

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36766 of 2014

**Arising Out of PS.Case No. -3583 Year- 2010 Thana -MUZFFARPUR
COMPLAINT CASE District- MUZAFFARPUR**

- =====
1. Anil Kumar Suman S/o Late Baldeo Sharma the then Branch Manager, Central Bank of India, Juran Chhapra (in the House of Dr. K.P. Singh), P.S. Brahmapura, District Muzaffarpur at present the Chief Manager, Central Bank of India, Regional Office, Booty More, Ranchi (Jharkhand).
 2. Vijay Kumar Mishra, the then Cashier, Central Bank of India, Juran Chhapra (in the House of Dr. K.P. Singh), P.S. Brahmapura, District Muzaffarpur, at present Branch Manager, Central Bank of India, Siwan Branch, District Siwan.

.... Petitioners

Versus

1. The State of Bihar.
2. Anil Singh S/o Late Manger Singh R/o Village Kumharar, P.S. Madhuban, District East Champaran at present residing at Jagdamba nagar, Kolhua Paigamberpur, P.S. Ahiyapur, District Muzaffarpur Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Alok Kumar Alok, Advocate
For the State : Mr. Upendra Kumar, APPELLANT
For the opp.party no.2 : None

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 06-09-2017

Heard learned counsel for the petitioners and the state.

Allegations made in the complaint pertains to fraudulent withdrawal of a total amount of Rs.40,000/- using forged ATM Card from a joint account of complainant/opposite party no.2 along with his wife Baby Devi, bearing Account no. 1484128400, in the Juran Chhapra Branch of the Central Bank of India, Police Station Brahmapura, District Muzaffarpur. With regard to the petitioners, who were the branch manager and the cashier of the said branch at the relevant time, the allegation is that they had assured that after



verifying the hand writing of the account holders, the issue would be resolved and the aforesaid amount would be credited to their account. The complainant thereafter alleges that in spite of repeated requests the said amount has not been credited by the petitioners. On the basis of such allegation, cognizance of the offence under section 420 of the Indian Penal Code vide order dated 29.5.2014, passed in Complaint case no. 3583 of 2010, Tr.No.4185 of 2014 by the court of the Judicial Magistrate, 1st class, Muzaffarpur.

Counsel for the petitioners submits that *prima facie* the allegations made in the complaint regarding non-crediting of the amount of alleged fraudulent withdrawal does not contain any of the ingredients constituting offence under section 420 of the IPC.

Bare perusal of the complaint shows that at best there is an allegation that the petitioners being bank employees did not credit the amount of fraudulent withdrawal, made by some other person. From bare perusal of the complaint petition, even if the allegations are taken to be true, no offence whatsoever is made out and the proceedings arising out of the complaint in question is an abuse of the process of the court. In support of the submissions, counsel for the petitioners refers to a decision of the Hon'ble Supreme Court rendered in case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 Supreme Court 604**.



In spite of issuance of notice to opposite party no.2 vide order dated 22.9.2014, though the appearance has already been filed, but none appears on his behalf on repeated calls. Earlier also, when the matter was listed on 23.8.2017, none had appeared on behalf of opposite party no.2.

Counsel for the State submits that the court below has rightly taken cognizance of the offence as per allegations made in the complaint.

After going through the uncontroverted allegations made in page 4 of the complaint dealing with the instant petitioners (accused), it appears that none of the ingredients of section 420 IPC is made out against the petitioners. Continuance of the proceedings in the court below against the petitioners would be an abuse of the process of the court. As from bare perusal of the allegations made in the complaint case no offence is made out under section 420 IPC, the order taking cognizance is unsustainable in law. The petitioners are unnecessarily being made to suffer the ordeal of a criminal trial. This Court is of the view that interest of justice demands that such criminal proceedings are not allowed to continue. In the result, proceedings going on against the petitioners in Complaint case no. 3583 of 2010, Tr.No.4185 of 2014 in the court of the Judicial Magistrate, 1st class, Muzaffarpur, is quashed.



The Cr. Misc. petition is thus allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	11.09.2017

