IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.431 of 2016

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Ravi Shankar Singh [aged about 48 years] son of Late Gopal Singh, Resident of 104, Sudhanil Apartment, P.O. P.S. New Patliputra Colony, Town And District Patna presently posted as Branch Manager, State Bank of India, Bikram Branch, District Patna. .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar,Main Secretariat, Patna
2. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
3. The Director General of Police, Bihar, Patna
4. The Sr. Superintendent of Police, Patna
5. The Superintendent of Police, Rural, Patna
6. The Officer In- charge, Bikram Police Station, Bikram, Patna
7. The Sub Registrar, Bikram, Office of Sub Registrar, Bikram, P.S. Bikram, District Patna
8. The Principle Secretary, Department of Registration, Excise & Prohibition, Vikas Bhavan, Bailey Road, Patna

.... Respondents

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with

Criminal Writ Jurisdiction Case No.450 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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Ramesh Prasad Singh Son of Ram Bilas Mahato Resident of Khoirkorbadha, P.O. Lagunia Suryakanth, P.S. Samastipur, Town and District Samastipur, Presently Posted as Branch Manager, State Bank of India, Motipur Branch, District – Muzaffarpur .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Main Secretariat, Patna
2. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
3. The Director General of Police, Bihar, Patna
4. The Superintendent of Police, Muzaffarpur
5. The Officer In - Charge, Motipur Police Station, Muzaffarpur
6. The Sub Registrar, Motipur, Office of Sub Registrar, Motipur, P.S. Motipur, District - Muzaffarpur
7. The Principal Secretary, Department of Registration, Excise & Prohibition, Vikash Bhavan, Bailey Road, Patna

.... Respondents

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with

Criminal Writ Jurisdiction Case No.457 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- DARBHANGA

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Sanjay Kumar Srivastava Son of Sri Vinod kumar Srivastava Resident of Viinoba Nagar PO Postal Park PS Kankar Bagh, Town and District Patna Presently posted as Branch Manager State Bank of India, Kamtaul,Branch

District Darbhanga. .... Petitioner

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Principle Secretary, Home, Government of Bihar, Main, Secretariat, Patna.
3. The District General of Police, Bihar Patna.
4. The Superintendent of Police, Darbhanga.
5. The Officer-in-Charge, Kamtaul, Police Station Darbhanga.
6. The Sub Registrar, Kamtaul, Officer Of Sub Registrar,Kamtaul, PS Kamtaul, District Darbhanga.
7. The Principal Secretary, Department of Registration Excise & Prohibition , Vikas Bhavan, Bailey Road, Patna.

.... Respondent

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with

Criminal Writ Jurisdiction Case No.469 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Pramod Kumar son of Late Shyam Baren Singh, Resident of Mohanpur Punaichak, P.O. P.S. Shastri Nagar, Town and District Patna, presently posted as Branch Manager, State Bank of India, Mohanai Branch, District Kaimur .... Petitioner

Versus

1. The State of Bihar through the Principle Secretary, Home Department, Government of Bihar, Main Secretariat, Patna
2. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
3. The Director General of Police, Bihar, Patna
4. The Superintendent of Police, Bhabua, Kaimur
5. The Officer-in-Charge, Mohania Police Station, Kaimur
6. The Sub Registrar, Mohania, Office of Sub Registrar, Mohania, P.S.-Mohania, District- Kaimur
7. The Principal Secretary, Department of Registration, Excise and Prohibition, Vikas Bhawan, Bailey Road, Patna

.... Respondents

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with

Criminal Writ Jurisdiction Case No.473 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Amit Kumar son of Ratan Kumar, Resident of House No. 87, Opposite Akhand Jyoti Eye Hospital Patipul, P.O.- Digha Ghat, P.S.- Digha, Town and District Patna, presently posted as Branch Manager, State Bank of India, Piro Branch, District Bhojpur .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Main Secretariat, Patna
2. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
3. The Director General of Police, Bihar, Patna

4. The Superintendent of Police, Bhojpur
5. The Officer-in-charge, Piro PoliceStation, Bhojpur
6. The Sub-Registrar, Piro, Office of Sub Registrar, Piro, P.S. Piro, District-Bhojpur
7. The Principal Secretary, Department of Registration, Excise & Prohibition, Vikas Bhavan, Bailey Road, Patna

.... Respondents

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with

Criminal Writ Jurisdiction Case No.485 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Vikash Kumar Ojha Son of Sheojee Ojha Resident of E1 Sineshwar Palace Boring Canal Road P.O. Boring Road PS Budha Colony, Town and district Patna Presently posted as Branch Manager State Bank of india, Jagdishpur Branch District Bhojpur. .... Petitioner

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Govt. of Bihar, Patna Ors
2. The Principal Secretary, Home Government of Bihar, Main Secretariat, Patna.
3. The Director General of Police, Bihar Patna.
4. The Superintendent of Police Bhojpur.
5. The Officer In-charge, Jagdishpur Police Station Bhojpur.
6. The Sub Registrar, Jagdishpur, Office of Sub Registrar, Jagdishpur, PS Jagdishpur, District Bhojpur.
7. The Principle Secretary, Department of Registration , Excise & Prohibition , Vikas Bhawan, Bailey Road, Patna.

