IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34563 of 2013

Arising Out of PS.Case No. -113 Year- 2013 Thana -MADHUBANI TOWN District-MADHUBANI

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1. Binod Poddar S/O Anirudh Poddar R/O Village + P.S. Bath, District Bhagalpur.
2. Bhola Kumar S/O Babu Lal Singh R/O Village Purkhauli, P.S. Lalganj, District Vaishali At Hajipur.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr.Advocate with Mr. Rajesh Kumar, Advocate

For the Opposite Party/s : Mr. Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 09-05-2017

Petitioners have preferred this application under Section 482 Cr.P.C. for quashing the order dated 10.7.2013 passed by learned Sub-Divisional Judicial Magistrate, Madhubani in T.R. No. 4594 of 2013, arising out of Madhubani (Town) P.S.Case No. 113 of 2013, whereby and whereunder learned Magistrate has been pleased to take cognizance of the offences under Sections 406, 408, 420, 120B, 467, 468, 471 of the Indian Penal Code and Section 76 of the Chit Fund Act, 1982 and Section 7(ii) of the Bihar Protection of Interest of Depositors (In financial establishments) Act, 2002 & Rules 2004.

As per prosecution, the Block Development Officer, Tirkaulia Block, East Champaran pursuant to the order contained in

Memo No. 199 dated 2.5.2013 on 3.5.2013, along with Manager of Agarani Bank raided the premises of Samruddha Jeevan Foods India Limited (hereinafter referred to as SJFIL) branch , Motihari and it was found that office staff and agents of aforesaid firm were accepting monthly instalment or one time payment and entering into agreement with the customers to supply within 2-5 years buffalo, goat, calf or money and from which it appears prima facie act of cheating and their activities appears like non-banking organization but the Manager, i.e., the petitioner told that it is the business of sale and purchase. It is further alleged that from the activities of the Company it appears that there is no safety of the money of the people nor the Company has any authorization either from R.B.I. or SEBI and, as such, filed a complaint for institution of a case on the basis of which the case under the aforesaid Sections was instituted against the petitioner and thereafter charge-sheet has been submitted in this case under the aforesaid sections and thereafter learned SDJM has taken cognizance by the impugned order under the aforesaid sections, as stated above.

The petitioners have challenged the order taking cognizance.

Contention of learned counsel for the petitioners is that no offence is made out against the petitioners as they are dealing with sale and purchase of veterinary products and for that no licence is required either from the RBI or from the District Administration or from any authority, rather they are guided by the guidelines of RBI and NABARD, hence no offence is made out and further there is no complaint of any independent person against the Company. It has further been submitted that the Company is limited Company having registration and its head office is at Maharashtra and furthermore it has been submitted that petitioners are data entry operators in that Company, as such, no offence is made out and order taking cognizance is bad in law.

In this case, case diary has been called for, as such, after hearing the parties in detail this application is being disposed of by this order.

Mere perusal of the FIR it appears that there is allegation against the Company that without any valid paper or without any order of Reserve Bank of India or District Magistrate they are running a non-Banking institution and in a conspiracy, inducing the persons of making false plea that some profit will be made they are accepting the deposits and through Axis Bank, got it distribute among themselves and petitioners are employees of the company. Even during investigation, material has come that the company is accepting the deposits from the customers and they are sending the money to the Head Office at Maharashtra and the customers are assured that on the basis of their money goats, hens, etc. are being purchased and after completion of bond they will be paid the bond amount. Even the witnesses who had deposited the money have come forward during the investigation and stated that they are depositing the money in the SJFIL and they have been informed that from that money buffalos, goats, etc. will be purchased and half of the money will be spent on the fodder and from benefits accrued from the purchase of buffalos, goat, etc. they will be given the maturity amount as mentioned in the bond certificate and several witness have stated like that.

From the materials collected during course of investigation it clearly appears that SJFIL is accepting the deposits from the customers and issuing bonds.

Non-Banking Financial Company has been defined in **Section 45-1(f)**, which has been introduced by the **Reserve Bank of India (Amendment) Act, 1997**, which provides as follows :

"**45-1(f)** "non-banking financial company" means –

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify."

Further **Section 58B of Reserve Bank of India Act, 1934** provides for penalties and sub-section 4A of Section 58B, which has also been inserted by the Amendment Act, 1997, reads as follows :

> "**4A**. If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees."

Further Section 3 of the Bihar Protection of Interest of Depositors (In financial establishments) Act, 2002, which is as follows :

> "**3. Fraudulent default by Financial Establishment** : Where any Financial Establishment, having fraudulently or dishonestly, defaults in repayment of any deposit on maturity along with any benefit in the form of interest, bonus or profit, or in any other form as promised or fraudulently or dishonestly fails to render service as assured against the deposit, the Financial Establishment and every person including the promoter, partner, director, manager or any other person or any employee responsible for the management of or conducting the business or affairs or such Financial Establishment shall, on convention, be punished with imprisonment for term up to ten years and with fine up to one lakh of rupees or where such default relates to a quantifiable sum of money twice amount of such sum, whichever is more:
> **Provided** that in absence of special and adequate reasons to be recorded in the judgment of the Court,

the imprisonment shall not be for less than three years and the fine shall not be less than fifty thousand rupees.

Explanation – 1 : For the purpose of this section, a Financial Establishment, which commits default in repayment of any deposit with such benefits in the term of interest, bonus, profit or in any other term as promised or falls to render any specified service agreed against the deposit with an intention of causing wrongful gain to one person on wrongful loss to another person or commits such defaults due to its inability arising out of impracticable of commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed, shall be deemed to have committed a default or failed to render the specific service, fraudulently.

Explanation – II : When a question arises whether any Financial Establishment has committed fraudulent default within the meaning of this section, the Court shall presume that such Financial Establishment has committed the default fraudulently."

Considering the allegations as well as provisions referred to above, it appears that SJFIL is dealing with the deposits of the customers under some Schemes without any licence issued under Reserve Bank of India Act, 1934, which is punishable under Section 58B of the above Act and further aforesaid act of the company also amounts to committing fraud on the customers. Petitioners are the employees of the company, as such, as per provisions of Bihar Protection of Interest of Depositors (In financial establishment) Act, 2002 & Rules 2004 they are also criminally liable for the aforesaid offence. It is needless to say that cognizance of offence is taken and not of the section.

In view of above discussions, I find that there is no infirmity in the order taking cognizance. Hence, this application is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	
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