

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16554 of 2011

Arising Out of Complaint Case No. -2952 Year- 2010 District- WESTCHAMPARAN(BETTIAH)

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1. Mohan Singh Chouhan S/O Late Phool Singh Chouhan Resident Of 605, Amarpur, P.S. Madan Mahal, District Jabalpur, Presently Posted As A Senior Manager, Central Bank Of India, Sindhi Colony, First Line, District Itarsi, Madhya Pradesh.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Kamal Deo Thakur S/O Late Braj Bhushan Thakur Resident Of Mohalla Bel Begh, P.S. Bettiah Mofassil, District West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arjun Kumar, Adv.
Mr. Alok Kumar, Adv.
For the State : Mr. Jharkhandi Upadhyay, APP
For the opposite party no.2 : Mr. Harendra Kumar Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date: 11-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order taking cognizance dated 21.01.2011 passed by the learned Sub-Divisional Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 2952(C) of 2010 whereby he has summoned the accused persons including the petitioner after finding a prima face case to be made out under Sections 409, 418, 384 and 166 of the Indian Penal Code.

2. The complaint case was filed by one Kamal Deo Thakur in the court of Chief Judicial Magistrate, Bettiah, West Champaran alleging therein that he was having savings account and a joint



current account with his wife in the Central Bank of India, Lal Bazar, Bettiah Branch (for short 'the bank') and he had overdraft arrangement against various fixed deposits. On 06.06.1980 he took locker facility by paying one year rent in advance at Rs.40/- and renewed time to time through executing an agreement dated 06.06.1980 and the overdraft arrangement in the said current account was continuing. The bank debited Rs.40/- on 06.06.1980 from the said current account with overdraft as locker's rent in advance and everything was well till 27.02.1993 but the bank officials initially showed unwillingness to allow him access to the locker on 27.02.1993 on the pretext of alleged locker rent arrears. However, after discussion with the bank officials, he was permitted to access the locker on 27.02.1993. He did not anticipate any foul play by the accused and, therefore, returned. Thereafter, the bank issued a notice dated 03.03.1993 under Certificate of Posting asking to pay locker rent arrear of Rs.500/- within one week failing which the locker operation would not be allowed. He sent a written request to the bank through registered post on 05.05.1993 for the details of arrears year wise, if any, and also requested to allow him to surrender the locker on payment of the same. It is further alleged that whenever he contacted the bank officials for surrendering the locker, he was asked to make payment of the locker rent for the period during which he



was not actually allowed to operate the same. On 31.05.1996, he gave a written intimation that he would surrender the locker on paying the entire dues of arrears of rent and, thereafter, he paid Rs.1800/- against locker rent arrears and penal surcharges on 03.03.1996 for which the bank granted a receipt as proof of such payment. Even after entire demanded payment was made and no payment was made for renewing the lease of that locker, he was not allowed to operate or surrender the locker and his ornaments worth Rs. 2 lakhs were withheld by the bank. It has been further alleged that he filed a title suit bearing T.S. No. 1 of 1997 in the court of Sub-Judge, Bettiah and in the said title suit the learned Sub-Judge, vide order dated 18.07.2009 directed the accused persons to allow him to operate the locker by taking legally payable amount under the banking laws. On 21.09.2010, he personally met the petitioner in his office chamber and submitted a written memorandum fixing 15.10.2010 as the last date for redressing his grievances, but no reply was received from the petitioner. Subsequently, on 18.10.2010, the petitioner told him that his valuables kept in the locker has surreptitiously been misappropriated by the bank. The complainant has alleged that in the said locker 12 bangles of 22 carat gold weighing 3 tolas, golden necklace, chains and several rings were kept. He further alleged that it was also published in the newspaper that a locker was found open



when the customer concerned came to operate and thereafter a police case was lodged after interrogation of the Branch Manager.

3. On the basis of these allegations, the complainant alleged that the accused persons have committed offences under Sections 166, 418, 384 and 409 of the Indian Penal Code.

4. After taking cognizance of the offence, vide order dated 21.10.2010, the learned Chief Judicial Magistrate, West Champaran, Bettiah made over the case to the court of Sub-Divisional Judicial Magistrate, West Champaran for its enquiry and trial. Thereafter, the complainant made his statement on solemn affirmation. In course of enquiry conducted under Section 202 of the Cr.P.C., five witnesses were examined on his behalf whereupon the learned Sub-Divisional Judicial Magistrate vide impugned order dated 21.01.2011 summoned the accused persons named in the complaint to face trial for the offences punishable under Sections 166, 384, 409 and 418 of the Indian Penal Code.