.... Respondents

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with

Criminal Writ Jurisdiction Case No.829 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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Samirvibhas Kerkitta, Son of Late Stanislaus Kerkitta, Resident of Vivek Vihar, Near St. Paul Academy, Mohanpur, Samastipur, presently posted as Branch Manager, State Bank of India, Kishanpur Branch, District-Samastipur. .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Main Secretariat, Patna
2. The Principal Secretary, Home, Government of Bihar, Main Secretariat, Patna
3. The Director General of Police, Bihar, Patna.
4. The Superintendent of Police, Samastipur.
5. The Officer-In-Charge, Warishnagar, Police Station, Samastipur
6. The Sub Registrar, Kishanpur, Samastipur.
7. The Principle Secretary, Department of Registration, Excise & Prohibition, Vikash Bhawan, Bailey Road, Patna.

.... Respondents

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Appearance :
(In Cr. WJC No.431 of 2016)
For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate
Mr. Alok Kumar Agrawal, Advocate
Ms. Priya Gupta, Advocate
For the Respondent/s : Mr. Vikash Kumar SC 11
(In Cr. WJC No.450 of 2016)
For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. Arvind Ujjawal (SC4)
(In Cr. WJC No.457 of 2016)
For the Petitioner/s : Mr. Priya Gupta, Advocate
For the Respondent/s : Mr. Sunil Kumar Mandal SC 3
(In Cr. WJC No.469 of 2016)
For the Petitioner/s : Mr. Priya Gupta, Advocate
For the Respondent/s : Mr. Binod Kumar Yadav SC 18
(In Cr. WJC No.473 of 2016)
For the Petitioner/s : Mr. Priya Gupta, Advocate
For the Respondent/s : Mr. Syed Iqbal Ahmad, SC 20
(In Cr. WJC No.485 of 2016)
For the Petitioner/s : Mr. Priya Gupta, Advocate
For the Respondent/s : Mr. SC14-Anshuman
(In Cr. WJC No.829 of 2016)
For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. SC8-Sheo Shankar Pd.
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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

20 28-08-2018 All these criminal writ applications have been preferred by the employees of the State Bank of India who are serving in different branches of the Bank in the State of Bihar. They have occasion to move to this Court seeking quashing of the first information reports lodged against them by the Sub-Registrars of different Registry Offices in the State of Bihar at the instance of the Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar for the reason that the Bank in which they are serving as Branch Manager had either failed to credit the interest amount claimed

towards the delayed transfer of the amount collected by the concerned Branch on account of registration of deeds and process fees and kept in the Accounts of the concerned Registry Offices of the State of Bihar, to the Government Treasury or for the reason that the Branch Manager(s) had not furnished the data's showing the period of delay in transfer of money. All the FIRs have been registered by the Sub-Registrars of the Registry Office referring to the direction of the department alleging that due to violation of the rules of the Reserve Bank of India relating to transfer of the amount by the Bank in the Government Account, the Government has incurred loss of interest.

2. In Cr.W.J.C. No. 431 of 2016 the FIR being Bikram P. S. Case No. 52 of 2016 dated 18.03.2016 registered under Sections 409, 419 and 420 of the Indian Penal Code, in Cr.W.J.C. No. 450 of 2016 the FIR being Motipur P. S. Case No. 63 of 2016 dated 18.03.2016 registered under Sections 409 and 420 of the Indian Penal Code, in Cr.W.J.C. No. 457 of 2016 the FIR being Kamtaul P. S. Case No. 35 of 2016 dated 18.03.2016 registered under Sections 409, 420, 467 and 468 of the Indian Penal Code, in Cr.W.J.C. No. 469 of 2016 the FIR being Mohania P. S. Case No. 133 of 2016 dated 19.03.2016 registered under Sections 188 and 353 of the Indian Penal Code, in Cr.W.J.C. No. 473 of 2016 the FIR being Piro P. S. Case No. 95 of 2016 dated 08.03.2016 registered under Sections 409 and 420 of the Indian Penal Code, in Cr.W.J.C. No. 485 of 2016 the FIR being Jagdishpur P. S. Case No. 48 of 2016 dated 17.03.2016 registered under Sections 409 and 420 of the Indian Penal Code and in Cr.W.J.C. No. 829 of 2016 the FIR being Warishnagar P. S. Case No. 91 of 2016 dated 18.03.2016. registered under Sections 409 and 420 of the Indian Penal Code are under challenge. The petitioners have also prayed for a direction upon the competent authority of the respondent State of Bihar for taking appropriate departmental action against the concerned officer for directing the lodging of the first information report against the officials of the State Bank of India in such circumstances wherein no offence at all is made out. Alleging that it is a case of misuse and abuse of the official position and is a malafide exercise of power, the petitioners have also prayed for any other relief/reliefs for which the petitioner(s) may be found entitled to.

