

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18832 of 2014

Arising Out of Case No. -1093 Year- 2011 Thana -SARAN COMPLAINT CASE District- SARAN

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Amit Kumar Giri, Son of Yogendra Giri, resident of Village Dhup Nagar, Police Station- Khaira, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar

2. Vijay Kumar Singh, Son of Nathuni Prasad Singh, resident of village- Dhobwal, Police Station- Khaira, District- Saran at Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate.
Mr. Ram Bonod Singh, Advocate.

For the State : Mr. Ajay Kumar No. I, APP

For the O.P. No. 2 : Mr. Sudama Singh, Advocate.
Mr. Rabindra Nath Singh, Advocate.
Mr. Surendra Kumar Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the O.P. No. 2.

2. The petitioner has filed this application, under Section 482 of the Code of Civil Procedure, 1973, for quashing the entire criminal proceeding including order taking cognizance dated 02.12.2011 passed by Sri Brajesh Kumr, Judicial Magistrate, Chapra in Complaint Case No. 1093 of 2011 whereby he has taken cognizance against the petitioner for committing offence under Sections 406, 420 and 120B of the Indian Penal Code.

3. The facts, as stated in the complaint, is that a couple ,



namely, Binod Kumar Bharti and his wife Seema Bharati were running a Non-banking Organization in the name of Bharati Bachat Mission in town of Chapra. The Managing Directors of the Company were the aforesaid two persons under which the complainant was working as an agent. Several persons deposited money with Bharati Bachat Mission, on maturity investors demanded maturity amount but the Managing Director Binod Kumar Bharti told them that they would receive their amount with interest in the month of February, 2011, so the investors with their term deposit certificates returned back. Suddenly, complainant one day found that office of Bharati Bachat Mission is locked and Binod Kumar Bharati and others have escaped away. So, they have misappropriated money of investors. It is further alleged that accused nos. 3 and 4 were Managers and the office of Bharati Bachat Mission was running in the house of accused no. 3.

4. Learned counsel for the petitioner submits that allegation against the petitioner is added at the bottom of the complaint petition by pen though it is a typed copy. Only allegation against this petitioner is that he was Manager in the office of Bharati Bachat Mission and the allegation of misappropriation of investors money is only against the Managing Directors, Bonod Kumar Bharati and his wife Seema Bharati, who were running the Non-banking Organization and the petitioner was merely an employee working in



the office, like the complainant who worked as an agent and the petitioner never persuaded or induced anybody to make investment in the Organization. So even taking the entire allegation in the account, as levelled in the complaint, is correct, no *prima facie* case of any breach of trust and cheating is made out against this petitioner. Moreover, no investor has lodged any complaint of misappropriation.

5. Contrary to it, learned counsel appearing on behalf of the O.P. No. 2 submits that at the relevant point of time, petitioner was Manager, so he too was responsible for the offence.

6. Having considered rival submissions and on perusal of record, this Court finds that the allegation levelled in the complaint is directed against Binod Kumar Bharti and Seema Bharati and the Bharati Bachat Mission Mangers names are mentioned as accused nos. 3 and 4 in the complaint and against column of accused no. 4, this petitioner's name finds place but his designation is not mentioned. The only allegation against this petitioner is that he was working as a Manger in the Organization so, definitely he had no any control over the Organization and the same is being operated by Binod Kumar Bharati and his wife Seema Bharati, being the Managing Directors of the said Organization. So in the backdrop of these facts and the allegation levelled in the complaint, this Court does not find any *prima facie* case being made out against the petitioner. Therefore, the



entire criminal proceeding including the order taking cognizance dated 02.12.2011 passed by Sri Brajesh Kumr, Judicial Magistrate, Chapra in Complaint Case No. 1093 of 2011 is hereby set aside. As a result, this application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
Transmission Date	04.09.2017

