IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25163 of 2013

Arising Out of Complaint Case No. -1551 (C) Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

Anjani Kumar Sinha, s/o late Nawal Kishore Prasad Sinha, posted as Assistant General Manager, State Bank of India, Audit Deptt, LHO, Patna

.... Petitioner

Versus

1. The State of Bihar
2. Pramod Kumar Nirala, s/o Asharfi Lal, r/o Mohalla- At present Kamla Nehru Nagar, P.S. Kotwali, Dist.- Patna. Permanent resident of Mohalla- Shivnagar Colony, Behind Beur Jail, P.S.- Beur, Dist.- Patna

.... Opposite Parties

with

Criminal Miscellaneous No. 43898 of 2013

Arising Out of Complaint Case No.1551(C) Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

Reeta Nath, wife of Rahul Sinha, resident of 116/35B, Sheikhpura Aam Bagichha, Near SBI, I.G.I.M.S. Branch, P.S.-Shastri Nagar, District-Patna

.... Petitioner

Versus

1. The State of Bihar
2. Pramod Kumar Nirala, son of Asharfi Lal, at present resident of Kamla Nehru Nagar, P.S.-Kotwali, District-Patna and permanent resident of Shiv Nagar Colony, Behind Beur Jail, P.S. Beur, District-Patna

.... Opposite Parties

Appearance :
(In Cr.Misc. No.25163 of 2013)
For the Petitioner/s : Mr. Anupa Nand Jha, Advocate, Advocate.
For the Opposite Party No.2: Mr. Pancham Lal Jaiswal, Advocate.
Mr. Raju Kumar, Advocate.
For the State : Mr. Nawal Kishore Prasad, A.P.P.
(In Cr.Misc. No.43898 of 2013)
For the Petitioner : Mr. Ashok Kumar Sinha, Senior Advocate.
For the Opposite Party No.2: Mr. Santosh Kumar Singh & Anupanand Jha, Adv.
Mr. Prabhat Ranjan, Advocate.
Mr. Chandan Kumar, Advocate.
For the State : Mr. Nawal Kishore Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date: 8-03-2017

1. Both these Cr. Misc. Case Nos. 25163 of 2013 and 43898 of 2013 arise out of the common order dated 10.12.2012 passed in Complaint Case No. 1551(C) of 2011 by the learned Judicial Magistrate 1st Class, Patna, and, therefore, they have been heard together and are being disposed off by this common order.

2. These two quashing applications have been filed against the order dated 10.12.2012 passed by the Judicial Magistrate, 1st Class, Patna, by which the learned Magistrate has found prima facie case for the offences under Sections 323, 504, 448 and 34 of the Indian Penal Code against the petitioners.

3. The prosecution case as per the complaint filed by the opposite party No. 2 is that the petitioner of Cr. Misc. 25163 of 2013 was working as Assistant General Manager, State Bank of India, Audit Department, LHO, Patna, and the petitioner of Cr. Misc. 43898 of 2013 was the then Branch Manager, State Bank of India, Ashiana Nagar Branch. Patna. The complainant opposite party No. 2, his father and wife of late Rekha Kumari owned and possessed a piece of land appertaining to Plot No. 447 (part) and 380, Khata No. 45 measuring 1575 Sq. feet situated behind Beur Jail at Patna. They applied to the Branch Manager, State Bank of India, Ashiana Nagar Branch, Patna, for Housing Loan and a sum of Rs.8,64,000/- was sanctioned in two parts. The first part of loan amount was to be paid in 180 monthly installments of Rs.6,000/- within a period of 14 years whereas the second part of the loan was to be paid in 168 monthly installment of Rs.2,931/-. The complainant and his father regularly paid installments to the tune of Rs.2,42,000/-. The wife of complainant Rekha Devi died on 18.11.2007 and information about her death was given to the Branch Manager (accused No. 2). As per direction of accused No. 2, an application along with death certificate was also given on 16.7.2010 in the said Branch.

