IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38376 of 2007

Arising Out of PS.Case No. -9 Year- 2005 Thana -Hathauri District- SAMASTIPUR

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1. Kamal Kishore Singh, son of late Ramlakhan Singh, resident of village- Akhatwara, P.S.- Hathauri, District- Samastipur.
2. Lalbahadur Bhartiya, son of Umakant Singh, resident of village- Mahadeva, P.S. Hathauri, District- Samastipur.

.... Petitioner/s

Versus

1. State of Bihar
2. Md. Illias, Branch Manager Samastipur Kshetriya Gram Bank, Shivajeenagar, P.S.- Hathauri, District- Samastipur.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate.
For the Opposite Party/s : Mr. Ranjeet Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 29-03-2018

Heard learned counsel for the petitioners as well as learned counsel for the State.

2. Petitioners invoking inherent jurisdiction of the Court under Section 482 of the Cr.P.C., seek quashing of the cognizance order dated 18.08.2006 passed by the learned A.C.J.M. Rosera in Hathauri P.S.Case No. 9 of 2005 thereby taking cognizance of offence under Sections 406/34 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners submits that petitioners were guarantors of Brahmdeo Mandal, a loanee, having loan of Rs. 2 lacs to invest in the grocery shop but became defaulter, therefore, petitioners were also made accused in the

criminal case, being guarantors. However, loanee settled the loan amount which is evident from the supplementary counter affidavit filed by the Samastipur Kshetriya Gramin Bank, thereafter loan account was closed way back on 30.08.2011. The said fact is also admitted by the learned counsel appearing on behalf of the Bank, however, he submits that the liability of a guarantor is co-extensive regarding the loan as the borrower and guarantor both are liable.

4. Having considered the rival submissions of both sides and on perusal of record, the liability of the guarantor is co-extensive as a civil liability and not a criminal liability, moreover, loan account has already been settled by the borrower, so cognizance order dated 18.08.2006 and subsequent criminal proceedings with respect to the petitioners in Hathauri P.S.Case No. 9 of 2005 is quashed. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
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