IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3108 of 2015

Arising Out of PS.Case No. -1746 Year- 2013 Thana -PATNA COMPLAINT CASE District-PATNA

==

1. H.D.F.C. BANK LTD., Bank House, Senapati Bapat Marg, Lower Parel, Mumbai-400013 through Authorized person and Deputy Manager - Legal, Mr. Prashant Kumar S/o Shri Ramji Prasad at present posted at HDFC Bank Limited, Rajendra Ram Plaza, P.S. Gandhi Maidan, Exhibition Road, Patna-800001.
2. Mr. C.M. Basudev, Chairman, HDFC Bank Limited, Bank House, Senapati Bapat Marg, Lower Parel, Mumbai-400013.
3. Mr. K.K. Mistri @ Keki Mistry, Director, HDFC Bank Limited, Bank House, Senapati Bapat Marg, Lower Parel, Mumbai-400013.
4. Smt. Renu Karnad @ Renu Sudkarnad, Director, HDFC Bank Limited, Bank House, Senapati Bapat Mart, Lower Parel, Mumbai-400013.
5. Sri Partho Dutta, Director, HDFC Bank Limited, Bank House, Senapati Bapat Marg, Lower Parel, Mumbai-400013.

.... Petitioners

Versus

1. The State of Bihar.
2. Mr. Uttam Kumar S/o Srikant Singh

.... Opposite Party

==

Appearance :

For the Petitioners : Mr. Rana Vikram Singh
Mr. Dayanand Singh
Mr. N.D.Choubey

For the Opposite Party/s : Mr. Nawal Kishore Pd.(App)

==

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

6 11-12-2017 Heard learned Counsel for the petitioners as well as the learned Counsel for the State.

Despite receipt of notice opposite party No. 2 has not appeared.

The petitioners seek quashing of the entire criminal proceeding of Complaint Case No. 1746(C) of 2013 inclusive of the cognizance order dated 16.7.2014 passed by the Judicial Magistrate, lst

Class, Patna, thereby taking cognizance of the offence under Section 406/34 of the IPC and issuing summons to the petitioners to stand trial in the case.

The brief fact giving rise to the case is that the complainant by pledging jewelry had taken education loan of Rs. 26,900/- for his cousin. The total value of the jewelry pledged by the complainant was done by the bank which was worth of Rs. 26,900/-. The loan was sanctioned and money was given on 29.12.2011 and the maturity date for returning back the loan amount was 26.6.2012. On 25.6.2012 he went to the Bank but he was informed that even after a period of three years the loan amount may be returned and till that time his pledged jewelry will be kept safely in the bank. On 18.5.2013 he went to the bank to deposit the loan amount and to get the jewelry but learnt that the bank has already sold the pledged jewelry without giving any notice to him.

Learned Counsel appearing on behalf of the petitioners submits that the complainant entered into an agreement with the bank on 29.12.2011 accordingly a loan of Rs. 26,900/- was sanctioned on pledging the jewelry which was evaluated finding the value worth Rs. 26,900/- at that time. The jewelry was pledged as security and the date of maturity was after period of 180 days. On expiry of the maturity period despite several notices sent to the complainant intimating maturity of the terms for depositing the loan amount and to redeem the pledged jewelry. All notices are annexed with this application, the first notice was issued on 30.7.2012, the second notice on 13.8.2012, the third on 27.8.2012 and finally letter dated 17.9.2012 intimating if money is not paid within seven days the pledged jewelry will be sold. No reply was hear from the complainant, so finally the bank sold the jewelry and by post sell notice dated 1.2.2013 intimated the complainant details of sale proceed indicating the amount received from the sale of the jewelry as Rs. 33,078/- and after deduction of the sales tax it comes to Rs. 33,750/- and hence balance of Rs. 3011.31 is being returned to him and the manager cheque was issued to him, which is Annexure 9/A, but not received the cheque which is still with the bank so the complainant may get the said amount with interest any time. The petitioners are not concerned with the agreement at the local level. Petitioner No. 1 is the company and petitioners 2 to 5 are directors of the company and they are in the head office at Mumbai.

Having considered the rival submission and on perusal of the record the court finds that it is not a case of criminal breach of trust. Prima facie no ingredient of breach of trust is made out against the petitioners. The complainant was sanctioned loan by HDFC Bank after he pledged jewelry as security of the loan. The maturity period was 180 days. The complainant was required to deposit the loan amount and take back the jewelry after expiry of the maturity period but no such act was done by the complainant. It is also not the case that the bank without issuing the notice to the complainant sold the jewelry and loan amount was realized. Contrary to that the number of documents filed by the bank show issuance of notice by the bank after maturity period asking the complainant to deposit the loan amount and take back the jewelry, finally on 17.9.2012 the complainant was given specific notice that if money is not paid within seven days the jewelry may be sold and amount may be realized which was one of the conditions in the agreement in between the bank and the complainant that in case of not repaying the amount the jewelry may be sold by auction and the loan amount may be realized and if there is any money in excess the same shall be refunded to the person who has pledged the jewelry. In fairness the bank also issued a cheque of Rs. 3,000/- and odd amount the excess money of the loan amount after sale of the jewelry. So finding prima facie no ingredient of the alleged offence against the petitioners, the HDFC bank and its directors, entire criminal proceeding inclusive of the cognizance order dated 16.7.2014 passed in Complaint Case No. 1746 of 2013 pending in the court of Judicial Magistrate, lst Class, Patna with respect to the petitioners only is hereby quashed.

The application stands allowed.

(Arun Kumar, J.)

Snkumar/-

U		T	