3. It appears that after filing of these writ applications, when the matter came up for consideration before a learned co-ordinate Bench of this Court on 24.05.2016, the learned co-ordinate Bench had been pleased to stay the investigation of the case and it was directed that until further order, investigation shall remain stayed.

Brief facts & Submissions of the petitioner(s)

4. Mr. Alok Kumar Agrawal, learned Advocate assisted by Ms. Priya Gupta, Advocate while addressing this Court on behalf of the petitioners, has taken this Court through the contents of the written complaint lodged by the Sub-Registrar, Bikram, Patna which has given rise to Bikram P. S. Case No. 52 of 2016. All other FIRs have been lodged in similar manner alleging that the Branch Managers were directed to make available the data(s)/statements showing transfer of money from the Account of the concerned Registry Office to the Government Treasury but the branch Managers have failed to furnish the statements which has been causing difficulties in calculating of interest amount.

5. It is the contention of the learned counsel that a bare reading of the written complaint giving rise to the case in question would show that the entire allegations relate to delayed remittance of the amount collected on account of the registration fee and stamp duty by the Bank for and on behalf of the Government. According to the allegations in Cr.W.J.C. No. 431 of 2016, the State Bank of India is required to transfer the collected amount within a period of 5 days from the date of collection from the Account of the concerned Registry Office(s) to the Government Treasury. This is as per the guidelines of the Reserve Bank of India but it is alleged that the Branch Manager of the State Bank of India of concerned Branch is not following its guidelines regularly. It is alleged that because of the non-compliance with the guidelines, the Government has suffered loss of interest amounting to Rs. 43,85,061.60/-. It is further alleged that the loss was calculated by the District Sub-Registrar, Patna and the same has been informed to the Branch Manager, State Bank of India, Bikram Branch vide letter no. 337 dated 29.02.2016 and letter no. 391 dated 08.03.2016 and the Branch Manager was requested to transfer the aforesaid amount immediately in the Government Account but no concrete action could be taken by the Branch Manager of the State Bank of India in this regard. It is also stated in the written complaint that in this regard a direction has been issued by the concerned department that in case the interest amount is not deposited by 29.09.2016, the first information report should be lodged. In this background the first information report has been lodged against the petitioner in Cr.W.J.C. No. 431 of 2016.

6. In Cr.W.J.C. No. 450 of 2016 the F.I.R. under challenge alleges that the Branch Manager is not depositing the interest amount in the Government Account in the Treasury and is not making available the Datas/Statement of Accounts. The F.I.R., however, does not disclose any amount calculated by the Registry Office payable by the Bank on account of interest.

7. in Cr. W.J.C. No. 457 of 2016 it is alleged that the Registry Office called for the statements of the deposits in the Account in the light of the directives of the department. The letters dated 09.02.2016 and 15.03.2016 were written to the Branch Manager in this regard. It further alleges that as per information received, a sum of Rs. 42,76,606/- was the balance amount on 31.10.2015 which was transferred to the Darbhanga Main Branch on 16.11.2015 which according to the informant was loss to the Government.

8. In Cr.W.J.C. No. 469 of 2016 the allegation is that the Bank has provided the Statement of Accounts from the January 2015 to February, 2016 which is incomplete and due to this the informant was unable to calculate the amount of interest. In this regard letter was written to the Branch Manager on 01.03.2016 and 15.03.2016, direction to lodge the F.I.R. was received on 18.03.2016 and accordingly, the F.I.R. was lodged on 19.03.2016.

9. In Cr.W.J.C. No. 473 of 2016 it is alleged that on 14.03.2016 a letter was written to the Piro Branch to transfer the amount lying in the Account to the Government Treasury with interest but the direction was not complied with. It is alleged that a sum of Rs. 0.55 Crores is said to be lying in the Account but the same has not been transferred to the Treasury. It is, however, not the case of the informant that the amount was lying in any other Account and not in the Account of the Registry Office.

10. In Cr.W.J.C. No. 485 of 2016 the allegation is that a letter was written to the Branch office on 16.03.2016 to make available the transferred Datas so that the interest amount may be calculated but the Data was not made available within the given period. The F.I.R. was lodged on the next date on 17.03.2016.

11. In Cr.W.J.C. No. 829 of 2016 the allegation is that the statements of transferred amount in Government Treasury is not being made available since the year 2006, on 14.03.2016 a letter was written to the Bank to supply the Datas and the FIR has been lodged on 18.03.2016.

