IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26049 of 2014

Arising Out of P.S. Case No. - 4070 Year - 2007 Thana - SARAN COMPLAINT CASE District- SARAN

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Md. Ayub Mian @ Abbu @ Md. Ayub Son of Mahub S. Hussain @ Hasan Mian @ Hussain Doctor Resident of Village- Gangajal Tola Sonpur, P.S.- Sonpur, District- Saran.

.... Petitioner

Versus

1. The State of Bihar
2. Ramjan Ali, Son of late Hasim Miayan, resident of Village - Brhampur Pool, P.S. - Bhagwan Bazar, District- Saran.

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Umeshanand Pandit, Advocate.
For the State : Mr. Shyam Kumar Singh, A.P.P.
For the Opposite Party no.2: Mr. D. Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 06-09-2017

Heard learned counsel for the parties.

2. The sole petitioner in the present case has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing of the order dated 01.08.2012 passed in Tr. No. 398/13 (arising out of Complaint Case No. 4070/2007) in which cognizance under Section 420 of the Indian Penal Code has been taken by the learned Chief Judicial Magistrate at Chapra and the petitioner has been summoned. A copy of the complaint petition has been enclosed as Annexure-1 to the present application.

3. The case of the complainant-opposite party no. 2 is that he, being in need of money for his business purposes, submitted an

application before Bihar State Minorities Financial Corporation through its agent, namely, Md. Ayub Mian @ Abbu @ Md. Ayub (petitioner). On the said application, a sum of Rs. 42,500/- was sanctioned in the name of the wife of the complainant vide letter no. 272 dated 09.04.2005 and the said sanctioned amount was received vide D.D. no. CPR 055685 dated 09.04.2005. The said D.D. was deposited in the Bank A/C of his wife. It is alleged that even before disbursement of the amount by the Corporation, on 12.01.2005 the accused no. 1, who is the present petitioner, came to the complainant and asked him to make available the 10 cheques which were issued by the Bank in respect of the A/C maintained by his wife. The allegation is that as desired by the accused no. 1, the complainant got the signature of his wife on all those 10 cheques and handed them over to the accused on 12.01.2005. It is alleged that again the complainant was asked to make available 11 more cheques duly signed by his wife, which he once again made available to the accused no. 1. The complainant states that those cheques were blank.

3.1 The complainant further alleged that he had withdrawn a sum of Rs. 30,000/- only on 19.04.2005 and had deposited a sum of Rs. 28,000/- during the period 27.03.2006 to 04.01.2007. The complainant admits that the Corporation got encashed Cheque no. 982582 dated 27.11.2007 for Rs. 24,450/- and Cheque no. 982583 dated 30.06.2007 for Rs. 7,335/-, the total being Rs. 31,785/- towards recovery of loan. According to the complainant, earlier the Field Officer of the Corporation (accused no. 3) and the present petitioner were regularly coming to him pressurizing for recovery of loan and they were threatening that they had signed cheques with them which may be used for transfer / withdrawal of money to the A/C of the Corporation.

3.2 By way of allegations, the complainant has stated that on 18.12.2007 when he got the Savings Bank A/C statements of his wife updated, it was found that the accused persons had in conspiracy misappropriated by withdrawing a sum of Rs. 4890/- on 25.01.2007 vide Cheque no. 192355 in the name of accused N. Hussain and another cheque bearing no. 192357 for Rs. 4890 was encashed on 20.01.2007 showing 'self withdrawal'. The allegation against accused no. 1 (petitioner) is that he had withdrawn a total amount of Rs. 9,780/- and thereby he has committed fraud and misused the cheques issued by wife of the complainant.

4. It appears that the complaint was filed on 24.12.2007 and the learned Magistrate postponed issuance of process and called for a report from Dy.S.P., Saran, who has submitted his report, said to be based on the statements of witnesses and verification of papers, holding the complaint true. The learned Magistrate thereafter took

cognizance vide order dated 01.08.2012 and issued summons to accused no. 1 and 2.

5. Learned counsel for the petitioner submits that a perusal of the averments made in the complaint petition itself makes it clear that the present case has been filed against this petitioner because he was allegedly pressurizing the complainant for refund of the loan amount. Learned counsel submits that in the entire complaint petition there is no statement that this petitioner has withdrawn the money in his own name or that the money, as alleged, has been transferred in his A/C. Further, the averments of the complainant that Cheque no. 982582 and Cheque no. 982583 were encashed by the Corporation towards recovery of loan clearly demonstrate that the post-dated cheques were submitted with the Corporation as security for loan as it happens in normal finance business. Learned counsel would further submit that the learned Chief Judicial Magistrate, Saran has taken cognizance of the offence under Section 420 I.P.C. on the basis of the report submitted by the Dy.S.P. but the issuance of summons against the present petitioner has been ordered without there being any material on the record showing sufficient ground to proceed against the petitioner. The learned Chief Judicial Magistrate, Saran at Chapra has not even referred the relevant part of the report submitted by the Dy.S.P. and the order taking cognizance and issuance of summons

nowhere indicates application of judicious mind. According to the learned counsel for the petitioner, the impugned order, having been passed in a routine and mechanical manner, is fit to be set aside.