4. It is alleged that SBI Group Insurance Policy was taken in the name of father of the complainant and his deceased wife. The required premium was being paid in monthly installments. The policy amount became payable after death of wife of the complainant. The amount covered under the said policy was sufficient to liquidate the balance loan amount. The Life Insurance Policy of father of the complainant was pledged by the Bank as security. The date of maturity was 16.5.2010. The maturity value of the policy was about Rs.60,000/-. The information regarding maturity of the policy was given to the Bank for payment to the Policy holder. The Bank had already received Rs.6.75 lacs in cash inclusive of amount covered by the Life Insurance Policy. The complainant also liquidated the loan amount, but the accused persons had greedy eyes over the house of the complainant. Therefore, a case was lodged and an Appeal was filed in Debt Recovery Tribunal, Patna, for auction of the house. The complainant intended to appear and to give reply in that case, but on 17.2.2011 a possession notice was sent to the complainant fixing 22.2.2011 as the date for reply. The father of the complainant filed CWJC No. 6333 of 2011 in the Patna High Court challenging the possession notice dated 17.2.2011 on the ground that notice was unfounded and baseless. The said writ application was disposed off on 18.4.2011 with observation that the petitioner might file Appeal within a period of 15 days from the date of disposal of the Writ in the Debt Recovery Tribunal. As per observation of the Hon'ble High Court, the father of the complainant filed second Appeal No. 65 of 2011 in the Debt Recovery Tribunal. It is further alleged that on 30.4.2011 the accused No. 1 felt that despite payment of loan amount, the complainant kept on filing case after case; he on 2.5.2011 at 4:00 p.m. in the evening, came to the house of the complainant located at Kamla Nehru Nagar and threatened the complainant to withdraw the case or to face dire consequences. It is further alleged that he told the complainant that though he belongs to Harijan caste, but likes to live among the people of upper caste by constructing house in their area. This utterance of accused No. 1 infuriated the complainant to drive the accused out of the house. Thereafter, the accused persons came to the temple which was a public place and accused No. 1 started shouting at the complainant by taking his caste name and when complainant made protest, then he threw him on the ground. Thereafter, he told that he would be urinated on the body. It is further alleged that accused No. 1 pushed the old father of the complainant aged about 75 years, as a result of which, he sustained injury on the knee and waist. In the meantime, Md. Kalam Azad, Binod Kumar Paswan, Ramashish Lal and other mohalla people arrived and intervened. Thereafter, the accused persons fled away after seeing the gravity of the situation.

5. It is further alleged that from the very beginning the intention of the petitioner was to grab the house by filing a false case so that house might be purchased in auction sale in the name of their close relatives. The accused knew that the loan amount was due to be liquidated by 2012. As a matter of fact, the loan amount was almost liquidated in the year 2011. It is further alleged that accused persons abused the official position.

6. It has been submitted on behalf of the petitioners that both of them were Officers of the Bank. The role of accused No. 1 as the Assistant General Manager came to an end only after filing the original case of OA No. 07 of 2011 to secure the payment of home loan account of the complainant which was clarified as N.P.A. (Non Performing Account), when the complainant with his other family members jointly failed to make the payment of outstanding loan amount. It has further been submitted that no such occurrence as alleged by the complainant ever took place. The petitioners never visited the residential premises of the complainant. There was no occasion for the petitioners to visit the residence of the complainant after loan account having been declared N.P.A. and a possession notice having been issued against the complainant. The complaint case has been filed to put pressure on the petitioners and also upon the Bank to refrain from further proceedings in the matter and the petitioner had only sanctioned and disbursed the Housing Loan advance to the complainant. The complainant had taken Housing Loan from Ashiana Nagar Branch, Patna, and when the repayment was being made irregular, Proceedings under SARFAESI Act was initiated for recovery of the same. The complainant has willfully defaulted to pay back the loan amount and is trying to create alibis. The allegation made in the complaint against the petitioners is so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there is sufficient ground for Proceeding against the accused. This is a glaring instance of malicious prosecution of the petitioners who had never personal interest in the matter. The occurrence is said to have been committed on 2.5.2011 whereas the complaint has been filed after a lapse of more than one month without giving explanation of inordinate delay.

7. The counsel for the petitioners has relied ***on a decision*** reported in ***2013 (2) PLJR 571 (Chandra Shekhar Jha Vrs. The State of Bihar & Anr.)*** by which the Hon'ble High Court has held that it is a duty of the court to protect the Bank Officers and other Officials from unnecessary harassment and malicious prosecution.

