IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 40635 of 2013

Arising Out of PS.Case No. -2115 Year- 2011 Thana -GOPALGANJ COMPLAINT CASE District-GOPALGANJ

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1. Ratnesh Narayan @ Ratnesh Kumar Sah, Son of Sri Jagdish Sah Resident of Village - Sukulwa Kala, P.S.- Gopalganj, District - Gopalganj, (Bihar)
2. Umesh Chandra Sinha @ U.C. Sinha, Son of Late Satya Narayan Prasad, Resident of Mohallah - Kashipur, Ward No. 8, P.S.- Samastipur, District- Samastipur, (Bihar)

.... Petitioners

Versus

1. The State Of Bihar
2. Ajay Kumar Tiwary, Son of Sri Bishwanath Tiwary, Resident of Village - Banjaria, P.S.- Kuchaikot, District- Gopalganj, (Bihar)

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. B.P. Pandey, Sr. Advocate & Mr. Rakesh Kumar, Advocate
For the O.P. No. 2 Mr. Rajan Kumar Pandey, Advocate
For the State : Mr. Ajay Kumar -1 (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

7 25-04-2017 The instant Criminal Miscellaneous has been filed for quashing the order taking cognizance dated 02.03.2013 passed by the learned Chief Judicial Magistrate, Gopalganj in connection with Complaint Case No. 2115 of 2011 (Trial No. 3669 of 2013) wherein after finding prima facie offence to be made out cognizance has been taken under Sections 406, 420/34 of the Indian Penal Code and order has been passed to issue summons against the petitioners.

Heard the learned counsel for the petitioners, the learned APP for the State and learned counsel for the opposite party no.2.

As per the complaint petition, the complainant is an unemployed person and has taken loan from the State Bank of India, Sasamusa Branch, Gopalganj, amounting to Rs. 1,62,000/- in the year 2005 under Prime Minister Self Employment Scheme and has started a flour and rice mill, but unfortunately he got his leg fractured, as a result, of which the said flour and rice mill could not be managed properly which resulted in loss and the bank loan could not be repaid. For the recovery of the bank loan, certificate Case No. 29/10-11 was instituted in which the notice was issued to the complainant, again a notice was received by the complainant from Bank to the effect that on 02.05.2010 a Lok Adalat is going to be held in Civil Court Gopalganj wherein the case of the complainant can be disposed of on the basis of compromise. The complainant appeared before the Lok Adalat where it was assured that if the complainant will deposit the principle amount then the Certificate Case will be closed which was supported by the bank authorities. Thereafter, the complainant who is educated up to level Class -VIII , arranged money and asked to petitioner no.1 and 2 as to how he should deposit the amount, then the petitioner no.2 advised him to deposit the money before the petitioner no.1 and accordingly he deposited Rs. 1,52,260/- almost on different dates to petitioner no.1 and lastly petitioner no.1 in lieu of money deposited issued Certificate on 14.01.2011 for recall of warrant of arrest in the Certificate Case. Later on the complainant requested the petitioner no.1 to issue receipts for depositing in Certificate Case then he was handed over the Certificate which was for only Rs. 37,260/- thereafter he was misbehaved and threatened to implicate in a dacoity case. Thereafter, the police did not institute the case then the complaint was filed wherein after examination of the complainant on solemn affirmation and after examination of two inquiry witnesses summons have been ordered to be issued after finding prima facie case to be made against the petitioners under Sections 406, 420/34 of the Indian Penal Code.

Submissions of the petitioners are that the entire allegations leveled against the petitioners are false, concocted and baseless and there is no even iota of truth. From bare perusal of the complaint, statement of the complaint on solemn affirmation and the statement of two inquiry witnesses it is manifest that the complaint case has been filed falsely with oblique motive and no court of justice can rely upon such statements. Father of the complainant Bishwanath Tiwary has deposed before the court that whenever he deposits money, he takes receipts for the same. The first receipt issued dated 29.07.2011 is of Rs. 37,260/- thereafter the opposite party no.2 never paid any amount resulting, no receipt was granted to him but he has only alleged that on 10.08.2011 he paid Rs. 51,000/- and on 01.09.2011 he paid Rs. 25,000/- and on 03.09.2011 he paid Rs. 20,000/- and on 05.09.2011 he paid Rs. 15,000/- without any receipt. The first receipt which is Annexure-2 series to the petition it reveals that it was deposited by the complainant in loan account amounting of Rs. 37,260/- so without taking receipt it cannot be believed that the complainant paid the amount as alleged and no court of justice can rely upon such statement. The name written as Ajay Kumar Tiwari matches with the signature of the complainant. The signature as made in the statement recorded on solemn affirmation of Ajay Kumar Tiwari is similar to that of mentioned in the receipt. The petitioners are bank officers and the complainant is bank customer, a customer cannot pay the amount as alleged by the complainant without taking receipts for several times, it can be believed that one time such payment can be made but without taking receipt another payment cannot be made. The learned C.J.M. without considering all these facts has passed the impugned order which is fit to be set aside.