5. It is submitted by the learned counsel for the petitioner that the court below erred in taking cognizance of the offences and summoning the petitioner and another Senior Manager of the bank as no prima facie case is made out even if the allegations made in the complaint petition are taken to be true on their face value. It is submitted that as per the Master Circular Safe Deposit Lockers



Updation, lockers of bank cannot be opened without the key given to the customers. As per the said circular there are two keys required to unlock a locker and out of them one is with the customer and another is with the manager of bank. When the customer desires to unlock the locker, the customer and the manager both use their key in order to unlock the locker but in no case the locker can be unlocked by any one. In the present case, the allegation of unlocking the locker of the complainant is not believable because the locker could not have been unlocked with the key lying with the complainant. He submitted that the complainant has tried to substantiate his allegation referring to the news circulated in the newspaper but the incident published in the newspaper was not of the branch where the petitioner was the Branch Manager and the story published in the newspaper was completely different. In the said incident, the customer had himself inadvertently left his locker open after operating the same and went out of the bank without informing the manager and when the bank officials noticed the fact, they immediately informed the police as well as the customer whereafter the customer came back and locked his locker. He submitted that from perusal of the entire complaint petition and the statements of the witnesses examined during enquiry, it is apparent that no specific allegation has been made against the petitioner. The way the prosecution story has been narrated, it reflects that the entire



dispute of the petitioner is with respect to arrear of rent with the bank for the locker retained by him.

6. On the other hand, learned counsel appearing for the complainant-opposite party no.2 submitted that the allegations made in the complaint do attract the ingredients of the offences alleged. He submitted that there is specific allegation in the complaint that the bank charged rent for the period the complainant was not even allowed to access the locker and when he wanted to surrender the same, he was not permitted to do so and subsequently articles kept in the locker were dishonestly misappropriated. He submitted that the complainant and the witnesses have supported the allegation in course of enquiry and, thus, no illegality can be found with the order passed by the learned Magistrate whereby the petitioner and a senior manager of the bank have been summoned to face trial. He contended that the defence of the petitioner can only be appreciated at the stage of trial on the basis of evidence before the court. This Court cannot give any finding at this stage regarding the merits of the allegation.

7. I have heard learned counsel for the parties and perused the record.

8. In the statement made on oath, the complainant has alleged that he had hired locker no.90 under an agreement with the bank. He had instructed the accused to deduct locker rent from his



Account No. 1164 in advance and if rent is enhanced, renewal should be done only after taking his consent. The locker was hired on 06.06.1980. Subsequently, the accused made demand of arbitrary rent and surcharge for the locker. Though he wanted to surrender the locker, the same was not allowed. Hence, he was compelled to file Title Suit No. 1 of 1997 before the court of Sub-Judge-III, Bettiah in which vide order dated 18.07.2009 the bank was directed to allow him to operate the locker after taking hire charges as per the prevalent rules. The authorities of the bank failed to abide by the order passed by the court as a result of which he filed a miscellaneous case under Order 40 Rule 1 of the Code of Civil Procedure in the court of Sub-Judge-III, Bettiah. He further stated that he paid Rs.1800/- to the bank. On 18.10.2010, he noticed that the ornaments kept by him in the locker were removed.

9. In the complaint petition, in the column of accused the petitioner has been named. Apart from him, senior manager of the bank has been made accused by designation. However, in the statement recorded on oath, the complainant has not even whispered name of the petitioner or any role played by him in the entire transaction with the bank. It is a matter of common knowledge that the banks exercise due care and precaution in operation of lockers, but they do not accept any liability or responsibility for any loss or



damage whatsoever sustained to items kept in the locker. The relationship between the bank and the locker-hirer is in the nature of lessee and lessor where lessee is the bank and the lessor is the customer. The locker can only be opened by the locker holder along with master key of the bank. The banks have no liability for the things/goods kept in their lockers by the customers. The customers are made responsible for the valuables he/she keeps in the locker. The banks do not keep record of what a customer is putting inside the locker. Therefore, there is no mechanism through which it can be known whether the goods kept in the locker have been removed from it or not. The public sector banks mandatorily require for every person to sign a contract clause which declares that the bank shall not be liable for any loss or damage to the contents of the locker caused in any manner whatsoever.

10. The petitioner being branch manager of the bank cannot be held accountable in any manner in his individual capacity for any dispute with the bank. In case of any loss or damage caused to the complainant, he may sue the bank but without alleging any specific role of any officer of the bank for committing any unlawful and illegal act attracting ingredients of a criminal offence he cannot prosecute the petitioner or any other officer in a criminal case. Moreover, there is no concept of vicarious liability upon any officer of the bank under the Indian Penal Code for any offence alleged to be committed by a bank. In



S.K. Alagh Vs. State of Uttar Pradesh & Ors. [(2008) 5 SCC 662], the Supreme Court held that the Indian Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

11. Having regard to the well settled principles laid down in *State of Haryana & Others Vs. Bhajan Lal and Others [1992 Supp (1) SCC 335]*, and *R.P. Kapoor Vs. State of Punjab [AIR 1960 SC 866]*, I am of the considered opinion that allowing the prosecution of accused persons including the petitioner to continue any more would amount to an abuse of the process of the court.

12. Accordingly, the order impugned dated 21.01.2011 passed by the learned Sub-Divisional Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 2952(C) of 2010 is hereby quashed.

13. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13-04-2018
Transmission Date	13-04-2018

