IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53282 of 2016

Arising Out of PS.Case No. -298 Year- 2003 Thana -GANDHIMAIDAN District- PATNA

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Kumar Pradeep Narain S/o Late Surajdeep Narain R/o Mohalla- Anand Bihar, Sector 2, P.S.-Phulwari, P.O.-Anisabad, Patna-800002

.... Petitioner

Versus

1. The State of Bihar
2. The Branch Manager, Fatuha Branch, Bihar, State Finance Corporation

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Prasad Sinha, Advocate
For BSFC	:	Mr. Parthsarthy, Advocate
For the State	:	Mr. Jharkhandi Upadhyaya, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for Bihar State Finance Corporation (for short 'Corporation')/opposite party no. 2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order of cognizance dated 01.06.2009 passed by the learned ACJM, Patna in Gandhi Maidan P. S. Case No. 298 of 2003.

3. The aforesaid Gandhi Maidan P. S. Case No. 298 of 2003 was instituted under Sections 406, 420, 467, 468, 471 and

120-B of the Indian Penal Code on the basis of the written report submitted by one Mahavir Prasad Mandiwal, Branch Manager of the Corporation, Fathua.

4. According to the written report submitted by the informant, father and elder brother of the petitioner, namely, Suryadeep Narain and Prakash Narain respectively being partners of M/S Press Chemical of India were the proprietors of the firm. They had taken loan of a sum of Rs.1.74 lakh on 01.08.1978 from the Corporation to start a manufacturing unit of printing ink after executing equitable mortgage of their land concerning plot no. 497 admeasuring area 2200 sq. ft. They failed to return the loan amount with interest due upto Rs.10,99,385.48/-. Thereafter, the Corporation made an advertisement for sale of mortgaged land on auction and in course of the proceeding, the Corporation came to know that the measurement of the land was wrongly given at the time of mortgaging it as only 1017 sq. ft. was physically available out of plot no. 497 in place of 2200 sq. ft. and the remaining land of the said plot was sold by the family members of the mortgagors without giving any information to the Corporation. On such allegations, the informant alleged that the mortgaged land was never 2200 sq. ft. and this fact was in the knowledge of the mortgagor, but they deceived the Corporation in conspiracy with

each other.

5. It is submitted by the learned counsel for the petitioners that both the partners of the firm, namely, Suryadeep Narain and Prakash Narain have already died and now, the heirs of those partners are facing prosecution before the court below. He contended that the legal heirs of the partners are facing prosecution because they have been sent up for trial on completion of investigation by the police. According to him, one of the deceased accused late Prakash Narain had already paid the entire dues amount through settlement under one time settlement scheme launched by the Corporation in the year 2006. In proof of the same, a certificate was also issued to him by the Corporation. In that view of the matter, the dispute between the parties has already come to an end. He contended that in view of the settlement of dues with the Corporation, no useful purpose would be served by continuing with the trial of the case.

6. Mr. Parthsarthi, learned counsel appearing for the Corporation submitted that the Corporation took over the mortgaged assets on 13.02.2002 in presence of the Executive Magistrate. At the time of take over, the mortgage documents were examined by the Executive Magistrate and in his presence the government *amin* measured the area of the mortgaged plot no. 497

and it was found that only 1017.06 sq. ft. land was available as against 2200 sq. ft. mentioned in the mortgage deed. Thus, the dispute over the mortgaged area arose. The matter was referred to one of the advocates of panel of the Corporation. The advocate opined that in the facts of the case, first information report may be lodged against the parties whereafter the first information report was instituted. He submitted that after instituting of the first information report, the firm made an attempt to liquidate the Corporation's dues and when the Corporation came out with one time settlement scheme in the year 2006, the firm submitted a proposal for settlement of its dues under the said scheme and also submitted application. The Corporation allowed the settlement amount and the firm made total outstanding payment on 06.06.2007 and, accordingly, the Branch Manager issued no dues certificate in favour of the firm. He submitted that in view of the subsequent development, the Corporation is not interested in pursuing the matter. The arguments advanced by Mr. Parthsarthi, learned counsel for the Corporation is based on the stand of the respondent Corporation in its counter-affidavit.

7. Learned counsel for the State submitted that as the main grievance of the Corporation was for recovery of the loan amount and as the firm has already liquidated the loan amount and

the Corporation is not interested in pursuing the matter, the State has got no objection if the matter is allowed to be settled between the parties.

8. I have heard learned counsel for the parties and perused the record.

9. Having regard to the nature of the dispute and in view of the settlement between the parties, keeping in mind the ratio laid down by the Supreme Court in **Gian Singh Vs. State of Punjab [(2010) 15 SCC 118], B. S. Joshi & Ors. Vs. State of Haryana & Anr. [(2003) 4 SCC 675]** and **Jitendra Raghuvanshi & Ors. Vs. Babita Raghuvanshi & Anr. [(2013) 4 SCC 58]** wherein it consistently held that the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great

oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim, I am of the considered opinion that no useful purpose would be served by allowing the prosecution to continue.

10. Accordingly, the impugned order of cognizance dated 01.06.2009 passed by the learned ACJM, Patna in Gandhi Maidan P. S. Case No. 298 of 2003 is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2017
Transmission Date	10.10.2017