IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.997 of 2018
Arising Out of Town Darbhanga P.S. Case No. – 147/2017, Year- 2017 Thana – Nagar, District- Darbhanga

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1. Nasim Raza Khan @ Nasim Ahmad Raza Khan, S/o Md. Shamim Ahmad Khan,
2. Md. Shamim Ahmad Khan S/o Ali Raza Khan, Both R/o Village/Mohalla- Alafganj, P.O.- Lalbagh, P.S.- L.N.M.U., District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar Through The S. P. Darbhanga.
2. Prafull Kumar Jha S/o Vashist Narayan Jha, R/o Village/Mohalla- Laxmi Sagar, P.S.- L.N.M.U., District- Darbhanga. At present Chief Manager P.N.B. Barnch Tower Chowk, P.S.- Town, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Shahnawaz Ali
For the State	:	Mr. Saroj Kr. Sharma, A.C. to A.A.G.3
For the P.N.B.	:	Mr. Kumar Priya Ranjan, S.C.
		Mr. Niraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 07-05-2018

Heard learned counsel for the petitioner and learned counsel representing the Punjab National Bank.

The petitioner is seeking quashing of the First Information Report (in short the "F.I.R.") being Town Darbhanga P.S. Case No. 147/2017 dated 04.09.2017 registered under Section 420, 406, 120(B)/34 of the Indian Penal Code pending in the court of learned Chief Judicial

Magistrate, Darbhanga.

Learned counsel for the petitioner while reading out the written complaint dated 08.08.2017 under the signature of Chief Manager, Punjab National Bank, Tower Chowk Branch Darbhanga addressed to the Officer-in-Charge of the Town Police Station Darbhanga, has a submission whereunder he submits that in the present case the cash-credit limit of the account of the petitioner was enhanced from time to time on being fully satisfied with the operation of the account.

Learned counsel points out that initially the cash-credit limit was Rs. 37 lakhs which was enhanced to Rs. 67 Lakhs in the year 2013 and thereafter it was enhanced to Rs. 1 Crore on 27.05.2015. He submits that a bare perusal of the written complaint lodged by the Branch Manager would show that he himself admits about the smooth operation of the account in question since long. However, it is an admitted position that the account became Non Performing Account (in short the 'NPA') on 31.03.2016 because of the failure of the petitioner to keep the account good in operation. Learned counsel submits that the bank has already initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act 2002”), and such proceedings are still going on. It is submitted that the prosecution of the petitioner, for the reason stated in the written complaint, is not just and proper and a case of simple breach of contract has been converted in a criminal proceeding.

On the other hand, learned counsel representing the bank would submit that so far as the recovery proceedings are concerned, those proceedings are going on in terms of statutory provisions made for that purpose but that would not absolve the petitioner from facing the criminal charge and for that purpose he has pointed out from the last part of the written complaint whereunder it is specifically alleged that the stock in business, which was hypothecated in favour of the bank, has been sold out without consent of the bank, and in course of inspection by the bank officer when it was found that the hypothecated stocks have been sold out by the borrower for his own unlawful gain causing loss to the bank, the present F.I.R. has been lodged. It is his submission that the law is well settled on the subject that both civil and criminal proceedings can go together.

Having heard learned counsel for the petitioner as also learned counsel representing the bank and upon perusal of the F.I.R. registered in the present case, this court is of the considered opinion that the last paragraph of the written complaint demonstrates that the bank officers have visited the business premises of the petitioner and found that the hypothecated stocks were sold out, a perusal of the F.I.R. would show that if the allegations made therein found correct, it will definitely constitute a criminal offence.

Without going into the merit of the allegation and without going into the submissions made at the bar by either parties, having found that the allegations, if proved, will constitute a criminal offence, this court is not willing to quash the F.I.R. at the threshold.

The writ application has no merit. It is, accordingly, dismissed.

Rajeev/- **(Rajeev Ranjan Prasad, J.)**

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	**09.05.2018**
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