IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35597 of 2011

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

Aditya Puri
Managing Director, H.D.F.C. Bank, Bank House, Senapati Bapat Marg, Lower Parel, Mumbai-400013.

.... Petitioner

Versus

1. The State of Bihar
2. Kuntal Rai, W/o Amit Prakash, Resident of : A-9., P.C. Colony, P.S. Kankarbagh, Patna- 800020.

.... Opposite Parties

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with

Criminal Miscellaneous No.24378 of 2012

Arising Out of PS.Case No. -1622 Year- 2010 Thana -null District- PATNA

Mrs. Tripti Sinha,
W/o Mr. Deepak Srivastava, the then Branch Manager, H.D.F.C. Bank Limited B/33, Binodni Sadan, Patrakarnagar, Kankarbagh, Patna-20 At Present- Branch Manager, HDFC Bank Limited, Exhibition Road, Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Kuntal Rani, W/o Amit Prakash, Resident of A-9, P.C.- Colony, P.S.- Kankarbagh, Patna-800020

.... Opposite Parties

Appearance :
(In Cr.Misc. No.35597 of 2011)
For the Petitioner/s : Mr. Amresh Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Ariyam Pandey, Advocate
(In Cr.Misc. No.24378 of 2012)
For the Petitioner/s : Mr. Amresh Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Ariyam Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
Date: 12-10-2017

Both the criminal miscellaneous arise out of same case and, as such, have been heard together and are being disposed of by this common order.

In Criminal Miscellaneous No. 35597 of 2011, the petitioner Aditya Puri is the Managing Director , H.D.F.C. Bank House, Senapati Bapat Marg, Lower Parel, Mumbai, whereas in Criminal Miscellaneous No. 24378 of 2012 the petitioner Mrs. Tripti Sinha is the then Branch Manager, H.D.F.C. Bank Limited, B/33, Binodni Sadan, Patrakarnagar, Kankarbagh, Patna.

Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for the opposite party no.2.

These criminal miscellaneous applications have been filed for quashing the order dated 20.08.2011 passed by Smt. Namita Chandra, Judicial Magistrate 1st Class, Patna in Complaint Case No. 1622(C) of 2010 whereby the learned Judicial Magistrate has been pleased to take cognizance against the petitioners under Section 406 of the Indian Penal Code and has directed for issuance of summons against the petitioners.

The complainant filed the complaint petition with allegation that she opened a joint account with her husband on 30.08.2005 in H.D.F.C. Bank, Kankarbagh Branch, bearing Account No. 04771000006009. On 22.04.2010, the complainant deposited Rs. 3 lacs in the aforesaid account. On 05.06.2010 when the complainant went to the said branch for withdrawing Rs.

40,000/- from her account, she was informed that her account did not have sufficient balance. She was shocked to hear the same and enquired about the same from the Branch Manager Mrs. Tripti Sinha, then on inquiry she told that as per instruction of Mr. Aditya Puri the amount has been withdrawn from that account and sum of Rs. 2,83,342.59/- has been debited on 11.05.2010 as the husband of the complainant was having credit card and there was dues of the bank. The complainant being in wrongful loss filed the compliant case. It is alleged that the accused persons have committed an offence of Criminal Breach of Trust and Cheating and, as such, they are liable to be punished. The complainant was examined on solemn affirmation and one inquiry witness was examined and thereafter the learned Magistrate after considering the statement of the complainant and of the inquiry witness and further considering annexures to the complaint petition passed the impugned order holding that prima facie case appears to be made under Section 406 of the I.P.C. against the accused persons including the petitioners.

Submission on behalf of the petitioners is that as there was dues in account D.M. 4346-7810-0054-2795 which is a credit card number of the husband of the complainant and, as such, from this account being joint account amount of Rs. 2,83,342.59/- was debited and transferred to the account of credit card number of her husband. The petitioners have no criminal intention and, as such, no offence under Section 406 of the I.P.C. is made out. In the entire complaint petition there is no specific allegation against the petitioners. The complainant has merely stated that she was informed by the bank manager Mrs. Tripti Sinha that from her account some account has been debited under the instruction of Mr. Aditya Puri. The amount in complainant’s account was placed on ‘Hold’ invoking the Banker’s Right of Lien and Set off and not as alleged in the complaint petition. The Hon’ble Supreme Court in ***Pepsi Foods case (1998- A.I.R. Supreme Court page 128)*** has clearly held that summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the cases and the law applicable thereto. He has to examine the nature of allegations made in the Complaint and the evidence, both oral and documentary, in support thereof and then only that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate shall be a silent spectator at the time of recording of preliminary evidence before summoning of the accused persons. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise.