8. The counsel for the petitioner has also relied on a ***decision of Hon'ble Supreme Court*** reported in ***2012 (3) PLJR 91 (Dr. Ashok Kumar Jha & Anr. Vrs. the State of Bihar & Anr.)*** in which the Hon'ble High Court has held that where sufficient material placed to show that prosecution brought up is malicious and with ulterior motive for wreaking vengeance apart from other identifiable points, then in that event, prosecution is liable to be quashed.

9. The learned counsel for the opposite party No. 2 has submitted that no illegality has been committed by the learned court below. The witnesses in the lower court have supported the case as made in the complaint during their statement before the Magistrate at the time of enquiry. Learned A.P.P. has also submitted that no illegality has been committed by the court below.

10. Having heard the parties and from perusal of the impugned order and the materials available on record including the Xerox copies of the Solemn Affirmation of the complainant and the statement of the witnesses, it appears that after filing of a case bearing

OA No. 07 of 2011 by the Bank, in the Debt Recovery Tribunal, Patna, and when C.W.J.C. No. 6333 of 2011 filed in Hon'ble High Court was finally dismissed, then the instant complaint was filed by the complainant before the learned Chief Judicial Magistrate, Patna, on 8.6.2011 mentioning the date of occurrence since 16.7.2010 to till date.

11. It is admitted position that the complainant has taken Housing Loan from the State Bank of India, Ashiana Nagar Branch, Patna, and when the payment became irregular, the loan account of the complainant was classified as N.P.A. (Non Performing Account) and when the complainant's family jointly failed to make the payment of outstanding loan amount, then Proceedings under SARFAESI Act was initiated for recovery of the same.

12. Section 32 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), gives protection of action taken in good faith to the Reserve Bank or the Central Registry or any secure Creditor or any of its Officers.

13. The Hon'ble Supreme Court in a case of ***State of Haryana and Ors. Vrs. Bhajan Lal & Ors***. reported in ***AIR 1992 Supreme Court page 604*** has culled out seven grounds by way of illustration where the Court in exercise of power under Section 482

Cr. P.C. can interfere with the criminal proceeding are as follows:

> *"1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.*
>
> *3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.*
>
> *5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

14. This Hon'ble Court in a judgment reported in ***2013 (2) PLJR 571 (Supra)*** has clearly held that court can interfere with the criminal proceedings or the order of cognizance or the First Information Report in a Criminal Proceedings where allegations are so absurd and improbable that no prudent person can ever reach such conclusion and Cr. Proceedings is manifestly attended with *mala fide* and/or whether the Proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. Similar view has been taken in another decision of this Hon'ble High Court reported in ***2012 (3) PLJR 91 (Supra).***

16. From the facts stated in the complaint, it is an admitted position that there is no personal relationship between the petitioners and the opposite party No. 2 save and except, being a Banker and a Customer. The opposite party No. 2 has not brought any other material to show that earlier to this case, there was any other litigation between the parties.

17. From the facts of the case, it appears that when the payment by the complainant with respect to Housing Loan taken by him became irregular and the Housing Loan Account of the complainant was classified as N.P.A. (Non Performing Account) as also the Proceedings under SARFAESI Act was initiated for recovery of loan, the instant complaint was filed by the complainant against these petitioners.

18. From the complaint petition itself, it appears that the date of the occurrence has been mentioned as 16.7.2010 to till date. As such, no complaint was filed earlier. The complaint was filed on 8.6.2011 after initiating Proceedings by the Bank for recovery of the loan from the complainant.

19. In the aforesaid circumstances, this Court is of the view that the allegations made in the complaint are so absurd and inherently improbable, on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against accused. The entire Criminal Proceedings is manifestly attended with *mala fide* and the Proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge.

20. Therefore, the continuance of the Criminal Proceedings against the petitioners will be abuse of the process of Court and mere harassment to the accused persons (petitioners).

21. In such circumstances, the order of cognizance dated 10.12.2012 passed by the learned Judicial Magistrate, 1st Class, Patna, along with the entire Proceedings of Complaint Case No. 1551(C) of 2011, is hereby, quashed.

22. These two Cr. Misc. applications are accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	30.01.2017
Uploading Date	17.03.2017
Transmission Date	17.03.2017