IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27769 of 2012

Arising Out of Case No. -225 Year- 2011 Thana -null District- PATNA

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Md. Khurshid Alam, S/O Late Md. Hussain, Advocate/Notary Public, Patna Collectoriate, P.S.-Gandhi Maidan, Distt-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Iqbal, S/O Late Md. Maqbool Hussain, R/O Naya Tola, P.S.-Phulwari Sharif, Distt-Patna

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Md. Salauddin Khan, Advocate.
For the Opposite Party/s: Mr. Md. Mushtaque Alam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 24-04-2017

Heard learned counsel for the parties.

2. This petition has been filed for quashing order taking cognizance dated 31.05.2011 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 225(C) of 2011 for the offence committed under Sections 419, 420 and 468 of the Indian Penal Code against Md. Khurshid Alam, who is a notary public.

3. A brief fact giving rise to the case is that one Md. Iqbal filed a Complaint Case No. 225(C) of 2011 against his son Md. Ekram, Md. Heyat Ahmad Ansari, the then Manager of J & K Bank, Md. Ali Imam, Mr. Om Prakash Sinha and Md. Khurshil Alam (the petitioner), wherein it is alleged that his eldest son Md. Ekram created a forged document and took loan of Rs. 3.5 lacs from J & K Bank, Phulwarisharif Branch by impersonating him and the specific

allegation against this petitioner is that he, being a Notary, knowingly certified his son Md. Ekram as of Md. Iqbal. He came to know about it after a legal notice was received by him from the Bank sent by the Manager, J & K Bank. Moreover, the J & K Bank has also lodged a case against Md. Iqbal vide Phulwarisharif P.S.Case No. 13 of 2010 dated 09.01.2010 under Sections 419, 420 and 409 of the Indian Penal Code.

4. Learned counsel for the petitioner submits that the allegation itself reveals that it was the complainant, Md. Iqbal, who had taken loan of Rs. 3.5 lacs from the J & K Bank Phulwarisharif Branch when he became defaulter, the Bank has lodged a case against him under Sections 419, 420 and 409 of the Indian Penal Code and the investigation is still continuing and in order to save his skin, he has filed the instant complaint case. Moreover, as far as allegation against this petitioner is concerned, the only allegation against him is that he attested the signature of the complainant's eldest son Md. Ekram as Md. Iqbal. Learned counsel submits that he has done so in good faith after verifying his identity and he is not a beneficiary of loan amount in any way of the matter. He submits that Section 13 of the Notaries Act, 1952 (hereinafter referred to as the 'Act') does not permit of taking cognizance against a notary for an offence committed by him in exercise or purported exercise of his functions under the

Act, save and except, upon the complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf. So, in the present case, cognizance has been taken on the complaint filed by a private person and not by any Government official or State Authority.

5. Learned A.P.P. submits that there is no illegality in the order taking cognizance and the same is passed after considering the facts as alleged in the complaint petition.

6. Considering rival submissions of both sides and on perusal of the record, in particular, the allegation made in the complaint, I find that the only allegation against the petitioner is that he certified the signature of Md. Iqbal. As per allegation, the complainant's son Md. Ekram, impersonating him as Md. Iqbal, has taken loan from the J & K Bank, Phulwarisharif Branch, Patna and this petitioner is not the beneficiary of the loan amount, only he discharged his function as per Section 8 of the Notaries Act. Moreover, a criminal case has already been lodged by the bank against Md. Iqbal, the complainant of the present case, alleging that he has obtained loan from the bank, but not repaying it. Further, Section 13 of the Notaries Act contemplates for taking cognizance of offence, which reads as under:

> *"13. Cognizance of offence.- (i) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorized by the Central Government*

or a State Government by general or special order in this behalf.
(ii) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act."

7. The aforesaid Act categorically expressed its intention that for taking cognizance against a notary relating to any offence committed while doing exercise or purported exercise of his functions, no court can take cognizance against him except a written complaint filed by an officer authorized either by the Central Government or the State Government. In the instant case, no such written complaint has been filed by a competent authority rather the same has been filed by one Md. Iqbal.

8. So in my view, taking cognizance by the Magistrate against this petitioner, in particular, is bad in law and without jurisdiction. Hence, order taking cognizance dated 31.05.2011 against this petitioner is set aside. In the result, the present quashing application is allowed.

9. However, it is made clear that cognizance against rest of the accused persons shall remain operative.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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