IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26569 of 2011

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D.K. Srivastava son of Late Bageshwari Lal Srivastava one of the Directors of Sahara Group of Companies, having its Head Office at 1, Kapoorthalla Complex, Aliganj, Lucknow .... Petitioner

Versus

1. The State of Bihar
2. Braj Bhushan Singh, son of Late Jageshwar Prasad Singh, R/o village- Rani Sakarpura, P.S.- Khagaria (Gangaur), District- Khagaria

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 19-05-2017

This Criminal Miscellaneous Application has been filed for quashing the order dated 10.03.2011 passed by Sri R. K. Diwedi, Judicial Magistrate Ist Class, Khagaria in Case No. 482 (C) of 2010 whereby and whereunder after finding prima facie case to be made out he has summoned the petitioner also under Section 406 /120 B of the Indian Penal Code including two other officials of Sahara India.

2. Heard learned counsel for the petitioner and learned counsel for opposite party no. 2 and learned APP for the State.

3. Opposite Party No. 2 being a commission agent of Sahara India filed complaint petition in the court of learned Chief Judicial Magistrate, Khagaria alleging that he had been working in the capacity of Agent of Sahara India and his Code No. is 156200497. He used to collect money from the account holders and used to deposit in his Code Number in favour of Sahara India on which Sahara India was to pay the commission to him. He used to get the commission from time to time but from October, 2004 he was not being paid his commission amount and that has been stopped for which he orally, telephonically, by fax and in writing used to represent the department. Accused persons gave only assurance and he was not paid the amount. On 27.07.2008 the accused no. 2, O. P. Mani, told the complainant to open a bank account in which the commission amount will be credited and accordingly, the complainant opened the bank account in Canara Bank, Samastipur and met accused no. 2 who told him that the money has been received from Lucknow and that will be deposited in his account, thereafter, he approached the petitioner also and he gave assurance that the commission money will be credited very soon in his account. On 14.04.2010 in presence of witness no. 1 and 4 the accused O. P. Mani and N. K. Singh asked the complainant to sign on the withdrawal form and he was told that money will be credited and accordingly, the complainant signed the withdrawal form but the commission amount was not credited. On 20.04.2010 at about 12:30 he went to Sector Office at Khagaria and made inquiry from N. K. Singh accused no. 3 who told him that D. K. Srivastava and O. P. Mani have informed that the complainant will not get money and accordingly, it is alleged that the accused persons in connivance with each other with intention to misappropriate the commission amount got signed the important document and has misappropriated the amount and also caused threatening that his code will be cancelled. It is alleged that his commission amount will be about Rs. 4-5 lakhs.

4. The complainant was examined on solemn affirmation, thereafter, three inquiry witnesses were examined and documents were filed and thereafter, learned Magistrate passed the impugned order.

5. On behalf of the petitioner it is submitted that there was no entrustment, specially to the petitioner. The alleged withdrawal form was signed not in presence of the petitioner rather in presence of O. P. Mani and N. K. Singh, so no offence punishable under Section 406 of the Indian Penal Code is made out against the petitioner. The petitioner is the Director of Sahara Group of Companies having its Head Office at 1, Kapoorthalla Complex, Aliganj, Lucknow whereas the complainant is an agent of Sahara India. The petitioner has got no concern with payment of commission of anyone and he has been unnecessary made accused in this case only due to fact that the son-in-law of the complainant namely, Rajnikant Rakesh who was cashier in Sahara India has misappropriated the amount of Rs. 44,40,323/- and this complainant was the guarantor. He stood as surety for his son-in-law Rajnikant Rakesh and for that FIR was lodged in the year 2004 bearing Gogari P.S. Case No. 265 of 2004 and further award of Rs. 44,40,323/- has been passed against the son-in-law of the complainant and one Sri B. K. Paliwal vide annexure 2/1 and with bad intention the complainant has filed this complaint case only with a view to harass the petitioner and others. Learned counsel for the petitioner has relied upon a judgment reported in **(2017) 1 Supreme Court Cases 640** in the case of **HDFC SECURITIES LIMITED AND OHTERS Versus STATE OF MAHARASHTRA AND ANOTHER** and in **(2008) 5 Supreme Court Cases 662** in the case of **S.K. ALAGH Versus STATE OF UTTAR PRADESH AND OTHERS**.

6. Learned counsel for the opposite party no. 2, on the other hand, submits that learned Magistrate after being satisfied with the materials collected during inquiry has passed the summoning order which does not require any interference of this Court. The petitioner being Director has stopped the payment of commission as told by other co-accused and as such the petitioner is liable to be prosecuted. At the relevant time, the petitioner was the Director of Sahara India and in complaint petition he is arrayed as accused no. 1. It is true that withdrawal form was not signed in presence of the petitioner but the petitioner got stopped the payment of the commission. The rulings relied upon by learned counsel for the petitioner are not applied in the present case and they are on differing footing.

7. Having considered the submissions argued at the Bar, going through the complaint petition, the impugned order and the record, it is manifest that the withdrawal form was entrusted after signing the same by the complainant to other co-accused not to the petitioner. A criminal breach of trust is an offence committed by a person to whom the property is entrusted and here nothing was entrusted to the petitioner and as such no offence under Sections 406 and 120B of the Indian Penal Code is made out against the petitioner. Accordingly, the order dated 10.03.2011 passed in Case No. 482 (C) of 2010 with respect to the petitioner is hereby quashed.

8. In the result, this Criminal Miscellaneous application is hereby allowed.

(Jitendra Mohan Sharma, J)

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CAV DATE	
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