IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.1304 of 2017

Arising Out of PS. Case No.-1190 Year-2014 Thana- JEHANABAD COMPLAINT CASE District- Jehanabad

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Ravindra Kumar Sinha , Son of Jag Mohan Prasad Azad, resident of At Barki Delha, P.S.-Delha, Distt.-Gaya. Presently posted as Senior Branch Manager, Punjab National Bank, Branch-Mahendia, P.S.-Mahendia, Distt.-Arwal.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Most. Lalmuni Devi, Wife of Late Ramparikha Singh, resident of Village+Post-Sheikhpura, P.S.-Rampur Chauram, Distt.-Arwal.
3. Branch Manager, Punjab National Bank, Branch-Mahendia, P.S.-Mahendia, Distt.-Arwal.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Adv.
For the State	:	Mr. Arun Kumar Singh-5, APP
For the O.P. No. 2	:	Mr. Ajit Kumar, Adv.
For the PNB	:	Mr. Kumar Priya Ranjan, Adv.
		Mr. Niraj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

5 08-07-2019 Heard the learned counsel for the parties.

2. The petitioner, who at the relevant time was the Branch Manager of the Punjab National Bank of Mahendia Branch, Arwal, has sought quashing of the order dated

09.04.2015 passed by the learned Chief Judicial Magistrate, Jehanabad in connection with Complaint Case No. 1190 of 2014/Trial No. 923 of 2015, whereby cognizance has been taken against him under Sections 323, 341, 420, 467, 468, 471 and 504/34 of the Indian Penal Code.

3. The complainant/opposite party No. 2 has filed a complaint alleging that her agnates have mortgaged the property belonging to her for securing a loan from the Punjab National Bank ***(in short the Bank)***. When this matter was brought to the notice of the complainant/opposite party No. 2, she went to the petitioner seeking cancellation of loan and return of the document which allegedly was mortgaged by the other accused persons with the bank for securing loan. It has been alleged that the petitioner and other employees of the Bank abused the complainant/opposite party No. 2 and threw her out of the bank premises.

4. The learned counsel for the petitioner has submitted that the petitioner was not at all aware of the fact that some impersonation had been made at the time of

registration of the document. Only on legal opinion given by an empanelled Advocate of the Bank, the loan was processed after mortgaging the land. The petitioner came to learn about the aforesaid impersonation only when he received a legal notice on 27.08.2014.

5. It has further been submitted that if any impersonation has been committed at the time of execution of any document before the Registrar, it is for the identifier and the office of the Urban Registry, which are to be held responsible. Apart from this, it has also been submitted that no sooner, the petitioner, in his capacity of Bank Manager, came to learn that the loan had been fraudulently obtained by pledging a property which belonged to the complainant/opposite party No. 2, he issued notice to the mortgagee/loanee and cancelled the loan. The loan account of accused/Sudhir Kumar has been closed. In fact, it has been stated that the complainant/opposite party No. 2 is aware of the fact that on her complaint, the loan file has been closed and no benefit has accrued to the other accused persons who had tried to pledge the property belonging to

the complainant/opposite party No. 2.

6. From the perusal of the complaint petition as also from other materials available on record, it appears that no offence in which cognizance has been taken by the learned Magistrate, can at all be said to be made out against the petitioner. The petitioner was not at all in know of any detail with regard to the property coming in possession of accused/Sudhir Kumar, who had mortgaged the property in question for securing loan. The reconnaissance made by the Bank Advocate is the only material before the Bank for a loan to be processed. All that a Bank is required to see, while processing loan, on the asking of the loanee, is the payability of the loanee.

7. The provisions under Section 482 of the Code of Criminal Procedure, 1973 ***(in short the Cr.P.C.)*** is aimed at preventing abuse of process of the Court or to otherwise secure the ends of justice. There are no hard and fast rules which can be laid down for the exercise of this power, but in case it is found that the prosecution is misconceived or the entire exercise would be futile and no good purpose would be

served in continuing with the prosecution against a person against whom none of the offences can be said to be made out, the aforesaid salutary provision in the Cr.P.C. must be exercised. The Courts have observed self-restrained and remind themselves to be circumspect while exercising the jurisdiction under Section 482 Cr.P.C.

8. The guidelines with regard to the exercise of the jurisdiction by the Court under Section 482 Cr.P.C. has been very succinctly laid down in ***State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 Supp (1) SCC 335***. The categories of cases have been listed in the aforesaid decision where power under Section 482 Cr.P.C. can be exercised by the Court. The aforesaid position of law has been reiterated in ***Central Bureau of Investigation Vs. Duncans Agro Industries Ltd., (1996) 5 SCC 591; Rajesh Bajaj Vs. State NCT of Delhi & Ors., (1999) 3 SCC 259; Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque & Anr., (2005) 1 SCC 122; Om Prakash & Ors. Vs. State of Jharkhand & Anr.*** with ***Kailashpati Singh Vs. Rajiv Ranjan Singh & Anr., (2012) 12 SCC 72 and***

Rishi Pal Singh Vs. State of Uttar Pradesh & Anr. (2014) 7 SCC 215.

9. Applying the aforesaid principles to the facts of this case, it appears that under no circumstance could the petitioner have known that an effort was made by some of the accused persons to falsely pledge the property belonging to the complainant/opposite party No. 2 for securing loan. No allegation of conspiracy has been raised in the complaint petition. All that has been urged is that when the complainant/opposite party No. 2 went for having the loan file of the accused persons closed, she was not given a hearing and was abused and thrown out of the Bank premises.

10. Assuming but not admitting the aforesaid allegation to be correct, none of the offences with respect to misappropriation of property or cheating can at all be said to have been made out against the petitioner, who, in his capacity as Branch Manager, had processed the loan to one of the accused persons without being in knowledge of any such fact. The petitioner, in his capacity as Branch Manager,

had taken the precaution of having the ownership of the property verified and only on the basis of No Objection Certificate by the empanelled Advocate of the Bank, the loan was processed.

11. In the absence of any allegation of conspiracy or of cheating the complainant/opposite party No. 2, none of the offences in which cognizance has been taken can at all be said to be made out. The learned Magistrate has not applied his mind and has mechanically taken cognizance against the petitioner.

12. For the aforesaid reasons, the cognizance order as against the petitioner cannot be sustained in the eyes of law and the same is set-aside with respect to him.

13. All criminal prosecution against the petitioner arising therefrom also stands quashed.

14. The petition is allowed accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

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