IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10289 of 2011

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1. Dhiraj Kumar Srivastava S/O Ramjee Prasad Srivastava, Field Officer, State Bank Of India, Sasaram Bracnh, P.S. - Sasaram, District - Rohtas, Presently Posted As Manager, Information Technology Services, State Bank Of India, Local Head Office, West Gandih Maidan, Patna, P.S. - Gandhi Maidan, District - Patna
2. Uday Narayan Singh S/O Late Ram Niwas Singh, Branch Manager, State Bank Of India, Sasaram Branch, P.S. - Sasaram , District - Sasaram Prresently Resident Of Arpana Bank Colony, West Of Canal, Ramjaipal Road, New Bailey Road, Patna, P.S. - Danapur Cant, District - Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Rajesh Kumar Gupta S/O Sarya Pd. Gupta M/S Muskan Furniture Works Under The Proprieto Ship Of Rajesh Kumar Gupta, Civil Line, Near St. Paul'S School, Sasaram, Rohtas At Present R/O Village - Nokha, P.S. - Nokha, District - Rohtas

.... Opposite Parties

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Appearance :
For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
Date: 04-07-2017

This Criminal Miscellaneous application is directed for quashing the order dated 07.05.2010 passed by Shri Ashish mishra, the then Judicial Magistrate, Ist class, Rohtas at Sasaram in Complaint Case no. 879 of 2007 Trial No. 1759 of 2010 whereby and whereunder after finding prima facie case to be made out under Sections 406/34 of the Indian Penal Code cognizance has been taken and summons have been ordered to be issued.

2. Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned APP representing the State.

3. Complaint Case No. 1135 (c) of 2006 was filed by O. P. No.

2 in the court of learned C.J.M., Rohtas against the petitioners which was sent to the Officer Incharge of Sasaram Town Police Station under Section 156 (3) of the Cr.P.C. for institution of the first information report and investigation and after completing investigation final form was submitted and after hearing the same was accepted vide order dated 25.06.2007 and on protest petition, filed on behalf of the informant, which was treated as Complaint Petition and that was inquired into and after making inquiry the impugned order has been passed.

4. The case of O. P. No. 2, as made out in the complaint petition, is that he was running Furniture Shop in the name and style of M/s Muskan Furniture Shop. He has taken loan of Rs. 2,00,000/- from the State Bank of India, Sasaram Branch wherein the petitioners at the relevant time were posted for which on 07.11.2000 he opened cash credit account bearing No. 01650061014. As the turn over of the shop was less for the year 2000-05 and as such the cash credit account was not regularly maintained and then the Branch Manager informed the informant that his cash credit is being temporarily stopped. On receiving the notice of the bank the informant visited along with witness with all papers, met with the Manager and Field Officer who suggested to file application to renew his account and accordingly, an application was filed and the informant returned to his Furniture Shop. When the informant reached at his Furniture Shop then he noticed that he has left his cheque book on bank counter. The informant accordingly, rushed with witness to the bank and found his cheque was lying on the bank counter and he took the cheque book and returned back. On 05.08.2006 the petitioner no. 1 asked the informant's brother Binod Kumar on telephone to ask the informant to talk with him and he gave mobile number and on 05.08.2006 the informant talked with the petitioner no. 1 who informed him that he has withdrawn Rs. 1,52,000/- through cheque from that cash credit account upon which he replied that he has not given any cheque. The informant visited the bank where he saw the cheque bearing No. 00789949 in the name of Lallan Chaudhary on which informant's signature is available but the informant denied that signature. The informant requested to make the inquiry in this regard as it was fraudulent withdrawal. After three days no information was given by the bank then on 09.08.2006 the informant again visited the bank where it was advised to make written complaint and accordingly, he contacted his advocate and application was prepared and the same was given to the Bank on 09.08.2006. On 14.08.2006 a registered post letter and notice was received by the informant sent by the Bank. It is suspected that when the cheque book of the informant was left at bank counter, someone took away cheque from the cheque book in collusion and conspiracy with petitioner no. 1 and 2 through said cheque withdrawal of Rs. 1,52,000/- was made.

5. Submission on behalf of the petitioners is that no offence under Sections 406/34 f the Indian Penal Code is made out, there was no entrustment, admittedly, there was a loan account of the complainant in the bank of the petitioners. O. P. No. 2 did not pay the loan amount and as such the competent authority of the bank namely, Chief Manager issued letter on 04.08.2006 and 21.05.2006 with regard to irregularity of loan account since 30.06.2006 vide annexure- 5 series. Thereafter, the bank authority has also sent and issued a legal notice dated 10.10.2006 and ultimately on 20.10.2006 under the Public Demand Recovery Act certificate case was filed wherein the complainant has appeared and filed show cause and rejoinder was filed on behalf of the bank. Due inquiry was made, expert opinion was also obtained and hand writing expert gave report that cheque in question bears the signature of the complainant and as such no offence is made out against the petitioners. The Chief Manager after getting the signature verified by the competent expert came to the conclusion that there is no forgery. The disputed signature is of Rajesh Kumar Gupta O. P. No. 2. Cognizance order has been passed in absence of any handwriting expert report and as such on this ground alone the same is fit to be quashed. The materials brought on record by the complainant is not sufficient for taking cognizance against the petitioners. O. P. No. 2 earlier on 15.11.2006 filed protest petition cum complaint petition which was kept on record and no order was passed, thereafter, again filed protest-cum-complaint petition on 27.11.2007 which was also kept on record and no order was passed but after submission of final form the second protest petition was treated as complaint petition and as such on this ground also the impugned order is fit to be set aside. Learned counsel for the petitioners has relied upon a judgment reported in **2010 (1) PLJR page 167** in the case of **Anand Kumar Singh @ Kali Singh Vs. The State of Bihar** and further reliance has been placed upon a judgment reported in **2017 (2) PLJR 332** in the case of **Anjani Kumar Sinha Vs. The State of Bihar and Others**.

6. On the other hand, learned APP and learned counsel representing O. P. No. 2 submit that there was cash credit account in the bank of the petitioners and through a cheque, which was not in the pen and handwriting of the complainant, amount of Rs. 1,52,000/- was paid to a fake person namely, Lallan Chaudhary and as such prima facie offence under Section 406 of the Indian Penal Code is made out. The learned Magistrate after considering the statement of the complainant on solemn affirmation and two inquiry witnesses, namely, Binod Kumar and Ramchandra Prasad has come to the conclusion that prima facie offence is made out and as such the same is fit to be affirmed and no interference is required by this Court. Learned counsel for O. P. No. 2 relied upon a judgment reported in **(1995) 1 Supreme Court Cases 627** in the case of **A.E. Rani Versus V.S.R. Sarma and Others**.

7. Having considered the submissions urged at the Bar, going through the impugned order, records and rulings cited above, it is manifest that the cheque was not handed over to the petitioners nor the same was entrusted to them in any way, due inquiry was made in the bank by handwriting and finger print expert and the expert gave opinion that it was the signature of O. P. No. 2 on the disputed cheque. The signatures were compared with the admitted signatures of O. P. No. 2, the petitioners no. 1 and 2 have got no concern in passing the aforesaid cheque at the relevant time. Those cheques were not produced before the petitioners but in spite of that they have been made accused. The Police after completing investigation has submitted final form which was accepted by learned Chief Judicial Magistrate. The Bank officers should be saved in such a peculiar circumstances where neither any entrustment nor there is any fault on their behalf in passing the said cheque.

8. In the result, the impugned order is hereby quashed and this criminal miscellaneous application is allowed.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	
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