IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.776 of 2017

Arising Out of Sheikhpura PS.Case No. -190 Year- 2017 Thana – Sekhpura, District- Sekhpura

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Amit Kumar, S/o Late Jitendra Kumar, P.S.- Bahadurpur, P.O.- Laheriasarai, R/o- Kabilpur Laheriasarai, Darbhanga, Bihar, Pin- 846001, presently posted as Branch Manager, HDFC Bank, Seikhpura Branch, P.S.- Seikhpura, District- Seikhpura.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary Finance Department.
2. The Nazarat Deputy Collector, Seikhpura.

.... Respondent

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Appearance :
For the Petitioner/s : Mr. Girijest Kumar, Advocate
For the Respondent/s : Mr. Raghwendra Kumar, S.C.22

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 25-04-2018

Heard learned counsel for the petitioner and learned Standing Counsel No. 22 for the State.

2. The petitioner has moved this court challenging the institution of the First Information Report (in short the "F.I.R.") being Sheikhpura P.S. Case No. 190/2017 registered on 10.05.2017 under Section 409 of the Indian Penal Code at the instance of one Gyan Prakash Nazarat, Deputy Collector, Sheikhpura (respondent no. 2). The respondent no. 2 is also represented by learned Standing Counsel No. 22.

3. A perusal of the F.I.R., as contained in Annexure-1 to the writ application, would show that the allegation against the petitioner is that he, being an employee of the HDFC Bank at Sheikhpura, had failed to honour the cheque of Rs. 5,00,000/- issued favour of one Sunita Devi, a widow of Martyr Ranjit Kumar. It is alleged that on the said date sufficient balance was there in the account of the respondent no. 2, however when the cheque was presented, the same was dishonoured.

4. It is the alleged in the F.I.R. that the matter relating to dishonour of cheque issued by the administration to the widow of the martyr was aired and broadcasted on the television channels which has brought down the reputation of the administration. It is alleged that by dishonouring the cheque the petitioner had committed an act of misappropriation.

5. Learned counsel representing the petitioner submits that this petitioner happened to be an employee of the HDFC Bank, it is categorically stated that this cheque in question was issued by the District Magistrate on 26th April, 2017 without getting his signatures updated in the bank records and the said instrument was presented for encashment on 6th of May 2017 in Cheque Truncation System (CTS) clearing in Noida wherein payment processing is done on the basis of the image of instrument. The cheque was returned by the clearing house with a reason 'Drawers signature mismatch' as the signature of the new District Magistrate as signatory could not be captured in the system.

6. The petitioner has further stated that said act of issuing cheque without obtaining signatures in the bank records is an act of negligence on the part of the drawer of the instrument and for that he cannot be held responsible.

7. It is further pointed out that the cheque in question was the first cheque issued by the new District Magistrate of the said account since his joining on 11.04.2016 in the office which is clear from statement of account for the period 1^{st} April, 2016 to 14^{th} May 2017, a copy of which has been annexed as Annexure-2 to the writ application and has not been controverted by respondent no. 2 in response thereto.

8. Learned counsel for the petitioner has narrated before this court the harassments which were meted out to this petitioner and how he was called by the office of District Magistrate on 10^{th} of May 2017 and was pulled up severally by the District Magistrate and with threat of police action/arrest etc. he was asked to write an apology letter. The petitioner was verbally instructed by the District Magistrate to immediately process the payment of Rs. 5,00,000/- in favour of the holder of the cheque through RTGS. He was made to leave DM office under the custody of two officials of DM office in order to ensure that RTGS transaction is processed by the bank immediately as because petitioner informed that debit of account in absence of signature of authorized signatory will not be in order so far as the bank is concerned and he will not be able to debit the account. The entire manner in which the petitioner was brought to the branch of the HDFC bank by the two officials i.e. respondent no. 2 and Mr. Sunil Kumar and the informant signed on the RGTS application form (though he was not empowered) he was not empowered) and sought immediate transfer of amount failing which the petitioner was threatened to be arrested has been stated within the writ application.

9. A counter affidavit has been filed on behalf of the respondent in which the statement made in the writ application have been vaguely denied, as according to the respondent, the signature of the District Magistrate was sent to all the banks on 21.04.2016 itself. Annexure-B, which is one of the pages of the peon's book, has been brought on record on behalf of the respondent, a perusal of the same shows that under serial no. 10, there is an entry as last entry on the page in the name of Branch Manager, HDFC Bank, Sheikhpura but in the column showing delivery of the letter only an initial of someone is appearing without any date, thus apparently from their own document the respondent is unable to even *prima facie* show that the letter in question was delivered to the Branch Manager, HDFC Bank, Sheikhpura on 21.04.2016 as even the bank's seal is not there. Except this entry in all other entries the dates are mentioned.

10. Learned Standing Counsel representing the respondents has placed reliance on the statement made in paragraph 8, 9 and 10 of the counter affidavit.

11. Having heard learned counsel for the petitioner and learned Standing Counsel representing the respondents, this court is of the considered opinion that without adding in or substracting anything out of F.I.R., it can be safely held that no offence muchless an offence under Section 409 of the I.P.C. is made out. The tone and tenor of the F.I.R. clearly suggest that only because the cheque in question was issued in favour of widow of a martyr and the news regarding dishonour of the said cheque was aired on the television, the district administration in order to save itself from any controversy proceeded to lodge the F.I.R. against the petitioner. The dishonour of cheque took place for the reason that there was mismatch in the signature of the drawer as the new District Magistrate had joined recently and it was the first cheque by him after joining. In the opinion of this court whatever be the reason for the dishonour of cheque, in this case it would not constitute any criminal offence; this court fails to understand as to how a case may be registered under section 409 of the I.P.C. because in the facts and circumstances of this case none of the ingredients of section 409 I.P.C. would be attracted. The money which was lying in the account of the district administration remained in the account and it was not transferred to any other account. Later on it was transferred in favour of payee through 'RTGS'. The only issue was that the cheque which was drawn in favour of Sunita Devi was not honoured for the reasons stated by the petitioner. Section 409 of the I.P.C. reads as under: -

> ***"409 – Criminal breach of trust by public servant, or by banker, merchant or agent.*** *– Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a*

term which may extend to ten years, and shall also be liable to fine."

12. Criminal breach of trust has been defined under Section 405 I.P.C., which reads as under: -

> ***"405***. *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*
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> ***Explanation – 1*** *– A person, being an employer of [an establishment whether exempted under Section 17 of the Employee' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the*

contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2. *– A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Emplyees' State Insurance Act, 19489 (34 of 1948), shall be deemed to have been entrusted with the amountn of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."*

13. In the facts of this case, this court is not required to examine any document or evidence to come on a conclusion that no case in the nature of a criminal offence of breach of trust is made out against the petitioner. In the opinion of this court institution and further continuance of the prosecution of petitioner in this case would be a mere abuse and a harassment to the petitioner who is a bank employee. It is not in dispute that the cheque was dishonoured at the 'CTS' due to mismatch in the image which was caught at Noida Centre. This petitioner had no role to play in such dishonour of cheque.

14. Regard being had to the facts and circumstances of the case, the First Information Report bearing Sheikhpura P.S. Case No. 190 of 2017 is hereby quashed.

15. As regards allegation of harassment, the petitioner, if so advised, may pursue his remedy for adequate compensation against the authorities for the harassments as claimed by him in accordance with law.

16. This criminal writ application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	**27.04.2018**
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