12. Learned counsel submits that a bare reading of the first information reports lodged against the petitioner(s) would show that no case at all under the provisions of the Sections 188, 353, 409, 419, 420, 467 and 468 of the Indian Penal Code is made out. It is submitted that the entire allegation is that of delay in remittance of the money collected by the Bank on account of registration fee and stamp duty which is deposited in the Accounts of the Registry office only. Transfer is to be done from the Accounts of Registry Office to the Government Treasury through the local branch office. It is submitted that the amount deposited in the Accounts of Registry office (s) keep earning the applicable interest and in case of delay of more than five days the Bank has to pay additional interest for the delayed period for which reconciliation of Accounts taken place. It is not the case that the Bank or the petitioner has swindled or siphoned the Government money. The allegation is of mere delay in remittance and in fact the case has not been lodged for non-remittance of the money collected on behalf of the Government, it is a case where the FIR has been lodged alleging delay in remittance of the amount on account of interest which has been calculated for the delayed period by the Sub-Registrar and the amount is yet to be reconciled. It is submitted that mere delay in remittance of the amount in the Government Account cannot be allowed to be taken as an offence under various provisions of the Indian Penal Code, it will result in a chaotic situation where for even a single day delay in remittance of money either by the

Government or to the Government would invite registration of a criminal case. It is submitted that the provisions of the Indian Penal Code under which the FIRs have been registered do not provide for a criminal offence merely on account of delay in remittance. Moreover there is a guideline of the Reserve bank of India which are binding on the bank as well as the Government.

12. Learned counsel further submits that except in one case, all other F.I.Rs. have been lodged alleging that the Bank has not provided required statements/Data(s) from which the Sub-Registrar could have calculated the interest amount. On this ground alone the Bank had not furnished the Data(s) within the prescribed period in the letters written by the Sub-Registrar to the respective Bank Managers, the F.I.Rs. have been lodged. It is pointed out that the F.I.Rs. have been lodged within an interval of 2-3 days after writing the letter requiring the statements showing transfer of amount to the Government Treasury and the amount of interest deposited by the Bank for the delayed period. Learned counsel submits that these are not the matters for which a first information report could have been lodged against the Branch Managers.

14. Learned counsel submits that in fact the then Principal Secretary of the Department of Registration, Excise and

Prohibition has been in habit of lodging such FIRs wherever he is in charge, he has generated hundreds of litigations which have caused burden on the Government by way of financial liabilities and he has once again misused his power and position by issuing direction to his subordinates to lodge FIR against the Branch Managers of the State Bank of India. Learned counsel submits that the manner in which the then Principal Secretary is in habit of directing registration of the FIRs, the same itself should be a matter of inquiry by the Government and the Government should take a view on the action of the then Principal Secretary and decide whether he is fit to continue in the administrative service. Learned counsel has submitted that a departmental inquiry be ordered against him.

15. It is submitted that as a matter of fact there is no ingredient of the offence of cheating, breach of trust or misappropriation in the present case. No case under Sections 409, 419, 420, 467, 468, 188 and 353 of the Indian Penal Code is made out against these petitioners. These provisions are not attracted even by any stretch of imagination but the Police authorities have lodged the FIR in question without even looking into the contents of the same and finding out whether a cognizanble offence is made out so as to require the registration of the first information report. It is submitted that every day a citizen and a government servant after his retirement is moving this Court pointing out delay in payment of his/their lawful dues by one or the another department of the Government, if these very police authorities are called upon to register an F.I.R. against the Principal Secretary of the concerned department for this reason alone the Police authorities will not register an F.I.R. In this case, they have done it under influence and pressure of the concerned department.

16. Learned counsel has submitted that the State Bank of India is acting as an agent of the Reserve Bank of India for discharging the banking function on behalf of the State Government by accepting deposit or making/disbursing the payment on their behalf. The amount deposited through Challan under normal course of banking business in the State Bank of India by the parties which has made transfer of land and has deposited stamp duty and registration charges in the Bank remains lying in the Bank Accounts of the Registry office earning interest for the State Government. As per banking procedure, such amount collected on behalf of the Government are not diverted anywhere else. It is only because of the various formalities delay occurs in settlement of account with Reserve

Bank of India and if the time which is taken exceeds beyond five days then the State Government is entitled for interest for the delayed reporting. In such circumstance the period for which interest is to be calculated is to be reconciled with the amount which is required to be paid in the account of the State Government. Immediately after reconciliation of the amount the same is automatically credited in the State Government account.

17. It is further submitted that there is no allegation that anybody in the Bank or the petitioner has refused to deposit the amount. It is submitted that the money had already been credited in the Government account, it is only the interest for the delay in crediting the money in the Government Account had to be paid after reconciliation and therefore, there was no occasion for the Principal Secretary of the concerned Department to direct registration of FIR against the Branch Manager alleging that no concrete action has been taken towards crediting the amount. It is submitted that if at all the Department had any grievance with regard to delay in crediting the interest amount, the same could have been agitated with the Reserve Bank of India and/or with the Head Office of the Bank for appropriate settlement but as it appears from the contents of the FIR in Bikramganj Police Station Case itself that the District Sub-Registrar wrote a letter on

29.02.2016 and then on 08.03.2016 i.e. within four days directing deposit of the amount in question and then without waiting for a reasonable time to allow reconciliation of Account, the first information report has been lodged on 18.03.2016 in the light of the direction of the Department. It is, thus, submitted that the first information report (s) are liable to be quashed as it is a result of malafide exercise of power by the Principal Secretary of the Government Department.