The Hon'ble Supreme Court in the case of ***Indian Oil Corporation Versus NEPC India Ltd.*** reported in ***A.I.R. 2006 Supreme Court page 2780*** has observed that it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases.

In the present case, the nature of dispute is purely civil. Whether the dues amount standing in the name of the husband can be debited or not from the joint account of the husband and wife this can only be scrutinized in civil dispute and not in criminal dispute. Admittedly, the husband of the complainant was in dues to the bank against his credit card number and the amount was debited in that account. No offence under Section 406 of the I.P.C. is made out against the petitioners therefore, the order dated 20.08.2011 is bad in law and is fit to be set aside as the continuance of the present proceeding will be an abuse of the process of law. There has been huge outstanding amount against credit card No. 4346-7810-0054-2795 availed by the complainant's husband and, as such, in accordance with Banking Norms and Terms and Conditions set out in the Card Member

Agreement, the due amount was debited. The matter was essentially a civil dispute arising out of a Civil Contract duly executed and signed between the parties. The Bank has placed "Lien" upon the joint account after duly sending "Lien Notice" and after giving reasonable time to clear the amount outstanding in the card account, payment was not effected on the card account and subsequently, Rs. 2,83,342.59/- was debited and 'Sett Off' from the joint account on 11.05.2010.

The learned court below ought to have dismissed the complaint case for willful suppression of material facts and for approaching the learned court with unclean hands. In the counter affidavit it is admitted that dues standing on credit card was settled at Rs. 60,000/- and out of that amount some amount was paid also but not the entire amount and, as such, the settlement failed and the bank debited the dues amount form the joint account standing in the name of the complainant and her husband. The case of the petitioners is squarely covered by principles laid down by the Apex Court in the case of **Bhajan Lal's case**.

On the other hand, the learned A.P.P. and learned counsel for the opposite party no.2 submit that the learned Magistrate after considering the materials available on the record and finding prima facie case to be made under Section 406 of the

I.P.C. has rightly summoned the accused persons including the petitioners and there is no illegality, incorrectness or impropriety. The bank cannot debit the dues of the husband from the joint account of the husband and wife and for that reliance has been placed upon ***A.I.R. 2005 Supreme Court page 29*** *in the case of* ***Anumati, Appellant Vs. Punjab National Bank, Respondent***. It is submitted that where civil remedy and criminal remedy both are available, both can be availed. According to learned counsel for the opposite party no.2, the dues of the husband of the complainant was settled at Rs. 60,000/- and out of that said amount, amount of Rs. 15,000/- was paid in three times so the husband was paying dues amount but in the meantime, the amount has been debited which is not correct and the same has been done with criminal intent.

Having considered the submissions urged at the Bar and after going through the record, it is manifest that amount of Rs. 2,83,342.59/- paisa was transferred from joint account of the complainant and her husband to the account of credit card number of her husband and was not withhold by the petitioners for their personal gain. Admittedly, lien was there and whether the amount can be deducted to the credit card of the husband from the joint account standing in the name of the complainant and her husband can be tested only in civil dispute and in civil dispute continuation of criminal proceeding against the petitioners will be misuse of the process of the court. Ruling relied upon by the learned counsel for the opposite party no.2 is not applicable in the present case as there the amount was in fixed deposit, but here the amount was not a fixed deposit rather in saving account and that saving account was standing in the name of the complainant and her husband and as per the bank, the dues was standing in the name of the husband so the bank debited the same. So, no criminal offence is made out against the petitioners and specially under Section 406 of the I.P.C.

In the result, the impugned order dated 20.08.2011 passed in Complaint Case No. 1622(C) of 2010 is hereby quashed against the petitioners and both the criminal miscellaneous applications are hereby allowed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.10.2017
Transmission Date	18.10.2017