

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.32506 of 2014**

Arising out of case no. -167 Year- 2012 Thana -Aurangabad Complaint case District- Aurangabad

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Nagendra Kumar Singh, son of late Mangal Prasad Singh, Ex-Manager, Indian Bank, Kochar, P.S.- Barun, District- Aurangabad, Bihar. Present address- branch Manager, Indian Bank, Sheikhpura Branch, P.S. & District- Sheikhpura, Pin- 811105.

.... .... Petitioner/s

Versus

1. State of Bihar
2. Ambika Ram, son of Daudheshwar Ram, resident of village, Koshdihra, Post- Padrawa, P.S.- Jamhor, District- Aurangabad, Bihar.

.... .... Opposite Party/s

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**Appearance :**

|                      |   |                                   |
|----------------------|---|-----------------------------------|
| For the Petitioner/s | : | Dr. Binay Kumar Singh, Advocate.  |
| For the State        | : | Mr. Ajay Kumar-1, Advocate.       |
| For the O.P. No. 2   | : | Mr. Purushottam Sharma, Advocate. |

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

ORAL JUDGMENT

**Date: 26-07-2017**

Heard learned counsel for the parties.

2. This application is filed, under Section 482 of the Cr.P.C., 1973, for setting aside order dated 17.09.2012 passed by Mr. B.K.Pathak, Judicial Magistrate 1<sup>st</sup> Class, Aurangabad in Complaint Case No. 167 of 2012 (Tr. No. 2398 of 2012), whereby he has taken cognizance of offence under Sections 409, 419, 467, 468 and 471/34 of the Indian Penal Code.

3. The facts, as stated in the complaint, in brief, is that the complainant, while he was posted as Panchayat Secretary in Panchayat Pipra during 20.02.2010 to 30.07.2010, handed over the charge to next incumbent Shiv Bachan Rai, the present Panchayat



Secretary of the said Panchayat on 28.08.2010. While the complainant was posted there, he handed over cheques bearing Nos. 598428 to 598440 to Lalita Devi, the then Mukhia of the Panchayat relating to fund released under the 12<sup>th</sup> Finance Commission. It is alleged that blank cheques were taken by Lalita Devi but inadvertently, he forgot to mention about the cheque book in the list of charge at the time of handing over charge to his new incumbent. Later on, on 21.02.2012 the Block Development Officer, Barun informed him that accused Gauri Shankar Das had withdrawn Rs. 4,35,000/- from the Indian Bank, Kochar Branch. On query from the Branch Manager of the bank, he learnt that on 13.12.2010 to 23.03.2011, by different cheques, earlier handed over by him to Lalita Devi, money was withdrawn by Gauri Shankar Das, husband of the then Mukhia Lalita Devi, after putting his forged signatures on those cheques and also he got deposited Rs. 1,00,000/- in his account. So, it is alleged that Panchayat Secretary Shiv Bachan Rai, Gauri Shankar Das and his wife Lalita Devi, the then Mukhia, in conspiracy with the Bank Manger and Cashier of the said bank, have withdrawn Rs. 4,35,000/-. It is also alleged that after being relieved on 30.07.2010, the joint specimen signatures of the present Panchayat Secretary, Shiv Bachan Ram and Lalita Devi was transmitted to the Bank and in such situation it was not possible for him to issue cheque to the Mukhia.



4. Learned counsel appearing on behalf of the petitioner submits that in fact the complainant had embezzled the Government money relating to diesel subsidy and in that regard the Block Development Officer, Barun lodged an FIR vide Barun P.S.Case No. 91 of 2012 dated 13.06.2012 registered under Sections 409/34 of the Indian Penal Code against Ambika Ram (complainant), present Panchayat Secretary Shiv Bachan Rai, the then Mukhia Lalita Devi and her husband Gauri Shankar Rai, besides Ram Jivan Rai, a Jan Sevak. So as a defence, having sensed that case of embezzlement is going to be lodged against him, he filed this complaint case to make a ground of defence in that case. However, the petitioner is a bank official and at the relevant point of time, he was Branch Manager of said Indian Bank, Kochar Branch and there was no communication to the Bank with regard to specimen signature of new incumbent. Moreover, cheques, in question, were not passed by the petitioner rather it was passed by the Assistant Branch Manager and the Cashier and a certificate in this regard is issued by the Bank which is kept at Annexure- 4 and 5.

5. Learned counsel appearing on behalf of the complainant/O.P. No. 2 submits that though there is no direct allegation against the petitioner but he was the Branch Manager of the Bant at Kochar Branch and even after communication of specimen



signature of the present Secretary and the then Mukhia Lalita Devi, the cheques bearing his forged signature along with Lalita Devi was cleared by the Bank, but he concedes that there is no any document filed with the complaint or produced during enquiry relating to allegation of specimen signature of his successor.

6. Having considered rival submissions of both sides and on perusal of the record I find that only allegation levelled against the petitioner is that he being Branch Manager, at the relevant point of time of the Indian Bank, Kochar Branch, passed cheques bearing signature of Lalita Devi, Mukhia and forged signature of complainant done by present Secretary Shiv Bachan Ram as alleged in the complaint. However, Block Development Officer of the concerned Block has lodged a police case against the complainant for embezzlement of Government money in the matter moreover all cheques in question were passed by the Assistant Branch Manager and Cashier of the Bank and not by the petitioner. So, *prima facie*, no case of any conspiracy against the petitioner in the alleged offence is made out. It is also not on the record to show that specimen signature of the successor of the complainant Shiv Bachan Rai was transmitted to the Bank after taking over charge by him.

7. Therefore, for the aforesaid reasons, the criminal proceeding including the cognizance order dated 17.09.2012 passed in



Complaint Case No. 167 of 2012 with respect to this petitioner only is set aside. The application stands allowed.

**(Arun Kumar, J)**

Sujit/-

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| AFR/NAFR          | NAFR       |
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