IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8960 of 2018

Arising Out of COMPLAINT CASE No. -3404 Year- 2007 District- PATNA

Sanjay Kumar S/o Sh. Gauri Shankar Pandey, R/o 305, Narayan Shree Apartment, Anandpuri, P.S.- S.K. Puri, Patna-800001, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Agricultural Insurance Company of India Limited, through its Regional Manager, Regional Office at 3rd floor, Grand Plaza, Frazer Road, Patna, Bihar, Also at, 1st Floor , Yunus Manzil, S.P. Verma Road, Patna, Bihar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashutosh Nath, Adv
Mr. Binod Kumar, Adv.
For the State : Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2 : Mr. Chitaranjan Sinha, Sr. Adv.
Mr. Rajeeva Sahay, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-06-2018

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner seeking quashing of the order dated 06.03.2009 passed by the learned Sub Judge XIV-cum-ACJM, Patna in Complaint Case No. 3404(C) of 2007 whereby and whereunder finding a prima facie case to be made out for the offences punishable under Sections 409, 467, 468, 471 and 120-B of the Indian Penal Code, the petitioner has been summoned to face trial along with three others, namely, Vijay Mishra, Kaushik Chandra and Ahed Mustafeez.

2. It is submitted by Mr. Ashutosh Nath, learned counsel for the petitioner that on the allegation of fraudulent opening and

operation of a bank account in the name of Agriculture Insurance Company of India Limited (for short 'the Company') in the ICICI Bank, Patna, the petitioner, who was the then Branch Manager of the said Bank at Exhibition Road Branch, Patna, has been named as an accused in the complaint in question. He submitted that the complaint in question was filed on 05.12.2007 whereas about nine months prior to the complaint on 02.03.2007 an FIR was lodged by the said Company in respect of the same offence which was registered as Gandhi Maidan P.S.Case No. 68 of 2007 under Sections 420, 467, 468, 469, 470, 471 and 120-B of the Indian Penal Code against Suparasi Bhandari and T.K. Das and others unknown. In the police case registered by the Company, the petitioner has been cited as one of the witnesses in the police report submitted under Section 173(2) of the Cr.P.C. whereas in the complaint he has been made an accused. According to him, when the police case has already been filed and charge-sheet in the said case has been submitted long back on 04.06.2007, filing of the complaint on 05.12.2007, is bad in law and, thus, fit to be set aside. Even on merits, his contention is that at the relevant time the petitioner was Branch Manager of Exhibition Road Branch of the Bank but the account through which the fraudulent transactions were made was opened in Frazer Road Branch of the Bank and neither the complainant nor any witness has alleged any specific allegation against the petitioner in the complaint petition. However, the learned Magistrate has summoned the petitioner without application of judicial mind and without looking into the averments made in the complaint wherein it has categorically been stated that on the same set of allegation a police case was previously instituted.

3. Per contra, Mr. Chitaranjan Sinha, learned Senior Advocate appearing for the Company submitted that the order taking cognizance of the offences and summoning the petitioner is based on the evidences led before the court. The witnesses examined in course of enquiry conducted under Section 202 of the Cr.P.C. fully supported the allegation made in the complaint and, thus, no error can be found in the order impugned whereby the petitioner and others have been summoned. He submitted that it is true that an FIR was instituted in respect of the alleged offence much prior to the institution of the present complaint, but since a larger conspiracy came to the knowledge of the Company, which was not taken note of by the police and the police failed to take any action on it, the Company was left with no other option but to institute a complaint before the court. He submitted that being the Branch Manager of Exhibition Road Branch, the petitioner was vested with the power of superintendence and control over the Frazer Road Branch of the

Bank. He contended that this Court as well as the Supreme Court in a catena of decisions consistently gave note of caution that inherent power of quashing should be exercised very sparingly and that too in the rarest of rate cases. In exercise of power under Section 482 of the Cr.P.C., this Court has to prima facie ascertain about the existence of sufficient ground for proceeding against the accused and for this limited purpose only the court can evaluate the material and documents on record, but it cannot appreciate the evidence so as to access the credibility of the statement of the witnesses recorded in course of investigation. He submitted that it is not even a case of double jeopardy as in the police case the petitioner has been cited as a witness whereas in the complaint case cognizance has been taken of the offences in which the petitioner has been summoned to face trial as one of the accused.

