IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8113 of 2012

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1. Sri Bishnu Pada Tikader, S/O Bimal Krishna Tikader, R/O 50/D Banerjee Para, Post Office - Talpukur, P.S - Titagarh, Barrackpore Distt- 24 Parganas North, (West Bengal) at present posted as Senior Branch Manager, Syndicate Bank, Barasat Branch Sangam Market, Near 12 No Rail Gate, Barrackpore Road, P.S- Barasat, Distt- 24 Parganas North (West Bengal)
2. Sri Soumen Majumdar, S/O Sri Sanjib Chandra Majumdar R/O Shanti Niwas, West Apcar Garden, Gt Road (West) Aasansol, P.S- Aasansol South, Distt- Burdwan(West Bengal At Present Posted As Branch Manager, Syndicate Bank, Sabaijore Branch, Sabaijore, Distt- Deoghar(Jharkand)

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Narayan Mauar, S/O Late Jagdish Mauar, R/O Karman Tola, Ara, P.S- Ara Nawada, Distt- Bhojpur.

.... Opposite Party/s

Appearance :
For the Petitioner/s : Mr. Sanjeev Kumar, Advocate.
For the Opposite Party/s :

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 21-07-2017

Heard learned counsel for the petitioners and the learned counsel for the State. No one appears on behalf of the O.P. No. 2.

2. This quashing petition, under Section 482 of the Cr.P.C., 1973 has been filed challenging order dated 26.04.2011 passed by the learned Chief Judicial Magistrate, Ara in connection with Ara Nawada P.S.Case No. 212 of 2010 arising out of Complaint Case No. 806(C) of 2010, whereby he has taken cognizance of offence under Sections 323, 406, 420 and 504 of the Indian Penal Code against the petitioners.

3. The prosecution case, in brief, is that the petitioner no. 1, Senior Branch Manager and petitioner no. 2, Filed Officer,

Syndicate Bank, Ara, visited the house of the complainant on 18.04.2010 in the afternoon for recovery of loan amount since complainant had taken loan of Rs. 3,50,000/- in different installments in the year 2004-05 as well as cash credit of Rs. 5 lacs on collateral security of fixed deposit of Rs. 1,00,000/. It is alleged that the complainant had withdrawn Rs. 60,000/- on 13.04.2010 from P.N.B. Branch, so on 18.04.2010, he handed over Rs. 60,000/- in cash to the accused persons to deposit against his loan amount. The complainant asked acknowledgement receipt of the said amount, but they refused. On 03.05.2010, complainant went to the bank and on enquiry, found that Rs. 60,000/- earlier handed over by him to the accused persons, was not adjusted against the loan account. He met the accused persons in this regard but they started abusing and asked him to go out of bank premises.

4. The complaint was filed in the court and the same was sent under Section 156(3) Cr.P.C. to the police for lodging a case. Accordingly, present case was registered. The police, on conclusion of the investigation, submitted final form finding the case false, however, the learned Chief Judicial Magistrate, disagreeing with the police report took cognizance of offence.

5. Learned counsel appearing on behalf of the petitioners submits that petitioner no. 1 and 2 Branch Manager and Assistant Branch Manager respectively, were posted at the relevant time at

Syndicate Bank Ara. Complainant, Narayan Mauar had taken loan of cash credit and he withdrew Rs. 3,50,000/- from the Syndicate Bank in the year 2004-05. Later on, he became defaulter, his loan account turned into NPA and the loan amount with interest increased to more than Rs.6, 50,000/- Notice was issued to the complainant for payment of the outstanding dues in a proceeding filed under the Securitisation and Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002 (in short 'SARFAESI Act'), despite the receipt of notice, outstanding dues was not cleared so bank was going to take possession of his house which was mortgaged against loan then the present complaint case was filed to put pressure upon these officials not to proceed further taking coercive steps to realize outstanding dues.

6. Learned counsel further submits that the story of allegation levelled by the complainant is patently absurd, as no Bank Manager used to visit house of any loanee for collecting outstanding dues of loan amount, even no document was produced by the complainant to show that he had withdrawn Rs. 60,000/-, five days prior to the alleged occurrence, from the Bank. He submits that petitioner no. 1 was on leave from 03.05.2010 to 10.05.2010 and higher authorities had sanctioned the leave (Annexure-7) and as 1st and 2nd May, 2010 were holidays, so he had left for Howrah in the night of 30th April, 2010 and traveled on a reservation ticket, copy of

which is attached with this application, so there is no question that he was present in the bank on 03.05.2010, one of the dates of the alleged occurrence. The police also submitted final form in this case finding the case false.

7. Further submission is that subsequent to the alleged date of occurrence, the complainant participated in the Special Lok Adalat held in Ara Civil Court premises on 28.04.2010 for negotiating with the bank for settlement of outstanding dues against his loan account but even on that day, no such allegation was levelled before the Special Lok Adalat that he had earlier deposited Rs. 60,000/- and the same has not been deducted from his outstanding due.

8. Learned A.P.P. supports the impugned order.

9. Having considered the rival submissions and on perusal of record, the Court is of the view that present case filed by the O.P. No. 2 appears malicious in nature as well as content of allegation is patently absurd and improbable. The O.P NO. 2 is defaulter in making payment of loan amount taken from the Syndicate Bank, his loan account had turned as NPA, so bank started proceeding for recovery accordingly a notice was issued to him under SARFAESI Act, thereafter process being initiated for taking possession of his house as the same was mortgaged against the loan. Thereafter, present complaint case was filed by the O.P. No. 2 that too on the allegation that he had given Rs. 60,000/- to the petitioners on 18.04.2010 but

without any acknowledgement receipt, which appears improbable moreover, earlier to filing complaint case nowhere any complaint either to higher authority of the bank or in the proceeding before the Lok Adalat was made. Moreover, the police, on conclusion of investigation, found the case false so submitted final form recommending for initiating prosecution against the O.P No. 2 under Sections 188 and 411 of the Indian Penal Code. In the backdrop of such facts, there cannot be two opinions except the present complaint filed by O.P. No. 2, is malicious in nature instituted with an oblique motive for wrecking personal vengeance from petitioners with a view to spite him for taking coercive steps of realizing outstanding dues against loan account of the complainant.

10. So for the aforesaid reasons, the entire criminal proceeding including cognizance order dated 26.04.2011 passed by the learned Chief Judicial Magistrate, Ara in Ara Nawada P.S.Case No. 212 of 2010 arising out of Complaint Case No. 806(C) of 2010, is set aside. The petition stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.08.2017
Transmission Date	12.08.2017