IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47689 of 2015

Arising Out of PS. Case No.-578 Year-2015 Thana- BEGUSARAI COMPLAINT CASE District- Begusarai

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Gunjan Gupta S/o Late Madan Mohan Prasad Branch Manager, HDFC Bank Ltd., Branch - Begusarai, Thana - Nagar, District - Begusarai, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Sanjay Kumar S/o Rajnikant Paswan At - Pokhriya, Ward No. 36, Near Mira Nursing Home, P.S. Town Thana Begusarai, District - Begusarai 851101.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Dayanand Singh, Advocate
Mr. Nagdeo Chaubey, Advocate

For the Opposite Party/s : Mr. Parmeshwar Mehta (APP)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 06-07-2018

Shri Sandeep Kumar, learned Counsel, appears for the applicant. None appears for the respondent, even though served and represented by a counsel.

This application under Section 482 of Cr.P.C. has been filed for quashing the order dated 23.6.2015 passed by the learned A.C.J.M., Begusarai in Complaint Case No.578 C of 2015 taking cognizance for an offence under Sections- 323 of I.P.C. and 3(I)(X) of S.C./S.T. Act, 1989.

Applicant is the Branch Manager of H.D.F.C. Bank Limited, Begusarai and from the official documents of the Bank available on record, it is clear that he was transferred to the said Branch by transfer advice issued on 16th of June, 2012 and he is said to have joined thereafter.

Be that as it may, it is the case of the complainant before the court below that he has taken a loan from the Bank in question for the purpose of purchasing a vehicle. Thereafter the complainant fell sick and could not repay the loan. As a consequence thereof, it is alleged that on 14.12.2014, the applicant and other accused persons came to his house and demanded a sum of Rs.1,50,000/-. A sum of Rs.50,000/- was paid and it was said that the remaining amount of Rs.1,00,000/- will be paid in one and a half months. It is said that on the next date i.e. on 15.12.2014, after the amount of Rs.50,000/- was paid on 14.12.2014, the accused persons again came and, it is alleged that the complainant was beaten and he was used unparliamentary words. The respondents visited his house on 8.2.2015 and he paid Rs.1,00,000/-, but when he demanded a receipt for the same, he was denied the same.

On the basis of the aforesaid, the complaint has been filed and the records indicate that the complainant Shri Sanjay Kumar is said to have given his own statement in the court which is available on record and a perusal of the statement of the complainant goes to show that he speaks about the loan being advanced to him, the applicant and other accused persons coming to his house at 3:00 p.m. and demanding Rs.1,50,000/-, his having paid Rs.50,000/- and thereafter seeking time to pay the remaining amount in one and a half months, the accused persons again coming on 8.2.2015, demanding Rs.1,00,000/- and thereafter using abuses imputing his caste.

From the aforesaid narration of fact, it is clear that even though in the body of the complaint averments are made with regard to demand of voucher/receipt on payment of the amount and assault and use of unparliamentary language, but in the statement of the complainant on solemn affirmation recorded, nothing of this sort has been stated except for contending that he was abused by his caste word.

From the above, it is seen that it is a case where the complainant respondent had taken a loan from the Bank and in the matter of repayment of the loan when default was committed, the vehicle was taken over by the Bank authorities and in retaliation to the same the complaint has been filed.

On a complete reading of the complaint and the statement of the complainant on solemn affirmation, it is seen that except for making vague and unspecified allegation, no specific particulars with regard to commission and omission are narrated. In the matter of instituting complaint in contract and hire purchase matter and exercise of jurisdiction by this Court under Section 482 of Cr.P.C., Hon'ble Supreme Court has laid down various principles in the cases of Charanjit Singh Chadha And Others., 2001 (7) SCC 418, Anup Sarmah Vs. Bhola Nath Sharma And Others., (2013) 1 SCC 400 and recently the Hon'ble Supreme Court, in the case of Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra And Anr., Criminal Appeal No.416 of 2018, decided on 20th of March, 2018 has discussed in detail various judgments on the issue and has cautioned the court in initiating criminal complaint and taking cognizance without there being any cogent material, especially in cases for grant of loan and recovery of the amount, when the Bank authorities or the other financers resort to coercive steps for recovery of the amount.

Keeping in view the principle laid down in the aforesaid cases and the facts of the present case, it is clear that except for making vague and unspecified allegation, which is also contradictory in nature, nothing has been brought on record to indicate that the applicant, as a Branch Manager, has, in fact, committed the offence as narrated in the body of the complaint. That apart, the certificates and documents of the Bank also indicate that the applicant was posted in the Bank on 12th of June, 2014 and when the incident is said to have taken place much prior to that.

Taking note of the aforesaid, it is a fit case where the jurisdiction available to this Court may be exercised for the purpose of avoiding injustice and misuse of the process of law.

Accordingly, the application is allowed and the impugned order dated 23.6.2015 passed by the learned A.C.J.M., Begusarai in Complaint Case No.578 C of 2015 taking cognizance for an offence under Sections- 323 of I.P.C. and 3(I)(X) of S.C./S.T. Act, 1989 is quashed.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.07.2018
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