IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54109 of 2013

Arising Out of PS.Case No. -399 Year- 2012 Thana -KISHANGANJ District- KISANGANJ

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1. Girish Chandra Sinha @ Girish Sinha, s/o late Ramdeni Prasad
2. Bharti Sinha @ Bharti Kumari, w/o Girish Chandra Sinha @ Girish Sinha

Both resident of Chunapur Road, Madhubani, P.S- Khazaulhi Hat, District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar
2. Manish Kumar, s/o Heera Lal Sah, resident of village- Dangi Basti, P.S- Kishanganj, District- Kishanganj.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 23-06-2017

1. This Cr. Misc. application has been filed for quashing the First Information Report dated 20.10.2012 lodged in Kishanganj P.S. Case No. 399 of 2012.

2. The main ground taken by the petitioner for quashing the First Information Report is that for the same offence, earlier K. Hat P.S. Case No. 257 of 2011 was registered in Purnea District on the basis of written application of 26 persons in which name of informant of this case Manish Kumar finds mentioned at Sl. No. 24. All the accused persons including these petitioners are facing trial in that case. Thereafter, for the same cause of action, another case has been filed by the informant Manish Kumar vide Complaint Case

No. 648 of 2011 (instant case), which was sent to police under Section 156 (3) of the Cr. P.C. and, thereafter, Kishanganj P.S. Case No. 399 of 2012 dated 20.10.2012 was registered. Both the First Information Reports have been annexed as Annexure-1 and 2 respectively in this petition.

3. Heard learned counsel for the petitioners, learned counsel for the opposite Party No. 2 and learned counsel for the State.

4. The learned counsel for the petitioners has relied on decisions reported in 2006 (3) PLJR 610 (*Lalit Kumar Singh Vrs. State of Bihar*), 2006 (2) PLJR Page 514 (*Raju Sah Vrs. State of Bihar) and AIR (2001*) SC Page 2637 (*T.T. Antony Vrs. State of Kerela)* in support of his submission.

5. Learned counsel for the opposite party No. 2 has appeared. He has submitted that both the cases are not of same transaction. The date of occurrence and cause of action of both the cases are different. The first case bearing K. Hat P.S. Case No. 257 of 2011 was registered by Rakesh Kumar for committing defalcation by these petitioners and other accused persons after opening a non-banking institution and asking the local people to deposit Rs.2250/- as registration fee and in this manner, they have defalcated crores of rupees of the depositors. The name of Manish Kumar was mentioned in that case as one of depositors at Sl. No. 24.

6. The allegation in Complaint Case No. 648 of 2011 (instant case) on the basis of which Kishanganj P.S. Case No.399 of 2012 dated 22.10.2012 was registered is that the informant, his father and mother have deposited rupees eighty thousand in all for taking loan from non banking institution which have been defalcated by the accused persons.

7. Earlier First Information Report was lodged by Rakesh Kumar on 29.6.2011**.** The complaint case No. 648 of 2011 was filed by Manish Kumar before the learned Chief Judicial Magistrate, Kishanganj on 8.7.2011 stating the date of occurrence about three months prior to filing of the complaint petition and place of occurrence as Kishanganj. The aforesaid complaint was sent by the learned Chief Judicial Magistrate, Kisahanganj, to the Police Station under Section 156(3) Cr. P.C. and, thereafter, Kishanganj P.S. Case No. 399 of 2012 dated 20.10.2012 was registered against the petitioners and other accused persons for the offence under Sections 420, 406, 467, 468 and 120(B) of the Indian Penal Code.

8. During course of argument, it has been submitted on behalf of the petitioners that in the aforesaid case, the police has concluded investigation and filed charge sheet against the accused persons including the petitioners. The case is pending for hearing on cognizance matter.

9. This Court after perusing the complaint petition of Kishanganj P.S. Case No. 399 of 2012 dated 20.10.2012 and F.I.R. of earlier case filed by Rakesh Kumar vide K. Hat P.S. Case No. 257 of 2011, finds that the cause of action as well as place of occurrence of both the cases are totally different.

10. The fact that the complainant of the present case has also been shown as one of the depositors along with other depositors who have been cheated by opening account in the non-banking institution, will not debar the complainant/informant of this case from filing a separate case against the accused persons, who have cheated his money, for which he will have separate cause of action.

11. The counsel for the petitioner has during course of argument submitted that the second First Information Report (instant case) will not be maintainable because both the case speaks of the same transaction and, therefore, the second First Information Report filed by Manish Kumar (instant case) is not legal and fit to be quashed.

12. This Court is not satisfied with the aforesaid submission of the learned counsel for the petitioners. The second First Information Report (instant case) has been filed by Manish Kumar whereas the informant in the earlier case K. Hat P.S. Case No. 257 of 2011 was Rakesh Kumar.

13. The matter would have been different if the informant and cause of action in both the cases would have been same. The informant Rakesh Kumar in earlier case vide K. Hat P.S.

Case No. 257 of 2011 has alleged that these petitioners and other accused persons have defalcated money of the informant of that case (Rakesh Kumar) along with several other depositors which include the name of Manish Kumar, who is informant in the present case.

14. This Court is of the view that in the course of same transaction when several persons have been cheated by the non-financial institution, then each individual who has been cheated by non financial institution will have separate cause of action. He can file separate case against the Company for recovery of his dues. The filing of case by one of the depositors, even if he includes the name of another depositor, will not debar another depositor to file a suit against non-financial institution for recovery of his dues.

15. Therefore, this Court does not find any merit in the submission of the learned counsel for the petitioner to quash the second First Information Report lodged by Manish Kumar which as per submission made by him, is of the same transaction.

16. Accordingly, this Cr. Misc. application is dismissed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
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