

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19896 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

1. Sanjay Kumar S/O Sri Sadan Prasad Singh Resident Of Village- Puraini, Police Station- Giriyak, District- Nalanda.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sant Kumar Singh S/O Late Hiya Bharan Kuer Resident Of Village- Bankatti, P.S.- Baikunthpur, District- Gopalganj.

.... Opposite Party/s

with

Criminal Miscellaneous No. 19943 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

1. Jai Deo Prasad Singh S/O Late Ramchandra Singh Resident Of Village- Serua, P.S.- Gama, District- Giridih
2. Ganesh Prasad Singh S/O Late Mehsaraj Singh Resident Of Village- Kathwalia, P.S.- Gopalganj, District- Gopalganj
3. Md. Idris S/O Late Ramjan Mian Resident Of Village- Sandali, P.S.- Varauli, District- Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sant Kumar Singh S/O Late Hiya Bharan Kuer Resident Of Village- Bankatti, P.S.- Baikunthpur, District- Gopalganj

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate.
Mr. Jay Prakash Singh, Advocate
Mr. Shyam Bihari Singh, Advocate
For the State Mr. Sanjay Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-07-2017

1. Both these applications have been filed by

the petitioners for quashing the order dated 18-02-2011 passed



by learned Sub Divisional Judicial Magistrate, Gopalganj in Complaint Case No. 70 of 2006 by which, learned Magistrate took cognizance against the petitioners for the offences under Sections-406, 420, 465 of the Indian Penal Code. Both petitions arise out of same impugned order and, accordingly, they are being heard and disposed off by this common judgment.

2. Heard learned counsel for the petitioners. Though notice was validly served upon opposite party No. 2 but none appeared on his behalf.

3. It has been submitted that petitioners were at the relevant time deputed in Gopalganj Central Co-operative Bank Ltd. and were performing various duties as described in paragraph-5 of the Cr. Misc. No. 19943 of 2012. It has been submitted that bank advanced loan to the PACS for different beneficial schemes managed by the State Government for betterment of the agriculturists. The bank had advanced the loan to the PACS of the complainant and the loan remained unpaid to the extent of Rs. 38,64,540/- There is procedure enshrined in the Co-operative Societies Act permitting set off the loan and accordingly, Rs. 18,00,000/- has been adjusted from the account of the PACS towards the outstanding loan. The complainant has made grievance in the complaint that the



aforesaid Rs. 18,00,000/- has been illegally misappropriated by the bank (accused persons) causing loss to the PACS of the complainant.

4. As per complaint petition, filed by the complainant who was the PACS manager, an amount of Rs. 18,00,000/- of the PACS has been illegally misappropriated by the bank (accused persons) causing loss to the PACS of the complainant on account of said irregularities committed by the accused persons. The complaint filed by the complainant was sent to Police Station u/S 156(3) of the Cr.P.C. on the basis of which, police registered Baikunthpur P.S. Case No. 94 of 2006. Police after investigation submitted final form in the case finding the case untrue and mistake of fact. Thereafter, Protest Petition was filed by the complainant which was treated as complaint petition and learned Magistrate proceeded in inquiry u/S 202 of the Cr.P.C. and by the impugned order, found prima facie case, for the offence under Sections-420, 406 and 465 of the Indian Penal Code.

5. During argument in the case, counsel for the petitioners has drawn attention of the court towards Annexures- 3 & 4. Annexure-4 is a notice sent to the complainant by the Branch Manager for return of the amount outstanding with the



PACS of the complainant failing which, the outstanding amount of the loan (N.P.A.) will be set off from the money deposit of the PACS with the banks.

6. Counsel for the petitioner has also drawn the attention of the court towards the letter (Annexure-3) issued by petitioner to the Managing Director of the bank whereby it was communicated that Rs. 38,64,540/- has to be paid by the PACS to the bank with interest. The amount to the tune of Rs. 2,21,7571/- has been available in the account of complainant. The Managing Director directed the Branch Manager to adjust Rs. 18,000,00/- against the loan of the bank. The complainant has alleged that an amount of Rs. 18,00000/- has illegally been transferred by the bank from the account of the PACS of the complainant.

7. Counsel for the petitioner has during course of argument drew the attention of the court towards the ***Provision of Section-48 of the Bihar Co-operative Societies Act, 1935*** wherein it has been specifically provided that “ if any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the Society or its Managing Committee against a paid servant of the society) arises-



(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased member, whether such sureties are members or non-members and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) between the society and any other registered society; ¹[or]

¹[(e) between a financing bank authorized under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society;

Such dispute shall be referred to the Registrar.

8. It has been submitted that in this manner, the complainant has alternative remedy for redressal of his grievance but just with mala fide intention to harass the



petitioners, who are responsible officer of the bank, have been made accused in the complaint case.

9. Counsel for the petitioners has relied on a decision reported in 2011 (1) PLJR 634 (Ramendra Narayan Rai Vs The State of Bihar and Anr.) wherein the Hon'ble Court has held that complaint filed to pressurize the bank to compromise amounts to abuse of the process of the court.

10. In view of the facts of the present case stated above, this court is of the view that the instant complaint has been filed by the complainant merely with mala fide intention for wreaking vengeance on the accused with ulterior motive to pressurize to settle the outstanding dues. The Hon'ble Supreme Court has clearly laid down the guidelines in a decision reported in **1992 Supplementary (1) SCC 335, (State of Haryana & Ors. Vs. Bhajan Lal & Ors.)** in which, the Hon'ble Supreme Court has held in paragraph-102, that "where criminal proceeding is manifestly attended with mala fide and/or where proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the criminal proceeding is fit to be quashed".



11. In such circumstances, this court is of the view that continuance of the instant criminal proceeding against the petitioners is abuse of process of law and harassment to the petitioners. Accordingly, the impugned order dated 27-01-2005 passed by Sri Raj Kishore Pandey, learned Judicial Magistrate-Ist Class, Jehanabad in Complaint Case No. 644 of 2004 Tr. No. 4574 of 2011 along with entire criminal proceeding against the petitioners is hereby quashed.

12. Both Cr. Misc. Applications are ***allowed.***

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31-7-17
Transmission Date	31-7-17

