IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20520 of 2012

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1. Sheo Nandan Singh S/O Sri Banarasi Singh R/O Mohalla- Babu Tola, Amarpur Road, P.S.- Banka, District- Banka

.... Petitioner/s

Versus

1. Chief General Manager State Bank Of India, Local Head Office, West Of Gandhi Maidan, Patna, Bihar
2. General Manager State Bank Of India, Local Head Office, West Of Gandhi Maidan, Patna, Bihar
3. Zonal Manager, State Bank Of India, Patna
4. Regional Manager, State Bank Of India, Bhagalpur
5. Chandra Shekhar Prasad Sinha, The Then Branch Manager State Bank Of India, Agriculture Development Bank Branch, Banka, P.S. And District- Banka
6. Neeraj Thakur, The Then Branch Manager State Bank Of India, Agricultural Development Bank, Branch Banka, P.S.- Banka, District- Banka
7. Md. Atiur Rahman, Proprietor, M/S A-One Motors Tatarpur Road P.S.- Tatarpur, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Singh Mr. Rajiv Kumar Singh
For the SBI	:	Mr. Kaushal Kumar Sinha
For the Respondent No. 7	:	Mr. (Dr.) Manoj Kumar Ms. Sweety Sinha

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

17 24-04-2017 Heard learned counsel for the petitioner and learned counsel for the State Bank of India as well as learned counsel appearing on behalf of the Respondent No. 7.

2. The present case has been filed for a writ in the nature of certiorari for quashing the notice dated 05.08.2012 issued under the signature of the Branch Manager, State Bank of India, Agriculture Development Bank, Branch Banka, asking the petitioner to deposit a sum of Rs. 310844/- along with the interest and other charges and on failure of the petitioner to deposit the

same, the bank would be liable to recover the above amount with cost and consequences. The petitioner further seeks a mandamus commanding the respondents to act in accordance with law and to restrain them from proceedings ahead to realize the aforesaid amount.

3. Learned counsel for the petitioner submits that he had applied for the sanction of a loan amount of Rs. 405462/- which was duly sanctioned to him in 2007 itself and the petitioner was asked to deposit a sum of Rs. 105462/- as a margin money for availing the said sanction loan to him, the aforesaid sanction of loan amount was then released in favour of a firm known as M/s Hyundai A-One Motors and the banker's cheque was issued in favour of the M/s A-One Hyundai Motors on 18.10.2007. However, no car was delivered to the petitioner by the said M/s A-One Hyundai Motors though they had taken the said banker's cheque which was issued in lieu of 'Santor Xing' Car which was to be released in favour of the petitioner. Learned counsel for the petitioner submits that on 20.03.2008, when the said car was not delivered to him, M/s A-One Motors handed over a cheque of Rs. 4,80,667/- issued by the ICICI Bank issued in favour of the petitioner, but the said cheque was returned to the petitioner for want of inadequate funds in the account of M/s A-One Hyundai Motors. Consequently, the petitioner once again approached the Bank informing him that neither the money has been returned nor

has been car given to the petitioner. Learned counsel for the petitioner further submits that when the cheque issued by the M/s A-One Hyundai Motors could not be encashed for insufficient fund, the petitioner contacted the Branch Manager on 24.03.2008 whereupon he was advised to deposit the said cheque in his loan account. Accordingly, the petitioner deposited the said cheque on 16.08.2008 in the loan account of the State Bank of India, but the same was once again returned unpaid from the said State Bank of India for want of insufficient funds.

4. It appears that the State Bank of India had received the cheque from the petitioner on three occasions, once at the Barari Branch of the State Bank of India, the second time at the Main Branch of Bhagalpur and lastly on 16.10.2008, in the loan account of the petitioner at the Agriculture Development Bank, Branch Banka. On three occasions, the said cheque issued by M/s A-One Hyundai Motors in favour of the petitioner had been returned for insufficient funds. Thereafter, the State Bank of India was thus aware that M/s A-One Hyundai Motors had wrongly issued the cheque in favour of the petitioner though the State Bank of India by issuing the banker's cheque in favour of the M/s A-One Hyundai Motors had taken an amount of Rs. 105462/-. Till almost one year thereafter, the State Bank of India did not take any step whatsoever to recover the money of the bank from the Dealer of the car. Thereafter, a complaint case was initiated by the Branch

Manager of the State Bank of India bearing Banka P.S. Case No. 535 of 2009 dated 24.12.2009. Thus, it appears that for over one year after the cheque had bounced, the bank sat idle over the matter and lodged the present case only in December, 2009. The said case was filed both against the sole proprietor of M/s A-One Hyundai Motors, namely, Atiur Rahman, respondent No. 7 herein as well as the petitioner.

5. Against the said First Information Report, the petitioner preferred a Criminal Writ application bearing Cr. Writ No. 414 of 2010 in which this Court after hearing the parties has quashed the Criminal case as instituted against the petitioner vide its order dated 07.09.2011. While disposing of the said writ application, this Court clearly held that the First Information Report of Banka P.S. Case No. 535 of 2009 instituted under Sections 406 and 420 of the Indian Penal Code was quashed as against the petitioner only. This Court also held that as far as the petitioner was concerned, no case under Section 415 of Indian Penal Code was made out as far as Section 406 of the Indian Penal Code is concerned which deals with criminal breach of trust and which envisages that a person must be entrusted with some property which he dishonestly converts for his own use, and only then a case of misappropriation could be made out. It is evident from the pleadings of the parties that the cheque issued to the petitioner was never encashed in his favour as on all occasions, it had been

returned for want of insufficient funds.

6. The present writ application has now been filed only because the bank seeks to recover its own money and the case pending against the respondent No. 5 has not reached to its own conclusion. The trial in the said case is till going on. So far as the petitioner is concerned, no liability can be attached on him for the present until and unless, it is established that M/s A-One Hyundai Motors had no role to play and is absolved of the allegations made in the said case.

7. Thus in the considered opinion of this Court and for the reasons stated above, the present Demand Notice dated 05.08.2012 seeking to recover a sum of Rs. 310844/- as against the petitioner is wholly unwarranted, misconceived and fit to be set aside.

8. In the result, the impugned Demand Notice contained in Letter dated 05.08.2012 (Annexure-5), is quashed. However, so far as Respondent No. 7 is concerned, it shall be open to the State Bank of India to pursue its own remedy in accordance with law.

9. The writ application thus, stands allowed.

(Anjana Mishra, J)

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