18. Similarly in all other cases F.I.R.s have been lodged in a hurry on the allegation that the Branch is not making available the statements of transfer. These matters were requried to be agitated in accordance with the R.B.I. guidelines. So far as these Branch Managers are concerned, they are not keeping the money in their own Account, they are not transferring the money to any other person's Account and they are not the beneficiaries, therefore, in absence of any 'mens rea' on the part of these Branch Managers they cannot be prosecuted in this manner.

19. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Binod Kumar and Ors. vs. State of Bihar and Anr** reported in **(2014) 10 SCC 663**. In the said case a first information report alleging criminal breach of trust was registered for the reason that amount of Rs. 34,505/-

as balance amount payable to respondent no. 2 was not paid to him and that amount was utilized by the appellants in some other work. The Hon'ble Supreme Court had held that dispute relates to non-payment of bill amount pertaining to contract and the appellants had no intention to cheat or dishonestly misappropriate the amount, and they acted as per direction issued by the Vice Chancellor, thus, the criminal proceedings could not be allowed to continue. It was held that the criminal proceedings are not a shortcut for other remedies.

20. Learned counsel further submits that in the case of **S.W. Palanitkar and Ors. Versus State of Bihar and Anr.** Reported in **(2002) 1 SCC 241** while considering a case in which allegations were that of cheating and criminal breach of trust, the Hon'ble Supreme Court had been pleased to hold that every breach of trust may not result in penal offence of criminal breach of trust, unless there is evidence of a mental act of fraudulent misappropriation. The act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

21. Learned counsel has also relied on judgment of the Hon'ble Supreme Court in the case of **Parbatbhai Aahir Alis**

Parbatbhai Bhimsinhbhai Karmur and Ors. Versus State of Gujarat and Anr. reported in **(2017) 9 SCC 641** and submitted that the Hon'ble Supreme Court has laid down broad principles which have emerged from the precedence on the inherent power of the High Court, as a superior court, to make such orders as may be necessary (i) to prevent an abuse of the process of any court; (ii) otherwise to secure the ends of justice. One of the principles is that whether the criminal cases involving offence which arises from commercial, financial and mercantile, partnership or similar transaction with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled their disputes. It is submitted that in the present case, in fact, the amount on account of interest for the delayed period is liable to be paid in the Account of the department but after reconciliation of Account as per R.B.I. norms is a factor to be kept in mind. It is submitted that the delay in settlement of Account due to operational reasons cannot be made a subject matter of criminal proceeding against the Branch Manager or the Bank.

22. It appears that vide order dated 03.08.2017 a learned co-ordinate Bench of this Court directed the State respondents to substantiate their statement that the registration money was kept in the Banks' own account. This direction was issued taking note of the submissions of the Bank that the Challan money was being deposited in the Government Account. The Sub-Registrar has filed a supplementary counter affidavit in which he has himself brought on record the three account numbers 31764518728, 31764525688 and 31764524425 which are standing in the name of Registry Office, Bikram. In paragraph '9' of the affidavit it is stated that the said account was used for depositing for various fee relating to registration and it was to be transferred to Treasury Account timely according to RBI rules. Annexure-C to the affidavit is the letter which has been received from the State Bank of India saying that three account numbers are maintained in the name of Registry Office, Bikram separately for depositing registration fee, stamp fee and processing fee. The affidavit nowhere says that the money collected by the Bank was being deposited in any other account or being transferred illegally to any other account which did not belong to the Registry Office.

Submissions of the State

23. While contesting the submissions of the learned counsel representing the petitioner(s) in all these writ applications, learned counsel representing the State led by Mr.

Sunil Kumar Mandal, learned SC 3 argued the case on behalf of the State Department on the strength of the pleadings available on the record by way of counter affidavit and supplementary counter affidavits. In the counter affidavit filed on behalf of the State respondents stand has been taken that as per the guidelines of the Reserve Bank of India as contained in letter no. H-14061/31.04.008/2006-07 dated 21.03.2007 (Annexure2/A of the writ application) the State Bank of India is required to deposit the amount collected on account of stamp duty and registration fee in the Government Account within 5 days but it has not been followed by the Branch Manager (s) of the Bank and due to violation of the aforesaid directive issued by the RBI there has been a loss of interest to the tune of Rs. 43,85,061.60/- in the case of Bikramganj Branch and similarly in other branches as well.

24. It is submitted that the Principal Secretary, Registration, Excise and Prohibition Department had directed all the District Magistrates-cum-Registrar to identify all such Branches who have not deposited the amount in the Account of the State Government and also inform the department about the penalty money charged against the Bank as per the aforesaid RBI guidelines dated 21.03.2007. The District Magistrates were also directed to issue directions to the concerned Bank to deposit the amount otherwise FIR will be lodged under the various sections of the Indian Penal Code. The copy of letter dated 09.02.2016 has been brought on record as Annexure-A to the counter affidavit. On perusal of Annexure-A shows that in the meeting held on 08.02.2016 the Principle Secretary of the Department issued various instructions with regard to different maters. In the said meeting a decision was taken that if the Banks have not transferred the amount in the Government Account within the prescribed period then amount of interest should be calculated and action should be taken to get the amount deposited in the Government Account through the Bank. In the same meeting it was also directed that if the amount is not transferred in the Government Account by the Branch Managers by 29.02.2016 then in any case first information report will be lodged against them.

