IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11385 of 2013

Arising Out of PS.Case No. -3533 Year- 2012 Thana -SARAN COMPLAINT CASE District- -

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A.K.Shrivastava @ Anil Kumar Shrivastava, S/O Sri Satya Ranjan Prasad Verma, Resident of Village & P.O- Parmanadpur, P.S- Dumara, District-Sitamarhi At Present Posted As Chief Manager-Cum- Authorised Officer, Punjab National Bank, Hathua Market Branch, Chapra, P.O- Chapra, P.S-Chapra Town, District- Saran.

.... Petitioner

Versus

1. The State of Bihar
2. Binay Kumar Gupta, S/O Late Rameshwar Prasad Gupta, Resident of Mohalla- Gandhi Chawk, P.O- Chapra, Town, District- Saran.

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Mahesh Narayan Prabat, Sr. Adv.
For the O.P. No.2	:	Mr. Abhay Shankar Jha, Adv.
For the State	:	Mr. Jharkhandi Upadhya, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

5 09-02-2017 Heard Sri Mahesh Narayan Prabat, learned counsel for the petitioner, Sri Abhay Shankar Jha, learned counsel appearing on behalf of the O.P. No. 2 and Sri Jharkhandi Upadhya learned A.P.P. appearing on behalf of the State.

The petitioner, being the Chief Manager-cum-Authorized Officer of Punjab National Bank, Hathua Market Branch, Chapra has brought this application under Section 482 of Cr.P.C. for quashing of order dated 30.01.2013 passed in Complaint Case No. 3533 of 2012 (Trial No. 3999 of 2013), whereby the Court of the Judicial Magistrate, Chapra summoned the petitioner and also seven other accused named in the complaint petition, on inquiry under Section 202 Cr.P.C., finding prima facie case under Sections 120(B) and 420 of the Indian Penal Code.

The brief facts of the case is that the petitioner being the Chief Manager-cum-Authorized Officer of Punjab National Bank, Hathua Market Branch, Chapra in collusion permitted to avail and cash credit facility up to Rs. 5 lakhs to accused Nos. 6, 7 and 8, namely, Awadhesh Kumar Gupta, Santosh Kumar Gupta and Manoj Kumar Gupta, who used to run the agency in the name of M/s Sri Annapurna Fertilizer. The petitioner was one of the guarantors and his property was also mortgaged in relation to said account. The borrower sold the land more than their share of joint property mortgaged to the Bank in collusion of the accused-petitioner. Thereafter, his younger brother lodged Chapra Town P.S. Case No. 114 of 2012 against the borrower accused O.P. No. 6, 7 and 8 and the Police submitted Chargesheet. The accused/O.P. Nos. 6, 7 and 8 to save themselves from that case under collusion with the accused/petitioner got advertise the Notice in the daily Newspapers for auction of the land of the petitioner and his two brothers Awadhesh Kumar Gupta and Sanjiv Kumar Gupta and without following the procedure of the auction their joint property was auctioned in favour of accused/O.P. No. 2 and 3 on which petitioner No.4 and 5 put their signature as a witness and a certificate of the same is also issued in their favour.

Learned counsel for the petitioner submits that, in fact, cash credit facility was allowed in the year 1989 in the name of M/s Sri Annapurna Fertilizer Agency of which the proprietor was father of accused/O.P. No. 6 to 8 on mortgaging the property and from time to time cash credit facility was enhanced up to Rs. 5 lakhs. The complainant / O.PNo.2 was also the guarantor and his property was also mortgaged. Due to non return of the loan amount SARFAESI proceeding was instituted in the year 2008 and after final decision of the D.R.T. in S.A. No. 39 the proceeding for auction started. In the meantime, the petitioner joined as Chief Manager-cum-Authorized Officer of Punjab National Bank, Hathua Market Branch, Chapra and in M.A. No. 186 of 2012 filed by the complainant/O.P. No. 2 the DRT observed that if the dues amount by sale of borrower property is satisfied then the properties of guarantors is not required to be sold and issuance of sale certificate in favour of auction purchaser of guarantor property be made if borrowers property is insufficient to satisfy the loan amount. Thereafter, M.A. No. 375 of 2012 was filed on behalf of Punjab National Bank about proceeding with the mortgaged property of the guarantor due to insufficient of the property of the borrower and that was allowed and accordingly Sale Certificate was issued. Moreover in view of provision of Section 32 of the Securitisation

& Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 "*No suit, prosecution or other legal proceeding shall lie against [the Reserve Bank or the Central Registry or any secured creditor or any of its officers] for anything done or omitted to be done in good faith under this Act*". As such the Complaint Case No. 3533 of 2012 filed by the O.P. No.2 against the petitioner in which the impugned order is passed is not maintainable.

In view of the submission of the learned counsel for the petitioner taking the aid of Section 32 of SARFAESI Act, the impugned order summoning the petitioner is liable to be set aside. Accordingly, the criminal proceeding and impugned order dated 30.01.2013 passed in Complaint Case No. 3533 of 2012 filed by O.P. No.2 summoning the accused including the petitioner is hereby quashed.

(Rajendra Kumar Mishra, J)

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