IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45553 of 2013

Arising Out of Complaint Case No. -2283 Year- 2012 Thana -null District- GOPALGANJ

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1. Priyaranjan Sahay S/O Bipinendra Bhusan Sahay R/O Tribhuwan Binayak Residency, Flat No. D-3, Budha Colony, P.S.- Budha Colony District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dhananjay Singh S/O Late Bharat Singh R/O Village- Bhusaon, P.S.- Thawe, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None
For the State : Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-05-2017

Despite repeated calls, neither the petitioner has appeared nor the complainant-opposite party no.2, who has been served with notice, has appeared.

2. Perused the record.

3. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 13.03.2013 passed by the learned Judicial Magistrate 1st Class, Gopalganj in Complaint Case No. 2283 of 2012 whereby the learned Magistrate has summoned the petitioner to face trial for the offence punishable under Sections 323 and 504 of the Indian Penal Code.

4. It is stated in the complaint that the complainant availed

a loan of Rs.3 lacs from the State Bank of India, Main Branch, Gopalganj to start the business of sale of mobile sets and related accessories and after availing the said facility he opened a shop in the name of S.S. Mobile Care.

5. It is stated that at the time of sanction of loan the complainant deposited Rs.1.5 lacs in the form of F.D. as a liquid security and his wife stood as guarantor and the documents of property of his wife worth Rs.15 lacs were deposited with the bank against the loan account. After availing the loan facility, the complainant started his business but the repayment of loan could not be made as per repayment schedule because of ill health of the complainant. After recovery, the complainant deposited Rs.2,000/- on 30.04.2012, Rs.5,000/- on 09.08.2012 and Rs.3,000/- on 19.08.2012. However, he was shocked to see his name in the newspaper in the list of defaulter and name of his wife in the list of guarantor of defaulter loanees. After such paper publication the complainant met the petitioner and raised the issue on which he was advised to meet the authorized officer of the bank. The complainant met with the Authorized Officer of the bank at the Regional Business Office, Bettiah of the State Bank of India, who advised him to meet the petitioner to settle the problem.

6. It is stated that thereafter on 12.08.2012 the complainant

went to the residence of the petitioner along with one Mukesh Kumar Singh where the petitioner demanded Rs.20,000/- and told that he will regularize his account within 20-25 days and will also arrange another newspaper publication in contradiction of the previous publication. When the complainant opposed the aforesaid demand of the petitioner, he started abusing him and also pushed him away.

7. The complainant was examined on solemn affirmation and apart from him certain witnesses were also examined in course of enquiry conducted under Section 202 of the Cr.P.C. whereafter the learned Judicial Magistrate passed the impugned order dated 13.03.2013 whereby the petitioner was summoned to face trial.

8. The defence taken by the petitioner in the present application is that the story propounded in the complaint is actuated with ulterior motive in order to pressurize the petitioner to settle the loan account of the complainant after waiving the interest which was expressly denied by the petitioner, who is the Branch Manager of the State Bank of India, Gopalganj. It is contended that the complainant availed the loan of Rs.3 lacs in the form of cash credit limit to start his business and the same was sanctioned and disbursed on 13.09.2011 and he started his business. The cash credit limit facility requires the borrower to deposit the interest part regularly immediately after disbursement of the amount to keep the account

within the sanctioned limit. It is contended that after availing the loan on 13.09.2011, the complainant deposited Rs.2,000/- on 30.04.2012, whereafter due to non payment of interest amount, the loan account was declared NPA. After that, he deposited Rs.5,000/- on 09.08.2012 and Rs.3,000/- on 19.08.2012. Under the circumstances, the complainant (borrower) and his wife (guarantor) were served upon a notice dated 30.05.2012 under Section 13(2) of the SARFAESI Act, 2002 and thereby they were intimated that the loan account of the complainant had an outstanding due of Rs.3,13,219/- and interest and they were given 60 days time to repay the said amount. Even after service of notice under Section 13(2) of the SARFAESI Act, 2002 the complainant failed to repay his loan amount which necessitated the creditor bank to take action under Section 13(4) of the SARFAESI Act which provides of taking over the possession of the mortgaged assets and as such they were served upon a notice dated 04.08.2012 under Section 13(4) of the SARFAESI Act.

9. It is contended by the petitioner that as per the banking rules when the possession of the mortgaged assets is taken by the bank, it requires the bank to publish the name of the borrower and guarantor in the local newspaper along with the details of mortgaged assets to make it in public knowledge that such property is not free from encumbrances. In the case of the complainant also, after taking

over the possession of the mortgaged assets by the bank the name of the complainant and his wife was published in the local newspaper on 09.08.2012 in the list of defaulters. It is contended by the petitioner that all the rules and regulations of the banking laws were duly complied with in the case of the loan account of the complainant and nothing has been done beyond the authority. It is further contended that the allegation of publication of names of the complainant and his wife in the newspaper cannot be categorized as an offence as the same was done with the authority of law.

10. Having carefully perused the record of the case including the application filed under Section 482 of the Cr.P.C., I find that the instant complaint is nothing but an abuse of the process of the Court. The same has been brought just in order to pressurize the petitioner to settle the loan account on completely baseless allegation. There is nothing in the complaint to suggest as to why the complaint was filed in the court of Chief Judicial Magistrate on 18.08.2012 when the alleged misbehaviour with the complainant took place on 12.08.2012. Further, there is no averment in the complaint as to why no information regarding the incident was given to the officer-in-charge of the concerned Police Station.

11. Considering the facts and circumstances of the case, this Court deems it fit and necessary in the interest of justice not to allow

such a malafide complaint to continue. Accordingly, the order dated 13.03.2013 passed by the learned Judicial Magistrate 1st Class, Gopalganj in Complaint Case No. 2283 of 2012 is hereby quashed.

12. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18-05-2017
Transmission Date	18-05-2017