25. In course of argument when this Court raised a query saying that if mere delay in remittance of the amount from the Bank Account maintained in the name of Registry Office of the concerned area to the Government Treasury or non-furnishing of data’s within two-three days as per direction of Sub-Registrar(s) is the only reason for lodging of the first information report against the Branch Managers of the Bank then what will be the situation as against the Government Department and the Treasuries who are delaying the payments to the retired employees of the State Government, for which thousands of the writ applications are coming to this Court pointing out the delay and taking note of such delay the Court is directing payment of interest, not the prosecution of the Government officials for such delay, Mr. Mandal, learned counsel representing the State had virtually no reply. It has been crystal clear and not in dispute that the money collected by Banks were credited in the Accounts of the concerned Registry office and those were earning applicable rate of interest.

Consideration.

26. Having heard learned counsel for the petitioner(s) and learned counsel representing the State as also upon going through the materials available on the record, to this Court it is quite clear that it is a case of misuse of power and position by the Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar. The Principal Secretary of the Department has adopted a coercive method by implicating the Branch Managers of the Bank in a criminal case in order to recover the interest amount or penalty as per his own calculation for the alleged delay in remittance of money from the account of Registry Office of the concerned area to the Government Treasury. It is evident, not in dispute, that the Bank is collecting money from the depositors towards stamp duty, court fee and process fee and such collected amount are being deposited in the Bank account maintained in the name of the Registry Office of the concerned area, therefore, it is not a case where the money received on account of the Registry Office is being credited in any other account or anybody else is getting benefitted for a single day for such deposit. The RBI guidelines provide that for transaction below Rs. 1 lakh the Bank will transfer the amount from the concerned account of the Registry office to the Government Treasury within a period of five days. The relevant provisions of the RBI guidelines read as under:

> "Department of Government & Bank Account Central Office
> Opp. Mumbai Central Railway Station, Byculla, Mumbai-400006
> Telephone-(022) 23084121, Fax No. -(022) 23000370/2301 6072/23010095, email:-illegible
>
> -2-
>
> (c) In case of both the local and outstation transaction, the put through date of settlement with the RBI shall

be kept outside this time limit of illegible working days respectively.

(d) Delayed period interest shall be imposed on the banks for the actual delayed and not from the date of transaction. In other words, the delay period calculation start from the day following the prescribed put through date.

(e) The period of delay in respect of transactions of Rs. 1 lakh and above started delayed period interest at bank Rate 1.2%.

(f) **For transaction below Rs. 1 Lakh each, the delayed period interest shall be – the bank rate for delays up to 5 calendar days and at the bank Rate + 2% delays above 5 calendar days for the full period of delay.**

(emphasis supplied)

(g) The above instructions at para 4(a) to (f) shall also be applicable in – Men Tax and all other Government receipts. (The bank Rate will be the rate notified by the RBi from time to time as illegible the time of transaction.)

3. The revised procedure will come into effect from April, 1, 2007. The

procedure illegible/recovering of delayed period interest will remain unchanged and it was charged irrespective of the amount of remittance involved in a particular Transaction.

4. You may bring the revised procedure to the notice of your branches according conduct state government transaction and advise them to strictly adhere prescribed time schedule for reporting State Government transactions.

5. All the State Government are being advise about the revised procedure."

It is evident from the aforementioned paragraph that the transactions are through settlement made by the RBI and for the delayed period over and above 5 calendar days delayed period interest is to be imposed on the Bank for the actual delay and not from the date of transaction. From Annexure-2 which is a letter bearing no. 1377/31.04.008/2002-03 dated 22.02.2003 issued by the Chief General Manager of the Reserve Bank of India addressed to all the Finance Secretaries of the State Governments it would appear that the accounting and reconciliation of State Government transactions are to be done in a particular manner. For delayed receipt of Rs. 10 Lakhs and above if period of delay exceeds 10 days for normal branches and 15 days for branches situated in far flung areas interest @ 2% over and above the Bank rate would be charged. The relevant part of Annexure-2 which is required to be mentioned for purpose of the present case are being taken note of as under :

> "3. The Report of the Working Group was placed before the 10th Conference of Finance Secretaries held on June, 7, 2002 and was adopted for implementation. The Working Group is of the view that the system and procedure outlined in the existing "Scheme of Partial Decentralisation" introduced in 1987 are broadly adequate to meet the accounting and reporting requirements and that the present problems have arisen mostly due to inadequacies and lags in the implementation of the Scheme by the parties involved. Some of the major recommendations of the Working Group are briefly recapitulated below :
>
> i) It was observed that the use of

