IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43015 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

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1. Tripati Nath Sinha Late Rameshwar Prasad R/O,Mohll.-Lallu Pokhar,Post & Dist.-Munger ,At Present Working As Officer Bihar Kehetriya Gramin Bank,Purani Bazar,Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Anil Kumar Yadav Sahdeo Yadav R/O,Hanumanganj,P.O. & P.S.-Areari,Dist.-Shekhpura

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukteshwar Dayal, Adv.

For the State : Mr. Shailendra Kumar, No. 1 APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the petitioners. Learned counsel for opposite party No. 2 does not appear although notice has validly been served upon him. Heard learned APP for the State.

This petition has been filed for quashing the impugned order dated 15-11-2011 passed by Sri Keshar Murti Tiwary, learned Additional Sessions Judge, FTC-II, Sheikhpura in Cr. Rev. No. 215 of 2008 and also for quashing the order taking cognizance dated 01-04-2008 in Complaint Case No. 28C of 2006 under Sections-409, 420 of the Indian Penal Code.

It has been submitted that this petitioner is suffering rigours of criminal proceeding since year, 2008 for allegation of misappropriating an amount of Rs. 3,000/- allegedly paid by the complainant towards repayment of loan installment.

The complainant has alleged in the complaint that he had borrowed Rs. 10,000/- on 13-11-1995 for installation of pumping set and repaid the loan on different dates as mentioned in the complaint petition. It is further alleged that he went to the branch on 13-02-1999 along with one witness Rajendra Yadav and met with the petitioner. The petitioner told him that if he deposit Rs. 3000, his loan account will be closed. The complainant paid cash Rs. 3,000/- in the presence of witness Rajendra Yadav and got a receipt (Annexure-2) with regard to aforesaid amount. The petitioner did not deposit the amount in the loan account of the complainant and also did not close the loan account and has misappropriated the aforesaid amount. The complainant made complaint with bank officials but no action was taken, then the complaint was filed.

At the very outset, it is apparent that the occurrence is alleged to have taken place on 13-02-1999 and this complaint has been filed by the complainant in the year, 2006 after delay of about seven years. Counsel for the petitioner has submitted that the learned Magistrate has by order dated 01-04-2008 after holding inquiry u/S 202 Cr.P.C. found prima facie case u/Ss 409, 420 of the Indian Penal Code although there was oral and documentary evidence available which shows that the amount was not received by the petitioner. Thereafter, the aforesaid order was challenged by the petitioner in the revision vide Cr. Rev. No. 215 of 2008 which was also rejected by the learned Additional Sessions Judge, Sheikhpura vide order dated15-11-2011. Learned Additional Sessions Judge has also failed to take into account the documentary evidence pointed out by the petitioner, which was report of fingerprint expert clearly stating that signature on the loan receipt (Annexure-2) was not of the petitioner.

Learned APP has appeared and submitted that this petitioner has filed the instant quashing application after dismissal of revision application. This petition u/S 482 of the Cr.P.C. is not maintainable as it is second revision filed u/S 482 Cr.p.C. Counsel for the state further submitted that there is no illegality in the impugned order of the court below.

Section-482 of the Cr. P.C. speaks of the inherent power of the High Court and clearly lays down "that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice".

There is catena of judgments which speaks that High Court can interfere under the jurisdiction of 482 Cr.P.C. to prevent the abuse of process of court and to secure the ends of justice, even if revisional jurisdiction has been earlier adopted by the petitioner.

In the instant case, from perusal of both orders i.e. order dated 01-04-2008 as well as revisional order dated 15-11-2011, it appears that both the courts have failed to take into consideration very relevant document which is the report of the handwriting expert wherein it has been clearly found that signature on the alleged receipt which is said to have been given by the petitioner to the complainant in support of receiving Rs. 3000/- from him in cash towards repayment of loan, was not of the petitioner. It is apparent from the revisional order passed by the learned Additional Sessions Judge in the criminal revision No. 215 of 2008, that the record of entire departmental proceeding was called for by the court below, which was available before them. The aforesaid record of departmental proceeding contains the report of the handwriting expert. The submission was made before the revisional court that the aforesaid report of fingerprint expert be considered to pass appropriate order but the revisional court has failed to consider such argument of the petitioner. The revisional court held in the order that the genuineness of the receipt filed in the complaint petition is a question of fact, which will only be decided in trial.

This court is not satisfied with such reasoning of the revisional court. The court finds that there was specific report of the expert which says that signature on the aforesaid report (Annexure-2) which is said to have been issued by this petitioner to the complainant in support of having received Rs. 3000/- from him towards the payment of loan, was not of the petitioner.

There was specific allegation made that aforesaid amount was misappropriated by the petitioner instead of depositing the same in the loan account of the complainant. In that event, non consideration of the aforesaid valuable document, at the time of passing of the impugned orders, was totally inappropriate. As such non consideration of the aforesaid document by the courts below has resulted in failure of justice to the petitioner who suffered rigours of criminal proceeding for about 8 years for such allegation made by the informant.

Therefore, both orders i.e. order dated 15-11-2011 passed by Sri Keshar Murti Tiwary, learned Additional Sessions Judge, FTC-II, Sheikhpura in Cr. Rev. No. 215 of 2008 and the order taking cognizance passed by the learned Magistrate dated 01-04-2008 in Complaint Case No. 28C of 2006, along with entire criminal proceeding against the petitioner is hereby quashed.

Accordingly, this Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02-11-2017
Transmission Date	02-11-2017