IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30989 of 2014

Arising Out of PS.Case No. -793 Year- 2013 Thana -PATNA COMPLAINT CASE District-PATNA

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Kiran Kumari Wife of Sri Dilip Kumar, resident of mohalla- Sakari Gali, Police Station- Alamganj, District- Patna, Office Incharge, Head Office, Bank Karmchari Swablambi Sahkari Samiti Limited, Mohalla- Sakari Gali, Post Office- Gulzarbagh, Police Station- Alamganj, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Arun Kumar Rajak Son of Late Ramjee Rajak. resident of Swablambi residency, Block-D, IInd Floor, Daud Bigha, Police Station- Agam Kuan, District- Patna, Present address - Suspend Assistant Manager, Retel Assets Branch, Central Bank of India, Distt.- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Kr. Sinha, Adv.
		Mrs. Minu Sinha, Adv.
For the Opposite Party/s	:	Mr. C.B. Das, Av.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-04-2018

This application has been filed for quashing the order dated 08.10.2013 passed by Sub-divisional Judicial Magistrate, Patna City, Patna in Complaint Case No. 793 of 2013 whereby and whereunder the learned Sub-divisional Judicial Magistrate took cognizance of offence under sections 406, 420 and 120B of the Indian Penal Code against the petitioner and other co-accused.

2. Heard learned counsels for the petitioner and the respondents.

3. The opposite party no. 2 being an employee of Central

Bank of India was elected as member of the Board of Director of Karmchari Swablambi Sahkari Samiti Limited. He filed the complaint case against the petitioner and other co-accused. It is stated that in the year 1997, a Samiti was constituted in the name and style of Central Bank Karmchari Swablambi Co-operative Society Limited and it was registered with the Registrar of Co-operative Society, Patna. As per bye-laws of society, the accused no.2 was elected as Secretary to the Committee. It is alleged that the Secretary in collusion with other co-accused misappropriated and defalcated the handsome amount, which was deposited with the society. The accused persons acquired several properties in their name as well as in the names of their family members. The society acquired land at different places for construction of building for the use of members of society. The accused persons misused the capital amount of society and invested the same in Dental and Medical College Hospital, which caused scarcity of fund and thus the accused persons are liable to be prosecuted for the offences under sections 406, 420 and 120B of the Indian Penal Code.

4. The learned counsel for the petitioner submitted that the present petitioner has been impleaded as accused, as she is wife of accused Dilip Kumar. She has no concern with the society of complainant and the co-accuseds. There is absolutely no allegation

against the petitioner. The husband of the petitioner has been allowed anticipatory bail by this Court in Criminal Miscellaneous No. 23779 of 2015. The complainant filed Criminal Miscellaneous No. 54253 of 2016 for cancellation of bail, which after hearing was dismissed by this Court. In the said criminal miscellaneous, the Court has also found no material against the husband of the petitioner. The court below has thus committed error in taking cognizance and so the same is fit to be quashed.

5. The learned counsel for the respondents on the other hand supported the cognizance order and submitted that the court below finding *prima facie* case against the petitioner and other co-accused, has rightly taken cognizance.

6. On perusal of complaint case and documents on record, I find that the petitioner is wife of co-accused Dilip Kumar, who was/is Secretary of Bank Karmchari Swablambi Sahkari Samiti Limited having its office in the house of petitioner and her husband. There is a specific allegation that this petitioner and her husband were the custodian of the entire documents. The petitioner was appointed as incharge of the office by her husband Dilip Kumar and they in collusion with other accused transferred the fund in favour of their close relatives. The complainant at para 21 of the complaint petition has alleged that seven items of landed properties were acquired by

them from the fund of society. The court below considering the evidence on record took cognizance of offence for the offence under sections 406, 420 and 120-B of Indian Penal Code against the petitioner and 3 others. The defence which is available to the petitioner cannot be taken into consideration at this stage.

7. In view of above discussions, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02/05/2018
Transmission Date	