The learned counsel for the petitioners has placed reliance on the ruling reported in **(1998) 5 Supreme Court Cases page 749** in the case of **Pepsi Foods Ltd. and Another Versus Special Judicial Magistrate and Another,** and has argued that summoning of an accused in criminal case is a serious matter, order must show that the Magistrate applied his judicial mind to the facts of the case and law applicable thereto. He should carefully scrutinize the evidence brought on record and may himself put questions to the complainant and his witnesses to find out the allegations. In this case the learned Magistrate has put only two questions and the father of the complainant has stated that whenever he deposits the amount in the bank he takes receipts. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. Further reliance has been placed on the ruling reported in **2013 (2) PLJR page 571**. in the case of **Chandra Shekhar Jha Vs. the State of Bihar and Another.** The learned counsel has argued that court can interfere with the criminal proceeding or in the order of cognizance or the F.I.R. in a criminal proceeding where allegations are so absurd and improbable that no prudent person can ever reach such 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. In the case of **State of Haryana Vs. Bhajan Lal reported in A.I.R.1992 S.C. page 604** has given illustration setting parameter for interference under Section 482 Cr.P.C. held the power can be exercised either to prevent abuse of the processes of the Court or otherwise to secure the ends of justice. On these premises, the learned counsel for the petitioners submits that it is not believable that the petitioner no.1 has taken money from the complainant at several occasions without granting receipts and it is an admitted fact that petitioner no.1 is not a cashier of the bank. The money is being deposited with the cashier and the cashier used to grant receipts, one of the receipts for Rs. 37,260/- is fatal blow for the case of the complainant. It is submitted that the order taking cognizance is bad in law and is fit to be quashed.

On the other land, the learned A.P.P. and the learned counsel for the Opposite party no.2 submit that at the time of taking cognizance the court is only required to see as to what are the allegations in the complaint petition and whether those allegations have been supported during inquiry or not. Whether those allegations have been substantiated, during inquiry it cannot be adjudged. At this stage, the court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld during trial or not. Reliance has been placed on the ruling reported in **(2014) 12 Supreme Court Cases page 556,** in the case of **Homi Rajvansh Versus The State of Maharashtra and Others**. Further reliance has been placed in the matter reported in (**2014) 3 Supreme Court Cases 383** in the case of **Bhaskar Lal Sharma and Another Versus Monica and Others** and it has been argued that core test that has to be applied before summoning the accused is that the facts stated against accused have to be accepted as they appear on the very fact of it. Appreciation, even in a summary manner, of averments made in a complaint petition or F.I.R. is not permissible at the stage of quashment of criminal proceeding. Facts, as alleged, will have to be proved which can only be done in the course of a regular trial. further reliance has been placed on the ruling reported in **(2015) 1 Supreme Court Cases 103.** It has been stated that power should be exercised sparingly, with circumspection and not on the mere asking, depending upon facts and circumstances of each case**.** Mini-trial or roving inquiry not contemplated.

Having considered the submissions urged at the bar and going through the complaint petition the statement of the complainant on solemn affirmation the statement of inquiry witnesses namely Bishwanath Tiwary and Vijay Kumar which are annexed with the supplementary affidavit, it is manifest that the petitioners are bank officers and the complainant is bank customer. Admittedly, the opposite party no.2 did not pay the loan amount, resulting, instant Certificate Case and in Lok Adalat it was purposed that if the complainant will pay the principle amount, the Certificate Case can be closed then by way of first installment Rs. 37,260/- was paid for which there is a receipt and that receipt which is counterfoil pay in slip and that counterfoil appears to be written by the complainant in his own handwriting in which name written matches with the signature made by the complainant on statement on solemn affirmation.

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his judicial mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

In the case of **Chandra Shekhar Jha Vs. The State of Bihar (supra)**, this court after considering several judgments of Apex Court including the case of **State of Haryana Vs. Bhajan Lal (supra)** in a similar facts of the case has held that there is no personal relationship between the petitioners with the opposite party no.2. Save and except being a banker and a customer. Opposite party no 2 has not brought any material to show earlier to this case, there was any other litigation in between the parties. It is one of the cases where this Court in order to securer the ends of justice and to protect unnecessary and malicious prosecution, is required interference with the order of cognizance and to quash the proceeding. It is also held that it is duty of the court to protect the bank officer and government official from unnecessary harassment and malicious prosecution. The rulings relied upon by the learned counsel for the opposite party no.2 is not applicable, in the facts and circumstances of the present case, here the facts of the case are on quite different footing than that of the cases.

In the facts and circumstances as stated above, the order taking cognizance dated 02.03.2013 passed by the learned Chief Judicial Magistrate, Gopalganj, in connection with Complaint case No. 2115 of 2011 trial No. 3669 of 2013 is hereby quashed.

In the result, this Criminal Miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J)

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