Pass-Book system was not being followed at present. The Group appreciated the utility of Pass-Book system and recommended that the Agency Bank branch to maintain two sets of Pass-Book in the revised format (which includes certificate of confirmation by Treasury / Sub-Treasury Officers) for alternate day use, so that one full day is available to Treasury / Sub-Treasury for verification. Certificate regarding correctness of the transactions after verification of each item of receipt and payment recorded in scrolls is to be given in the Pass-Book itself.

ii) In view of persistent delay in remittance of collection to the Government account, a deterrent provision for payment of interest at two percentage points above the Bank Rate may be charged on delayed receipts of Rs. 10 Lakhs and above, if the period of delay exceeds the prescribed time (at present the prescribed time is 10 days for normal branches and 15 days for the branches situated in far flung areas) for crediting such transactions. The prescription in regard to period is to be reviewed after one year in the light of the procedural improvement and impact of computerisation at bank branch level.

iii) In future, the Accountant General may give confirmation to the Central Accounts Section (CAS), Nagpur on item-wise Cash Balance during the month within fifteen days of the reporting of the balances by the CAS. Apart from the monthly reconciliation, there should be a system of confirmation of Annual Cash balance of State within two months from date of receipt of figures.

iv) All Agency bank branches handling Government business on one side and Treasuries on the other should move towards centralised maintenance of accounts and processing. Accounting when centralised, reduces cost of operations, ensures availability of up-to-date information and improves management, paving the way for uniformity in standards. The concerned functionaries should gradually moved towards the centralised system of maintenance of accounts and processing.

v) Efforts should be made to switch over progressively to the cheque payment system, replacing the bill payments system existing in some States. This will minimise the movement of bulky documents and also facilitate easy capture of data.

vi) It would be desirable, to have an electronic link between the Accountants General offices and Public Accounts Departments of Reserve Bank of India on the one hand and Accountant General Offices and the CAS on the other, for better and speedy co-ordination. All the parties should make efforts to share their data electronically, duly ensuring transparency, correctness and security of data.

4. We enclose a copy each of detailed Memorandaum of Instructions on Accounting and Reconciliation – State Government

> Transactions and <u>Statement of Action Points</u> and request you to take immediate action to implement the recommendations within the time-frame as set out therein."

27. As regards the procedure for recovery for this penal interest by the State Government clause 5.11 of the guidelines read as under :

> "5.11 A. The Working Group felt the need for introducing an element of accountability among the Agency Banks for prompt credit to Government Account by charging appropriate interest for delayed credit. It has been decided that henceforth State Government may claim interest for delayed credit of collections as under :
>
> a) **Interest of two percentage points above the Bank Rate as notified by Reserve Bank (DGBA) based on Bank Rate prevailing as on May 1, and November 1, may be charged on delayed receipts of Rs. 10 lakhs and above. If the period of delay exceeds the prescribed time for crediting such**

transactions. The prescribed period at present is 10 days for normal branches (within same municipal limits) and 15 days for the branches situated in far-flung areas. (emphasis supplied)

b) The period for the above purpose will be counted from the date of receipt at the receiving branch till the date of its credit to State Government account at Public Accounts Department, Reserve Bank of India. Interest will be calculated for the period starting from the date of the receipt as per challan in case of cash / transfer transaction or date of realization of cheque in case of clearing instruments by the receiving branch to the date preceding the date of settlement by the bank link Cell with Reserve Bank of India Offices.

B. **The procedure for recovery of this penal interest by State Government from the Agency bank is as under :**

a) The Treasury / Sub-treasury Officer on the basis of scrolls / challans received from the receiving branch, keep a record of such cases of delay. He may examine in detail each and every case of this nature and find out the stage i.e. receiving branch or Link Cell where the delay has occurred. He will claim interest on all such transactions of Rs. 10 lakhs and above and raise demand for payment of interest directly from the Link Cell of the concerned bank on a monthly basis. A copy of the reference made to the bank in this regard will be sent to the Accountant General of the concerned State Government who will also keep watch on the recovery of the interest.

b) Once the responsibility for delay is fixed / established, interest for the relevant period should be paid by the Agency bank to the State Government within a period of two weeks from the date of receipt of such establishment.

c) P**ayment of interest will be made by the bank to the State Government by means of a bank draft drawn on any of their branches at the station of the Link**

Office favouring the State Government concerned.

d) **In case bank fails in making payment of penal interest within the above specified period the RBI reserves its discretion / right to debit the bank's account in its books and credit State Government account pursuant to the Principal-Agency relationship.**

e) Although the interest will be charged on the remittances of Rs. 10 lacs and above delayed beyond a period of 10 days (including Sundays and Holidays) for normal branches (within same Municipal limits) and 15 days for the branches situated in far-flung areas, it is not the intention to allow the banks longer time to transfer the revenue receipts and the banks should note to observe the current instructions on the subject under which a maximum period of 5 days for local transactions and 9 days for outstations transactions (including Sundays & Holidays) is permitted for the purpose. All efforts should, therefore, be made by the Agency banks to credit the tax collections to Government account on a day-to-day basis."