6. On the other hand, learned counsel representing the opposite party no. 2 as well as learned A.P.P. representing the State opposed the prayer for setting aside the impugned order. It is their submission that this petitioner has misused the cheques and a sum of Rs. 9780/- has been withdrawn fraudulently through two cheques mentioned in the complaint petition. They also submit in opposition that the order taking cognizance has been passed on the basis of the report of the Dy.S.P., which in turn was based on the statements of witnesses.

7. I have heard the parties and perused the record. To me, it appears on perusal of the complaint that a loan of Rs. 42,500/- was obtained by the complainant in the A/C of his wife. Receipt of the loan amount is admitted by the complainant. The terms and conditions, on which loan was advanced, have not been brought on the record but this Court can take judicial notice of the fact that loan is always advanced subject to payment of installments which may be monthly / quarterly and the installment amount is fixed taking into account the rate of interest on which loan has been advanced. According to the complainant himself, he had refunded only Rs.

31,785/-, that too, were recovered by virtue of the post-dated cheques, thereafter a sum of Rs. 9780/- is said to have been withdrawn by two cheques. The allegation of the complainant that this amount was withdrawn by accused-petitioner is not even *prima facie* true because the complainant himself states in the complaint petition that a sum of Rs. 4,890/- has been shown 'withdrawn' in the name of accused N. Hussain and another cheque, by which a sum of Rs. 4,890/- has been withdrawn, shows 'self' withdrawal. So far as the present petitioner is concerned, it is not the allegation of the complainant that the amount has been withdrawn by him under his signature.

8. The learned Chief Judicial Magistrate, Saran at Chapra has relied upon a report of the Dy. S.P., Saran which, according to this Court, is without application of judicious mind inasmuch as the learned Chief Judicial Magistrate, Saran at Chapra has not even briefly taken note of the relevant part of the report of the Dy. S.P. showing sufficient grounds to proceed against the petitioner. In the opinion of this Court, the learned Chief Judicial Magistrate was obliged to indicate at least the *prima facie* statements or evidences collected by the Dy. S.P., which would show sufficient grounds to proceed against the petitioner. By simply saying that there is a report based on the statements of witnesses and verification of papers etc., it cannot be said that there are sufficient grounds to proceed against the

accused. It is well said, "Cognizance is always taken of the Offence and not of the Offender". A person gets aggrieved when he is summoned by the court and not because the court takes cognizance of an offence. For purpose of issuance of summons, the learned Chief Judicial Magistrate was obliged to indicate those sufficient grounds for summoning the accused which in the present case is lacking. The submission of the learned counsel for the petitioner that the complainant brought this case because he was being pressurized to refund the loan is also demonstrated from the averments made in the complaint petition itself and this Court cannot throw out the submission of learned counsel for the petitioner that it is an admitted case of the complainant that the Corporation had recovered Rs. 31,780/- against the loan from the post-dated cheques, meaning thereby that the complainant / his wife was a defaulter in refund of the loan amount. The submission that the complaint is a '*mala fide'* complaint and the allegations against the petitioner do not inspire confidence because there is no material indicating withdrawal of money by this petitioner, seems correct and this Court accepts the submission.

8. The submissions of the learned counsel representing the opposite party no. 2 as well as learned A.P.P. for the State are not acceptable to this Court because a bare reading of the complaint

petition shows that so far as the present petitioner is concerned, there is no allegation against him that he had withdrawn the amount or got it transferred to his A/C under his signature. Since the reading of the complaint as a whole does not make out a *prima facie* case against this petitioner, in the opinion of this Court, the order taking cognizance and issuance of summons in so far as it relates to the accused - petitioner, namely, Md. Ayub Mian @ Abbu @ Md. Ayub, is liable to be set aside and is, accordingly, set aside.

9. Before this Court parts with the order, it is worth taking note of the fact that in the title portion of the petition filed before this Court, names of this petitioner and his father have been described, a comparison with the name of the accused shown in the complaint petition would show that there is one accused no. 2 whose name is identical to the name of the accused no. 2. It is made clear that before this Court this petition has been filed only on behalf of the Md. Ayub Mian @ Abbu @ Md. Ayub and the impugned order has been set-aside only in his respect.

10. The application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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