IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46988 of 2014

Arising Out of PS. Case No.-44 Year-2008 Thana- HALSI District- Lakhisarai

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Bhim Kumar Mandal S/o Late Shiv Shankar Mandal Resident of Village Matia, Police Station Laxmipur, District Jamui.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Amrendra Kumar, Adv
For the Opposite Party/s : Mr. U.S.P SINGH (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 17-11-2017

Heard learned counsel for the parties.

This application under section 482 of the Cr.P.C has been filed for quashing the order dated 17.01.2014 passed by C.J.M, Lakhisarai in Halsi P.S. Case No . 44 of 2008, by which cognizance under Sections 420, 467, 468, 471, 406 read with 120B of the IPC, has been taken against the petitioner.

Briefly stated, the facts of the case is that an FIR was lodged by the informant stating therein that on 28.02.2008 when the loan of Rs. 75,000/- was allowed by the informant who was branch manager of Bihar Kshetriya Gramin Bank, Tetarhat Branch, Lakhisarai, to one other accused Avanish Kumar on the basis of life insurance policy of Avanish Kumar verified by petitioner Bhim Kumar Mandal, who is the Peon of the alleged bank. According to informant, he had paid Rs. 75,000/- to accused Avanish Kumar on the basis of his loan documents and accused Avanish Kumar has got the aforesaid amount in his presence and his signature upon the concerned document in the branch. Subsequently, inquiry was made by the informant and it was revealed that accused Avanish Kumar has withdrawn the money on forged and fabricated life insurance policy after inquiry made by Life Insurance Officer, Lakhisarai. Accused Avanish Kumar has withdrawn the money of Rs. 75000/- against the forged and fabricated life insurance policy.

It has been submitted by the learned counsel for the petitioner that the petitioner is quite innocent and has committed no offence. He has been falsely implicated in this case and is being harassed and humiliated in a false litigation. The petitioner is not named in the FIR and his name has come during investigation. The FIR was lodged on 08.05.2008, whereas the offence was committed on 28.02.2008, after long delay of two and a half months, without any reasonable excuse for such delay. Petitioner is employed as Peon in the bank and the only material available against him is that he had identified the main accused Avanish Kumar and told the informant that he knew accused Avanish Kumar and except this there is no incrimnating material against the petitioner. It has been further submitted that the petitioner is a Peon in the said bank and everything was done by the branch Manager, who is also the informant, regarding sanction of loan. It is the branch Manager of the bank, who is responsible for sanctioning the loan after proper verification. It has further been submitted that it has come during investigation that Avanish Kumar was given loan on the basis of identification by old account holder namely, Gopal Singh and not by the petitioner and except that informant has stated that petitioner had identified the main accused Avanish Kumar, there is no any material or any other witness making such allegation.

After completion of the investigation by the police, police has submitted chargesheet against the petitioner under Sections 420, 467, 468, 471, 406 read with 120B of IPC and on the basis of chargsheet submitted by the police, the trial court has taken cognizance against the petitioner under Sections 420, 467, 468, 471, 406 and 120B of the IPC, and issued summons for their apperance to face the trial.

At the time of taking cognizance, the trial court has only to form a *prima facie* opinion that any offence is made out against the accused or not. The defence of the accused cannot be examined by the trial court at that stage. The trial court after going through the chargesheet, case diary, FIR and other materials available on record has found a *prima facie* case to be made out against the petitioner and took cognizance of the offence and issued summons for his appearance. The High Court in its inherent jurisdiction cannot substitute the finding of the trial court for issuing summoning orders. The sufficiency and adequacy of the evidence cannot be gone into by the High Court in its inherent jurisdiction, as the same is the function of the trial court, as such I am not inclined to interfere in the order passed by the trial court, however, the petitioner is granted liberty to raise all the issues raised in this petition as well as all other issues available to him in law at the subsequent stage of trial i.e at the time of consideration of his discharge petition or framing of charge, if not already framed.

With such liberty and observation the present petition is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
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