IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30223 of 2014

Arising Out of PS.Case No. -2126 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-GOPALGANJ

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1. Vijay Kumar Verma Son of Late Mano Ranjan Prasad Verma, Senior Branch Manager, Central Bank of India Branch Gopalganj, Yadopur Road, Police Station - Gopalganj, Dist.-Gopalganj
2. Ravi Shankar Son of Chandradeep Das, A.F.O., Central Bank of India Branch - Gopalganj, Yadopur Road, Police Station Gopalganj, Dist.-Gopalganj

.... Petitioners

Versus

1. The State of Bihar
2. Karn Prasad Son of Late Nagina Prasad Maa Durga Agro Agency, Arar More College Road, Resident of Mohalla - Haziapur, Ward No. 27, Police Station Gopalganj, Dist.-Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Adv.
		Mr. Lokesh Kumar Singh
		Mr. Naresh Prasad
For the Opposite Party/s	:	Mr. Hirday Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-07-2017

This is an application under Section 482 of the Code of Criminal Procedure for quashing the order dated 11.04.2014 passed by Judicial Magistrate, 1st Class, Gopalganj whereby the Magistrate finding prima facie case for the offence under Sections 417, 418 and 323 of the I.P.C. ordered for issuance of summons against the petitioners.

2. Heard both sides.

3. The O.P. No. 2 filed a Complaint Case No. 2126 of

2013 on 12.08.2013 on the file of C.J.M., Gopalganj alleging inter alia that he has availed cash credit facility from the Central Bank of India, Gopalganj in the name of his firm Durga Agro Agency. The petitioners were the Branch Manager and A.F.O. respectively of the said Bank at the relevant time. It is said that the petitioners started operating the account of the O.P. No. 2 in their own manner and they demanded gift from the complainant. Subsequently, the petitioners allegedly closed his account as his account became N.P.A. The O.P. No. 2 filed a case before Debt Recovery Tribunal, Patna for rectification of transaction made in his account. The petitioners having come to know about filing of case by the Opposite Party No. 2 before Debt Recovery Tribunal, Patna, called him in their chamber and insisted for payment of Rs. five lacs an additional amount as the principle of set off of the interest has been enforced. The O.P. No. 2 then arranged money and deposited Rs. 4 lacs in the said account. The petitioners then started insisting the O.P. No. 2 for payment of entire sum. The petitioners issued a new cheque book and obtained signature of the complainant on eight cheques. The complainant insisted the petitioners to return the cheque whereupon the petitioners misbehaved and threatened the complainant.

4. The learned counsel for the petitioners submitted that

the petitioners are responsible Officers of the Bank with clean career. They acted as per norms rules and regulations of the bank and also as per direction of Superior Officers. The account, which was standing in the name of the firm namely 'Durga Agro Agency' was mis-operated. The complainant defaulted in payment of money taken out of the account. His account became N.P.A. on account of being defaulter. The dues against the complainant increased to the tune of Rs. 88 lacs. The petitioner No. 1, who was senior Branch Manger, was directed to take steps for realization of amount and so, the petitioner had bona fide insisted the complainant for making payment. The complainant voluntarily issued eight cheques to be presented on future dates. The cheques issued by the complainant were presented under the instruction of Opposite Party No. 2 but all the cheque returned with the note of insufficiency of fund. The petitioners gave a legal notice and filed a complaint case no. 958 of 2013 on 18.04.2013. The complainant (O. P. No. 2) having come to know about filing of the case by the petitioners filed the present complaint case maliciously in order to put pressure on the petitioners to get the matter settled. It was also submitted that the complainant has not come with clean hands. He had filed a case No. 215 of 2012 before Debts Recovery Tribunal, Patna, which after hearing was disposed of as per order dated

29.07.2013. The complainant suppressed the said facts and thereafter, in order to put pressure on the petitioners has filed the complaint case before the court below. In the complaint petition, no specific act constituting any offence has been alleged and so, no offence against any of the petitioners is made out. The learned Magistrate has passed the impugned order in mechanical way without applying judicial mind and so, the impugned order is fit to be quashed.

5. The learned counsel for the informant as well as APP for the State on the other hand submitted that the petitioners called the O.P. No. 2 in his chamber and under pressure obtained his signatures on eight cheques and misused the same with ulterior motive. They misbehaved with the complainant also and so, the order of cognizance has rightly been taken against these petitioners.

6. On perusal of complaint petition and annexures on record, I find that the petitioners had filed complaint case no. 958 of 2013 on 18.04.2013 on the file of C.J.M., Gopalganj for the offence under Section 138 of NI Act. After filing of the said case, The complainant had filed a case no. 215 of 2012 before Debt Recovery Tribunal, Patna which was disposed of on 29.07.2013.

The complainant thereafter, filed the present Complaint Case No. 2126 of 2013 against the petitioners on 12.08.2013. In the said complaint petition, the O.P. No.2 has although admitted at paragraph -1 of the complaint petition that he had filed a case on 12.08.2013 before Debt Recovery Tribunal, for rectification of his account but he has not stated that the said case was already disposed of by Tribunal on 29.07.2013. Thus, I find that the present complaint case has been filed after the complaint case of these petitioners and also after losing his case before Debt Recovery Tribunal. In similar type of case the cognizance / criminal prosecution of accused was quashed by Hon'ble Apex Court in Eicher Tractor Ltd. Others Vs. Harihar Singh case. It appears relevant to cite the facts of the said case *in the case of Eicher Tractor Ltd. & Others Vs. Harihar Singh (reported in (2008) 16 S.C.C. 763, I find that in the said case the appellant after issuing a legal notice, filed complaint case against the respondent. The lower court finding prima facie case for the offence U/s 138/142, 141 of N.I. Act, ordered for issuance of summons against the respondent. Subsequent to the said case, respondent filed complaint case no. 1343 of 2004 alleging therein that the appellant had stolen the cheques and after making forgery and interpolation, presented the same in Bank and thus committed* *an offence punishable under Sections 468 and 471 of the Indian Penal Code. The Magistrate took cognizance on 08.02.2005. The cognizance order was challenged before Hon'ble Allahabad High Court under Section 482 of Cr.P.C. which after hearing was dismissed. The matter went to Apex Court where it was allowed and proceeding against the appellant was quashed holding that the said case squarely covered within the parameters indicated in category (7) of Bhajan Lal case (1999 Supp (1) S.C.C. 335)."*

7. In the case in hand I find that the allegation against both the petitioners are omnibus. There is nothing against the petitioner no. 2. It has been simply alleged that he was sitting in the Chamber of the Branch Manager. The act of the petitioner no. 1 to recover dues amount from Opposite Party No. 2 appears to be as per the direction of Superior Officer. The fact of this case is similar to the case decided by our Hon'ble Apex Court in Eicher Tractor Ltd. & Others Vs. Harihar Singh (above). The factual scenario indicates that the present complaint case has been filed maliciously with an ulterior motive with a view to counter the proceeding initiated by the petitioners. The present case squarely covered within the parameters indicated in category of Bhajan (a) case (1999 Supra (1) S.C.C. 335) as observed by our Hon'ble Apex Court in foregoing paragraph.

8. In view of the discussion made above, I find that the criminal prosecution of the petitioners would amount to abuse of process of the Court. Accordingly, the order dated 11.04.2014 passed by learned Chief Judicial Magistrate, Gopalganj, is quashed and this Criminal Miscellaneous application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	AFR
CAV DATE	NA
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