IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17482 of 2012

Arising Out of PS.Case No. -27 Year- 2008 Thana -null District- MADHUBANI

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1. Lakhanlal Sinha @ Lakhan Narain Sinha Son Of Late Deo Narain Sinha Resident Of Mohalla- Indrapuri Road No. 4, House No 4/17, P.O.- Keshrinagar, P.S.- Patliputra, District - Patna, Retired Branch Manager, Central Bank Of India, Puraini, P.S.- Puraini, District - Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
2. Pappu Kumar Son Of Banarshi Singh Resident Of Village - Garaiya Tola, P.S.- Chausa, District - Madhepura

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dinesh Prasad Verma, Adv.
For the Opposite Party No. 3 : Mr. Sarvesh Chandra Verma, Adv.
For the State Mr. Shyam Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 29-06-2017

Heard learned counsel for the petitioner and learned counsel appearing for the State as also learned counsel appearing for the opposite party No. 3. No one appeared on behalf of opposite party No. 2.

The petitioner who is a retired branch manager of Central Bank of India, has challenged the order dated 12-03-2012 passed by learned Chief Judicial Magistrate, Madhepura in Puraini P.S. Case No. 27 of 2008 by which cognizance has been taken against him under Sections-409, 419, 420 of the Indian Penal Code on the basis of charge sheet submitted by the police.

Prosecution case in brief is that one Pappu Kumar (opposite party No. 2) filed an application for loan in Central bank of India, Puraini

Branch, Madhepura for construction of godown which was sanctioned after proper formalities. The petitioner was branch manager at that time. The opposite party No. 2 has alleged that Rs. 75,000/- was given to him which was deposited as security of loan amount. Thereafter, the complainant (opposite party No. 2) was provided with a cheque book vide Serial No. 006201 to 006225. The branch manager (petitioner) asked the complainant and his father to sign on the blank cheque book. The father of the complainant signed on the blank cheque up to serial No. 006218. The complainant and his father due to some reason could not construct the godown for sometime. Thereafter, when the complainant was ready to construct the godown made demand of amount of first installment. The complainant has further alleged that he and his father went in the bank on 02-02-2008 for receiving the amount of rest installments of the loan, then they learnt that the then branch manager (petitioner) retired on 31-01-2005. The petitioner refused to pay the amount. The complainant also learnt from the cashier that Rs. 1,90,000/- was withdrawn by cheque No. 006201 and Rs. 1,60,000/- was withdrawn vide cheque No. 006202 by the branch manager. The total amount withdrawn by the then branch manager was Rs. 3,50,000/- out of which, Rs. 75,000/- was the money deposited by the complainant as a fixed deposit.

The counsel for the petitioner has submitted that loan of Rs. Five lacs was sanctioned to the complainant (opposite party No. 2). . During sanction of the loan amount, the opposite party No. 2 submitted blank cheque along with other papers, as required by the bank. The amount was disbursed to opposite party No. 2 in different installments, which was received by him.

The complainant filed an application before the petitioner with a request that the amount of first installment of Rs. 2,00,000/- (two lacs) was utilized and made request to sanction second installment of loan amount vide Annexure-3. Thereafter, on the request letter of the informant dated 07-12-2007, spot verification was made by the official and recommendation was made for release of second installment. The report of spot verification is annexed as Annexure-4. The second installment of Rs. 1,50,000/ was released in favour of informant on the recommendation of the officers concerned on 12-12-2007. The complainant after utilizing the second installment of loan amount, filed application before the concerned branch manager (at that time the petitioner has retired from service) for release of the third installment of loan of Rs. 1,50,000/- vide Annexure-5. The third installment of Rs. 1,50,000/- was released in favour of the informant on 18-03-2008. The informant Pappu Kumar and his father Banarsi Singh both signed on the back of the cheque at the time of receiving of the amount vide Annexure-6. The informant himself deposited Rs. 25,000/- and 50,000/- (totaling 75,000) in fixed deposit as security money after receiving the total installment of the loan amount. The xerox copy of application form of fixed deposit and certificates have been annexed as Annexure-7.

Counsel for the petitioner has submitted that at the time of giving application for release of third installment (at that time the petitioner has retired from service), the informant did not raise the issue that the first and second installment have not been received by him. The informant did not file any application before the bank complaining of defalcation, misappropriation of the amount by the petitioner. The inspection report shows that construction work started and continued just after receiving the first installment. The statement made by the informant in FIR that due to some reason, the construction work of godown was not done for the time being is completely false. The cashier and head cashier have not supported the allegation levelled by the informant against the petitioner.