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

5. In Gandhi Maidan P.S.Case No. 68 of 2007 dated 02.03.2007 lodged on the basis of report given to the police by the Regional Manager of the Company, it has alleged that the Company is registered under the Indian Companies Act, 1956 with its registered office at New Delhi. It has been designated by the Government of India as the implementing agency of the Government sponsored Crop

Insurance Scheme known as National Agricultural Insurance Scheme (NAIS). It transacts NAIS with financial assistance and administrative support of the Central and State Governments. For all crop insurance related business operations, it maintains its account with UTI Bank Limited only throughout the country including Patna. After closing of Kharif 2006 season the acknowledgement along with the money receipts were sent to all nodal banks. In the meantime, the Company received complaint from some banks that some declarations along with demand drafts were missing. After verification, it was found that the said demand drafts had not been lodged in the premium collection account at UTI Bank, Patna Branch. It came to the notice of the Company that somebody had fraudulently opened bank account in the name of the Company with ICICI Bank, Patna Main Branch. As per the information received from Branch Manager, ICICI Bank, Patna, the said account bears number as 6259540993 with the authorized signatories as Suparas Bhandari and T.K. Das, former Chairman-cum-Managing Director and former Director respectively. It is further alleged in the FIR that some of the premium cheques/demand drafts drawn in favour of the Company have been fraudulently deposited in the captioned bank account with ICICI Bank Patna Main Branch and the proceeds thereof have been siphoned off. The amount transacted is about Rs.1.5 crores. Lastly, it has been alleged that it is a part of high handed racket making fraud to the public coffer. The demand drafts accepted and duly entered into a register was maintained by one Vijay Kumar Mishra, who was working as a field officer on contract basis and very mysteriously he left the job on 27.10.2006. The information regarding default was received from Punjab National Bank, Planning & Development Section, Regional Office, Arrah, Bhojpur on 27.02.2007.

6. On the basis of the aforesaid allegations, the informant claimed that the erstwhile field office Vijay Kumar Mishra hatched a conspiracy under which a great deal of public money has been fraudulently encashed causing harm to the Company.

7. From the record, it is evident that on completion of investigation the police submitted its charge-sheet vide charge-sheet no.229 of 2007 dated 04.06.2007 against altogether six accused persons, namely, Sanjay Kumar, Santosh Kumar, Manoj Kumar Chaudhary, Subhash Ranjan, Ahed Mustafeez and Arvind Kumar Gupta and kept the supplementary investigation open. In the said charge-sheet, name of the petitioner finds place in the column of witnesses as witness no.2. Subsequently, on 06.01.2009, supplementary charge-sheet was submitted by the Investigating Officer of the case bearing charge-sheet no.1 of 2009 in which another person Mr. Ajit Kumar was sent up for trial. After taking

cognizance of the offences, the court of Magistrate has committed the case to the court of Sessions.

8. Admittedly, nine months after filing of the police case the instant complaint vide Complaint Case No. 3404(C) of 2007 has been filed by the Company through its Regional Manager in which the petitioner and three others, namely, Vijay Mishra, Kaushik Chandra and Ahed Mustafeez have been made named accused. From a reading of the complaint, it would appear that the allegations in the complaint are more or less identical to the allegations made by the Company in the police case.

9. Para 10 of the complaint reads as under :-

> "That experiencing the gravity of situation the Regional Manager of the Company lodged a formal FIR before the Gandhi Maidan Police Station against the accused bank and their respective functionary resulting in institution of P.S.Case No. 68 of 2007 in which after ndue investigation a charge-sheet no. 229/07 has been submitted U/s 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code against several others including employees of the Bank before the CJM concerned."

10. Para 16 of the complaint reads as under :-

> "That since the police has found sufficient materials prosecute the diligent employee of the

accused bank and the formal charte-sheet has been submitted under various section of I.P.C., so it is a full proof case against the accused persons and against them Prima facie case is made out to satisfy the relevant provisions of Cr.P.C. to prosecute further. The accused persons have given effect to their similar design to defalcate and misappropriate the public money in a joint conspiracies which fully affects the ingredients of section 409 criminal breach of trust by banker merchant or agent."

11. In para 18, the complaint has alleged as under :-

"That the accused no.2 deeply involved in serious omission and commission of crime as the entire transaction of such a huge sum was perpetrated on his behalf without verifying the person. Surprisingly enough the entire transaction was made in cash, which is neither viable nor permissible in a disbursal of public fund. The receipt and disbursal is the part and parcel of Bank's affair and its operation is always subject to policy decisions and in accordance with the RBI Rules. There is complete lack of diligence, supervision and superintendence over the functioning by the Branch Manager. The entire bungling has been brought to the notice of the Bank through legal notice. But, the same was not heeded to with any proper response. By taking side

> of fraud, cheating and criminal breach of trust, allowing impersonation by known importers, relying on forged and fabricated documents; they have become part of abetter or crime and joining the same u/s 120 B and 34 of the I.P.C. As such they are equally guilty of the above offence."

