IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28927 of 2011

Arising Out of PS.Case No. -785 Year- 2002 Thana -null District- PATNA

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Sohrai Ram, son of Late Raja Ram, Resident of Mohalla-Khajpura Shyama Smirit Bhawan in the Gali of Canara Bank, P.S. Gardanibagh (Shastri Nagar), District-Patna.

.... Petitioner

Versus

1. The State of Bihar,
2. H. Kumar, the Chief Manager, SBI Sheikhpura, Raja Bazar, Patna-14 P.S. Gardanibagh (Shastri Nagar), District-Patna.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Krishna Deoraj, Advocate
For the State : Mr. A.M. Mehta, APP
For O.P. No.2 : None

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 28-11-2017

Heard learned counsel for the petitioner and learned A.P.P. appearing on behalf of State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure to quash the order dated 06.05.2011 passed in G.R. No. 4228 of 2002, whereunder the Judicial Magistrate, 1st Class, Patna rejected the application filed under Section 239 of the Code of Criminal Procedure for discharge of the accused-petitioner No.1.

3. The facts leading to this application are that O.P. No.2 gave the written report on 21.11.2002 to the Officer In-Charge Shastri Nagar Police Station, Patna to the effect that Anjani Kumar, son of Sri M.N. Ram, retired Addl. Director of Mines resident of Nehru Nagar, Patliputra, Patna approached to State Bank of India, Sheikhpura, Raja Bazar Branch on 27.12.1997 and sought financial assistance by way of Demand Loan facility in his name against pledge of National Saving Certificates (NSC) of the face value of Rs. Two lakhs issued by G.P.O,

Patna for medical emergency. Sri Anjani Kumar had saving account No. 9300, which was opened on 11.12.1997 on the introduction of the petitioner Sohrai Ram. After appraisal of demand loan application of Anjani Kumar loan of Rs. 1,25,000 was sanctioned on pledging the NSCs of Rs. 2 lakhs issued by G.P.O, Patna. After execution of the agreement document by Anjani Kumar and completion of all formalities loan of Rs. 1,25,000/- was credited in the account of Anjani Kumar on his request. As promised by Anjani Kumar, he did not deposit the loan amount to the bank. On maturity of the said 20 N.S.Cs. in number worth of Rs. Two Lakhs were sent by the Bank to the G.P.O, Patna vide letter No. Account/02, dated 13.09.2002 and when the payment was not made by the G.P.O, the Bank sent a reminder letter on 06.11.2002. Thereafter, G.P.O, Patna returned 20 N.S.Cs. of face value of Rs. Two Lakhs vide letter dated 13.09.2002 with remarks that the said NSCs were not issued by the G.P.O, Patna. On enquiry made by the Bank to the G.P.O, it was detected that the said NSCs of face value of Rs. Two Lakhs were forged and fabricated.

On the basis of the aforesaid written report of O.P. No.2 Gardanibagh (Shastrinagar) P.S. Case No. 785 of 2002 was instituted against Anjani Kumar on 22.11.2002 under Sections 420, 120-B, 462 and 468 of the Indian Penal Code. On investigation, the Police submitted the Chargesheet on 31.07.2008 showing Anjani Kumar as absconder and none F.I.R. accused Sohrai Ram (Petitioner) under Sections 420, 120-B, 467 and 468 of the Indian Penal Code. Thereafter, cognizance of the offence under the aforesaid sections was taken and record was sent for trial to the court of Judicial Magistrate, 1st Class, Patna where the accused/petitioner filed an application under Section 239 Cr.P.C. for discharge on 01.03.2011, which was rejected by Judicial Magistrate, 1st

Class, Patna through the impugned order.

4. Learned counsel for the petitioner submits that it would appear from the F.I.R. and the materials available in the case diary that on the introduction of the petitioner Saving Account No. 9300 was opened by co-accused Anjani Kumar in the State Bank of India, Sheikhpura, Raja Bazar Branch on 11.12.1997. Thereafter, Anjani Kumari applied for loan by placing 20 NSCs face value of Rs. Two lakhs at State Bank of India, Sheikhpura, Raja Bazar Branch on 27.12.1997 and on that very basis, the State Bank of India, Sheikhpura, Raja Bazar Branch sanctioned the loan of Rs. 1,25,000/- and credited in the account of Anjani Kumar. During the investigation, while Anjani Kumar was found traceless, but nothing has come in course of investigation that either the Anjani Kumar was fake or his address as detailed in the bank at the time of opening of the account was wrong. As such no question arise about committing forgery by this petitioner in identifying the Anjani Kumar on 11.12.1997 at the time of opening of saving account. The accused-petitioner had no knowledge of applying for loan by Anjani Kumar on the basis of pledging of 20 NSCs worth of Rs. 2 lakhs, which was found later on forged. As such, no case is made out against the petitioner under Section 420, 120-B, 462 and 468 of I.P.C. and rejection of the discharge application through the impugned order is illegal.

5. Sri A.M. Mehta, learned A.P.P. appearing on behalf of State submits that saving account of Anjani Kumar was opened in the State Bank of India, Sheikhpura, Raja Bazar Branch on 11.12.1997 on the introduction of the petitioner as appears to F.I.R. and case diary, while the loan was sanction by the State Bank of India on the ground of presentation of the twenty NSCs of the face value of Rs. 2 lakhs issued by the G.P.O. Patna on 27.12.1997. There is no material in the case

diary to show that identity and address of Anjani Kumar as furnished at the time of opening of the saving account on the introduction of petitioner was found forge or wrong.

6. On perusal of the F.I.R. and case diary, it appears that Anjani Kumar opened the SB/Account No. 9300 in S.B.I. Shekhpura Raja Bazar Branch on 11.12.1997, on the introduction of the petitioner. Thereafter. Anjani Kumar applied the loan for Rs. 1,25,000/- on furnishing the 20 NSCs worth Rs. 2 Lakhs on 27.12.1997 and after completing the formalities loan amount was credited in his account, but he did not repay the loan. When the Bank send the 20 NSCs of face value of Rs. 2 Lakhs for encashment to G.P.O, Patna then it was detected that same were forged and fabricated. There is nothing in the case diary that either the Anjani Kumar was fake or his address was wrong as detailed in the form of opening the saving account in the investigation. As such no case under Section 420, 120-B, 462 and 468 of I.P.C. is made out against the petitioner.

7. In the result, the impugned order dated 06.05.2011 passed in G.R. No. 4228 of 2002 (Gardanibagh Shastrinagar P.S. Case No. 785 of 2002, whereunder the Judicial Magistrate, 1st Class, Patna is quashed and the application dated 01.03.2011 for discharge of petitioner is allowed. Accordingly, this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	07.12.2017
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