Notice was issued to the Branch Manager, Central Bank of India, opposite party No. 3 who has appeared and filed the counter affidavit. The bank has stated in paragraph-3 in the counter affidavit that as per records of the bank, opposite party No. 2 has been sanctioned loan of Rs. 5 lacs out of which, 1st installment of Rs. 2 lacs were disbursed on 29-11-2007 in the account of opposite party No. 2 and the opposite party No. 2 withdrew a sum of Rs. 1,90,000/- from the account vide cheque No. 006201. The second installment of Rs. 1.5 lacs was disbursed on 12-12-2007 in the account of opposite party No. 2 (informant) and the opposite party No. 2 withdrew Rs. 160000/- on 12-12-2007 vide cheque no. 006202 and after retirement of the petitioner on 31-01-2008, the opposite party No. 2 submitted an application for release of final loan amount and a sum of Rs. 1,50,000/- was disbursed by crediting in the account of the opposite party No. 2 on 18-03-2008. The bank has enclosed the xerox copy of the application dated 18-03-2008 of the opposite party No. 2 and specimen signature of the opposite party No. 2 as Annexures-A & B. The bank has also enclosed the loan application form duly signed by the informant seeking a housing finance of Rs. 5,00,000/- (five lacs) which was subsequently approved by the branch. A demand notice for the payment of loan amount with interest totaling Rs. 6,24,317/- on 31-05-2012 was issued to the opposite party No. 2 when the account became irregular and on 31-05-2012, the opposite party No. 2 deposited a sum of Rs. 1,00,000/-

The recent account statement of loan account shows that the informant has been depositing the amount from-time-to-time towards repayment of loan taken by him. In that view of the matter, the story made out by the informant in the FIR gets falsified.

Counsel for the petitioner has further submitted that during investigation, police recorded statement of chief cashier and assistant of Central Bank of India, Puraini Branch, Madhepura in which, they have stated that loan amount of Rs. 5,00,000/- (five lacs) was sanctioned which was withdrawn by the informant from time to time from the account. The informant has filed the instant case against the petitioner (the then branch manager of the bank) levelling false allegation in the FIR, when the time for repayment of loan became due.

None appears on behalf of the opposite party No. 2 (the informant) in spite of valid service of notice.

In this manner, from the documents filed on behalf of the bank (opposite party No. 3) as Annexures-A, B and F in the counter affidavit, it appears that housing loan of Rs. 5,00,000/- was sanctioned to the informant in three installments. The amount was to be repaid in 84 equal monthly installments of Rs. 8700/- which was due from May, 2009. It is specifically mentioned in paragraph-3 of the counter affidavit that the first installment of Rs. 2 lacs was disbursed on 29-11-2007 in the account of opposite party No. 2 and the opposite party No. 2 withdrew a sum of Rs. 1,90,000/- from the account vide cheque No. 006201. The second installment of Rs. 1.5 lacs was disbursed on 12-12-2007 in the account of opposite party No. 2 (informant) and the opposite party No. 2 withdrew Rs. 160000/- on 12-12-2007 vide cheque no. 006202 and after retirement of the petitioner on 31-01-2008, the opposite party No. 2 submitted an application for release of final loan amount. The petitioner has also annexed various request letters written by the informant to the bank for release of the installment, which have been annexed as Annexure-3 series.

This court in the judgment reported in ***2013(2) PLJR 571*** (***Chandra Shekhar Jha Vs The State of Bihar & Anr.)*** has held that the court can interfere with the criminal proceeding or the order of cognizance or the FIR in a criminal proceeding where allegations are so absurd and improbable that no prudent person can ever reach such a conclusion and criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. The Hon’ble Supreme Court in a decision reported in ***1992 Supp. (1) SCC page 335 (State of Haryana & Ors Vs Bhajanlal and others) at paragraph-102*** has held that the court can interfere in the criminal proceeding and criminal proceeding is liable to be quashed when the same is manifestly attended with mala fide and instituted with ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge.

Therefore, this court on the basis of facts of this case as also on the basis of decisions of the Hon'ble Supreme Court, is of the view, that continuance of criminal prosecution against this petitioner is mere harassment to him and abuse of process of law. Therefore, the impugned order dated 12-03-2012 passed by learned Chief Judicial Magistrate, Madhepura in Puraini P.S. Case No. 27 of 2008 along with entire criminal proceeding against the petitioner is, hereby, quashed.

This Cr. Misc. Application is ***allowed***.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	