IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38039 of 2014

Arising Out of PS.Case No. -410 Year- 2008 Thana -SAKRI District- MADHUBANI

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Rajesh Kumar Kapri S/o Sri Yogendra Prasad Kapri, Resident of village- Simri, P.S.- Bisfi, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Branch Manager, Branch Sakri, SBI, District- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Singh, Advocate.

For the Opposite Party/s: Mr. Parmeshwar Mehta, APP
Mr. K.K.Sinha, Advocate for SBI.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-03-2018

Heard learned counsel for the petitioner as well as learned counsel for the State Bank of India.

2. Petitioner seeks quashing of the cognizance order dated 17.11.2011 passed by the Judicial Magistrate, 1st Class, Madhubani in Sakri P.S.Case No. 410 of 2008 thereby taking cognizance of offence under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code.

3. A case was instituted against the petitioner under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code by the Bank officials of the S.B.I. that a cheque of Rs. 1,75,000/- was deposited but the bank inadvertently transferred Rs. 1,7500,000 in the account of the petitioner and the said amount was withdrawn by him

on different dates. When bank asked to return back the money, the petitioner made evasive reply and misappropriated the money.

4. Learned counsel for the petitioner submits that it was the error on part of the bank as excessive amount was transmitted in the petitioner's account, however after coming to the knowledge, the account of the petitioner was freezed by the bank on 07.11.2008, and the petitioner returned the entire amount by transmitting to bank in between 17.11.2008 to 30.12.2008, so no case of any cheating or breach of trust or committing any forgery is made out against the petitioner.

5. Learned counsel appearing on behalf of the State Bank of India though admits transfer of excessive amount by the petitioner, but submits that embezzlement has been done by the petitioner as he used the amount for a short period of time to serve his commercial interest.

6. Having considered the rival submissions and on perusal of record, the Court finds that *prima facie* no ingredient of cheating or breach of trust or committing any forgery by the petitioner is made out. It is the admitted position that excess amount were transferred in the account of the petitioner while clearing the cheque, it was an error on the part of the bank employee, there is no allegation of making any alteration in the amount mentioned in the cheque and

the FIR itself discloses that it was an error on the part of the concerned bank employee and after getting the knowledge of transmission of the excessive money in his account, the petitioner deposited the entire excessive amount, so no *prima facie* case is made out against him. Hence, the entire criminal proceeding inclusive of the cognizance order dated 17.11.2011 relating to Sakri P.S.Case No. 410 of 2008, pending in the court of the Judicial Magistrate, 1st Class, Madhubani, is hereby quashed.

7. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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