28. The Principal Secretary of the Government of Bihar has directed the Sub-Registrar to lodge first information report in all these cases without applying his mind towards the provisions available under the R.B.I. rule/guidelines. Instead of following the procedure for recovery of the penal interest provided by the Reserve Bank of India he adopted a coercive method. In counter affidavit a plea has been taken that in fact due to the drive of the department to collect the interest amount several crores rupees have been collected during this period. This court would, however, not get impressed by these assertions. If somebody indulges in a coercive method like the present cases dehorse to the recovery rules and thereby accumulated some money or recovered the alleged due without there being any reconciliation of Accounts, the method so adopted cannot be approved.

29. Lodging of F.I.R. has a serious consequence to a person named therein. It seems to be a totally unmindful act as there are certain duty cast upon Treasury and the Government Department and Offices also in the matter of recovery of the penal interest. This Court is at a loss and is unable to understand how an officer of the rank of Principal Secretary in the Govt. of Bihar can act in a manner in which the then Principal Secretary of the Government in the Department of Registration, Excise and Prohibition has acted in present cases. In his own fashion he directed the Sub-Registrar, working under him, to calculate the interest and call upon the Bank Managers to pay the amount as per his calculation. He held a meeting in this regard on 8th of February, 2016, directed for calculation of interest by 15th of February, 2016 and then directed the District Sub-Registrar to ensure that the payment is received from all the Branches of the Bank by 29.02.2016 failing which first information report should be lodged. He did not see that there is a duty on the Treasury/Sub-Treasury officer to keep a record of delays, to claim the interest on a monthly basis.The direction of the Principal Secretary has been followed by the Sub-Registrar/District Sub-Registrars of the concerned area as a parrot in the hands of the then Principal Secretary.They lodged the first information report making the Branch Manager of the Bank an accused for the offences alleged under Sections 409, 419 and 420 of the Indian Penal Code.

30. One of the F.I.Rs. has been lodged under Sections

188 and 353 I.P.C. whereas in another one even Sections 467 and 468 of I.P.C. have been added. Bare reading of Sections 188 and 353 of the Indian Penal Code it would appear that the FIR under both the provisions have been registered without there being a basic application of mind by the Investigating Agency. Section 188 of the I.P.C. applies where there is a disobedience to order duly promulgated by public servant lawfully empowered to promulgate such order and such disobedience causes or tends to cause a obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed. Section 353 I.P.C. talks of assault or criminal force to deter public servant from discharge of his duty. Apparently, this Court can believe that the allegations made in the F.I.R. by no stretch of imagination show commission of offence under these provisions. Similarly no case either under Sections 409, 419, 420 or under Sections 467 and 468 I.P.C. are made out against these petitioners.

31. This is a totally unmindful, malafide and irresponsible act of the then Principal Secretary which has resulted in harassment to the petitioner(s) in all these writ applications. The first information report(s) as they are without adding or subtracting anything out of them do not disclose commission of any cognizable offence and it clearly demonstrates that the FIRs were being lodged by way of coercion to pressurize the Branch Manager(s) of the Bank to pay certain amounts which were being claimed by the department on account of interest without following the procedures which were provided in the guidelines of the Reserve Bank of India. The FIR(s) lodged are nothing but a coercive act for recovery of money as claimed by the department as per their own calculation.

32. Even though the FIRs were not disclosing commission of any cognizable offence but again by a total non-application of mind the S.H.Os. of the concerned Police Station registered the first information reports. In the opinion of this Court, there cannot be a better example than this of a whimsical exercise of power by a person sitting in position from where he can dictate his terms not only to the officers acting under him but also to the investigating agency. It is a case of abuse of power and clear harassment to the petitioner(s). By no stretch of imagination the FIR(s) can be allowed to exist. These FIR (s) are accordingly, quashed.

33. In view of what has been discussed and held hereinabove, this Court is of the considered opinion that the State Government would be liable to pay a cost of Rs. 25,000/- to each of the petitioner(s) as cost of litigation for compelling them to contest this case against, their baseless prosecution and to save themselves from harassment in the hand of the Police.

34. Time has also come when the State Government should consider and take a view on the action of the then Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar and find out as to why appropriate action be taken against him for directing such whimsical prosecution of the Bank Officials, in haste without following the R.B.I. guidelines which were well within his knowledge. The cost which the State Government is now liable to pay to each of the petitioner(s) in this batch of writ application(s) may be recovered from the then Principal Secretary, Department of Registration, Excise and Prohibition, Govt. of Bihar.

35. Since this Court has come to a conclusion that it is a case of baseless prosecution, a whimsical act of the then Principal Secretary of the department and harassment to these petitioner(s), they will have liberty to seek their remedies for malicious prosecution in accordance with law.

36. A copy of this order be also sent to the office of the Sr. Superintendent of Police, Patna to apprise him with the manner in which the Police authorities are at the instance of persons in power entertaining institutions of F.I.Rs. without looking into the kind of allegations which do not disclose commission of a cognizable offence.

37. All these writ applications are allowed accordingly.

(Rajeev Ranjan Prasad, J)

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