12. The aforesaid averments made in the complaint were sufficient to draw the attention of the learned Magistrate towards the fact that a police case in respect of the offences alleged in the complaint had already been instituted in which on completion of investigation police had submitted their report before the court of Chief Judicial Magistrate. Under such circumstances, it was incumbent upon the learned Magistrate to have called for the record of the police case in course of enquiry to find out as to whether on the same set of allegations there can be two cases; one investigated by the police and the other enquired by the Magistrate.

13. True it is that in the police case the petitioner has not been impleaded in the category of accused whereas in the complaint case he has been named in the column of accused and has also been summoned under Section 204 of the Cr.P.C. by the learned Magistrate for facing trial, but the fact of the matter is that in the police case he has been cited as a witness for the prosecution in the charge-sheet. It would be incongruous if in respect of the same

allegations the petitioner would be supporting the case of prosecution in trial initiated on the basis of police case lodged by the Company by appearing as a witness and, simultaneously, in respect of the same allegation he will be facing prosecution in the complaint case. Moreover, allowing such prosecution would amount to permitting two parallel proceedings before two different courts on the same set of charges. Furthermore, the accused Ahed Mustafeez will be facing trial both in the police case as well as the complaint case in respect of the same allegation before two different courts.

14. In my opinion, if the police investigation was not proper or a committed and sensitive investigation was not done in order to bring all those responsible for the offence before the court of law, the complainant may have drawn the attention of the superior police officers for holding further investigation into the matter in terms of Section 173(8) of the Cr.P.C. The Cr.P.C. recognizes filing of further report before the court in case of further evidence, but collection of further material by the complainant himself and filing a parallel complaint on the same set of allegations during the pendency of the police case would be impermissible in law.

15. Furthermore, even if the police fail to investigate properly and bring to book all those responsible for an offence even in course of trial, the court is vested with the power to proceed

against such persons not being accused appearing to be guilty of offence and issue process for the purpose in exercise of power conferred under Section 319 of the Cr.P.C. if evidence is brought against them.

16. Instead of invoking the provisions of sub-section (8) of Section 173 of the Cr.P.C. or Section 319 of the Cr.P.C., the Company has resorted to filing a separate complaint and launching a parallel prosecution, which, in the opinion of this Court, would not be permissible. Since all the materials were available on record, the court below ought to have applied its mind to the well recognized principle of law before summoning the petitioner after conducting enquiry into the matter to face trial.

17. The law permits registration of two FIRs in respect of the same offence when there are rival versions. Similarly, there can be two complaints in respect of the same offence when there are rival versions, but if there is no rival version there cannot be an FIR and a complaint for the same offence. If such a prosecution is allowed, it would not only encourage multiplicity of litigation but it would also bring uncertainty and confusion in judicial proceedings.

18. In the complaint petition, the petitioner has been made accused no.2. I have already extracted para-18 of the complaint hereinabove in which specific allegations have been made against the

petitioner. As far as the allegations on merits are concerned, crux of the complaint is that being the Branch Manager of Exhibition Road Branch of the ICICI Bank, the petitioner failed to have proper control, superintendence and supervision over the affairs of the Bank. Neither the complainant in his statement made on oath nor the three witnesses examined on behalf of the complainant have whispered a word specifically attributing any active role of the petitioner in the alleged offence. However, his name has been given as one of the conspirators. It has been argued by the learned counsel for the petitioner that at the relevant time the petitioner was Branch Manager in the Exhibition Road Branch of ICICI Bank at Patna whereas the account through which fraudulent transactions were made was opened in the Frazer Road Branch of ICICI Bank. This factual aspect brought to the notice of the Court has not been disputed by the learned Senior Advocate appearing on behalf of the complainant.

19. Thus, admittedly no fraud had taken place in the Branch of the Bank in which the petitioner was Manager. In case, he lacked proper control, superintendence or supervision, the same may give rise to disciplinary proceeding against him, but that alone would not be sufficient to subject him to criminal prosecution in absence of any mens rea.

20. It is rightly submitted on behalf of the complainant that

at the stage of quashing the cognizance order or summoning order this Court would not be justified in embarking upon an enquiry as to the probability or genuineness of allegations made therein and the statutory power under Section 482 of the Cr.P.C. has to be exercised sparingly with circumspection in the rarest of rare cases. However, in case the court comes to a conclusion that the prosecution amounts to an abuse of the process of the court, it would be its bounden duty to exercise its extraordinary power under Sections 482 and 483 of the Cr.P.C.

21. In view of the discussions made above, I am of the opinion that allowing the prosecution of the petitioner in the complaint case would amount to gross abuse of the process of the court. Thus, in order to secure the ends of justice, the impugned order dated 06.03.2009 passed by the learned Sub Judge XIV-cum-ACJM, Patna in Complaint Case No. 3404(C) of 2007, so far as the petitioner is concerned, is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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