IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36630 of 2014

Arising Out of PS. Case No.-2193 Year-2011 Thana- WEST CHAMPARAN COMPLAINT District- West Champaran

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Shailendra Kumar S/o Late Shiv Das the then Chief Manager, State Bank Of India Narkatiyaganj Branch, District- West Champaran State Bank of India, Regional Manager, Regional Business Office, Deoghar (Jharkhand)

... ... Petitioner/s

Versus

1. The State of Bihar
2. Jai Shankar Thakur S/o Late Ram Ashray Thakur resident of village- Satwaria, P.S.- Sathi, District- West Champaran

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kaushlendra Kumar Sinha, Adv
For the O.P. No. 2	:	Mr.Bimlesh Kumar Pandey, Adv
For the State	:	Mr. AMRENDRA PRASAD (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 15-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 11.06.2014 passed by the learned Judicial Magistrate, Bettiah (West Champaran) in Complaint Case No. 2193 of 2011, by which cognizance has been taken against the petitioner for the offence punishable under sections 323 and 504 of the Indian Penal Code.

Briefly stated, the facts of the case is that complainant-opposite party no. 2 filed a complaint case in the court of Chief Judicial Magistrate, Bettiah (West Champaran) giving rise to Complaint Case No. 2193 of 2011 against the petitioner, who at the relevant point of time was branch Manager of the S.B.I Narkatiaganj branch stating therein that complainant-opposite party no. 2 had gone to S.B.I. Narkatiaganj branch in order to ascertain the status of his K.C.C loan so as to deposit the loan amount but the accused-petitioner asked him to hand over his Pass-Book and money to him whereafter he gave Rs. 25,000/- to the accused-petitioner. Having taken the money the accused-petitioner did not deposit the money when the complainant-opposite party no. 2 asked the accused-petitioner to return the Pass-Book, he became angry as to why he did not pay Rs. 15,000/- to him and thereafter he was abused and assaulted by the accused-petitioner, he was told that his Pass-Book would not be returned. On such allegation complaint case No. 2193 of 2011 was registered thereafter complainant was examined on S.A. and two inquiry witnesses were examined in support of his case and learned court below having found *prima facie* case made out against the accused-petitioner took cognizance of the offence under Section 323 and 504 of the Indian penal Code against the petitioner.

It has been contended by the learned counsel for the petitioner that earlier also a case of similar nature was filed by complainant-opposite party no. 2 being Complaint Case No.

2458C of 2008 before the Chief Judicial Magistrate, Bettiah on 09.09.2008. Learned Magistrate referred the said complaint petition to the police under Section 156 (3) of the Cr.P.C for registration of FIR and thereupon Officer-in-Charge of Shikarpur P.S. instituted and registered Shikarpur P.S. Case No. 304 of 2008 under Sections 323, 504, 389 and 379 of the Indian Penal Code and entrusted the investigation to one of his Sub-Inspector and after investigation the investigating officer on completion of investigation submitted a final report in the court of C.J.M., as the case to be false and recommended prosecution of complainant under Section 182 and 211 of the Indian Penal Code. The final form stating the case to be false was accepted by the learned Magistrate and on protest petition Complaint Case No. 3170C of 2010 was registered but complainant did not appear before the learned Magistrate and the learned Magistrate in August 2011 dismissed the complaint petition with a finding that the complainant has no interest to proceed with the case.

Learned counsel for the petitioner submitted that complainant-opposite party no. 2 had taken K.C.C. loan of Rs. 25,000/- from the State Bank of India, Narkatiaganj on 30.07.2005 but he never deposited any amount with bank, as a result of which outstanding loan amount of Rs. 58,621.75 as on

31.03.2008 which became 68641.75/- as on 31.03.2014. The petitioner being the Chief Manager of the said branch repeatedly reminded the complainant both verbally and in writting through the bank staffs for payment of bank dues failing which the bank will be constrained to take suitable action for liquidation of bank's dues but instead of paying the loan amount the complainant-opposite party no. 2 has filed this frivolous and mischeivous complaint petition to pressurize the petitioner who was performing his official duty. It is highly improbable for complainant-opposite party no. 2, who had not deposited even a single farthing with the bank in his loan account since 2005 till 05.09.2008 will go to deposit Rs. 25,000/- at one time and also directly with the Chief Manager (petitioner) of the bank. Had there been any intention on the part of the complainant-opposite party no. 2 to deposit the loan amount it was enjoined upon him to deposit the said amount with cashier and loan officer's of the bank instead of approaching the petitioner, who was the Chief Manager at the relevant time.

It has been contended on behalf of the learned counsel for the petitioner that with malafide intention and with an ulterior motive the complainant-opposite party no. 2 has filed this petition in order to pre-empt the due claim of the bank. In order to put pressure upon the bank he has made petitioner-Chief Manager as sole accused in his complaint petition. Initiation of criminal proceeding against the petitioner and taking cognizance of the offence vide order dated 11.06.2014 is complete abuse of the procees of court and in the interest of justice the same requires to be quashed. The complainant-opposite party no. 2 had not approached the court with clean hands and had earlier filed his complaint case on similar allegation which was referred to police and police after investigation submitted final form as case to be false and even recommended prosecution of complainant-opposite party no. 2 under Section 182 and 211 of the IPC, and the same was suppressed by the complainant-opposite party no. 2 while filing the present complaint case in which cognizance has been taken against the petitioner.

From the facts as stated above the present complaint case is a gross abuse of the procees of court by the complainant-opposite party no. 2 in order to put undue pressure on the bank official from performing his duty and take steps for proper re-payment of loan. Complainant-Opposite Party No. 2 had not paid a single farthing to the bank and instead of payment of the loan amount has filed this false and concocted complaint case after concealing all the necessary facts upon which the court below has intiaited criminal proceeding against the petitioner and took cognizance and issued summons for his appearance.

The Apex Court in a judgment since then reported in ***AIR 2017 SC 1884 (Vineet Kumar vs State of Uttar Pradesh)*** *in* paragraph no. 39, has held as follows:-

> "39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in State of Haryana vs. Bhajan Lal (1992 Suppl.(1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana vs. Bhajan Lal, which is to the following effect:
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> > "(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to

spite him due to private and personal grudge."

Considering the facts and circumstances of the present case the order taking cognizance dated 11.06.2014 as well as whole proceeding arising out of Complaint Case No. 2193 of 2011 is quashed.

The petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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