

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26610 of 2011

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1. Pramod Kumar Son Of Late Yamuna Das Resident Of Village- Chandpur, P.S.-
Warisaliganj, Dist.- Nawada
2. Sunil Paswan Son Of Kali Paswan Resident Of Village- Birnama, P.S.-
Kashichak, Dist- Nawada

.... Petitioners

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
Date: 01-05-2017

This Criminal Miscellaneous application has been filed for quashing the order dated 05.02.2011 passed by Sri Mahaveer Prasad, the then Judicial Magistrate, Nawada in Warsaliganj P.S. Case No. 70 of 2008 GR No. 1068 of 2008 / Tr. No. 2059 of 2011 registered under Sections 420/34 of the Indian Penal Code whereby and whereunder the learned Magistrate wrongly rejected the petition filed under Section 239 of the Cr.P.C. of the petitioners for discharge.

2. Heard learned counsel for the petitioners and learned counsel representing the State.

3. On the basis of self statement of S.I. K. Paswan of Warsaliganj Police Station this case has been instituted with allegation that the informant received confidential information that some middlemen have come to Madya Gramin Bank, Dariyapur Branch, at Warsaliganj to extract money of Indira Awas. On the said confidential information the informant along with other Police personnel reached at the same Madya Gramin Bank



and saw two persons in the said bank and on interrogation they disclosed their name as Pramod Kumar and Sunil Paswan (petitioners). Both were searched. From possession of Pramod Kumar two Passbooks; one passbook was in the name of Pramod Kumar in which Rs. 500/- and second passbook was in the name of Nathun Manjhi in which Rs. 24,100/- was mentioned. The second man Sunil Paswan was having one passbook in the name of Neelu Devi in which Rs. 4050/- was mentioned. On inquiry they could not give satisfactory reply, hence seizure list was prepared and accordingly the FIR was registered. After institution of the case the Police started its investigation and after completing investigation submitted chargesheet under Sections 420/34 of the Indian Penal Code against the petitioners. Learned Chief Judicial Magistrate, Nawada took cognizance and transferred the case to the file of Sri Mahaveer Prasad, Judicial Magistrate Ist Class, Nawada. The petitioners filed petition under Section 239 of the Cr.P.C. for their discharge as there was no ground for framing of charge. Both Nilu Devi and Nathuni Manjhi have been examined during investigation vide paragraph 23 and 27 of the case diary wherein they have stated that they have given their passbook for up-to-dating the same and as such no offence under Sections 420/34 of the Indian Penal Code is made out and the petitioners are liable to be discharged. Learned Magistrate without going into the materials, collected during investigation, has rejected the petition under Section 239 of the Cr.P.C. and as such impugned order is fit to be quashed.

3. On the other hand, learned APP submits that other witnesses



have supported the prosecution version.

4. Having considered the submissions urged at bar, going through the records and noticing that in the case diary the two persons Nilu Devi and Nathuni Manjhi, whose passbooks were seized and which are the basis of the present case, have not supported that their passbooks were taken away for withdrawing Indira Awas amount rather they have specifically stated that they have given their passbook for up-to-dating the same and as such in my opinion no offence under Sections 420/34 of the Indian Penal Code is made out against the petitioners and the petitioners are liable to be discharged. There is no material in the case diary to show that the petitioners have withdrawn any amount from the passbooks.

5. Accordingly, this application is allowed and the impugned order dated 05.02.2011 passed by Sri Mahaveer Prasad, the then Judicial Magistrate, Nawada in Warsaliganj P.S. Case No. 70 of 2008 GR No. 1068 of 2008 / Tr. No. 2059 of 2011 is hereby quashed and the petitioners are discharged from the present case.

(Jitendra Mohan Sharma, J)

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