IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 49367 of 2014

Arising Out of C.R. No.-2081 Year-2013 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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1. Vijay Kumar Singh, Son of Ram Priksan Singh, Resident of Village-Manma, P.S-Jalley, District-Darbhanga.
2. Rakesh Kumar @ Rakesh Kumar Singh, Son of Sri Rajendra Kumar Singh Resident of Village-Mazra, P.S-Jalley, District-Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Khairun Khatoon, Wife of Md. Akhtar, Resident of Village-Ghoghraha,P.S-Jalley, District-Darbhanga.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No 13 and Mr. Rohit Kumar, Advocates
For the State	:	Mr. Murlidhar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 12-03-2019

Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’) for the following relief:

> *“That the petitioners seek to invoke the inherent powers of this Hon’ble Court for quashing the order dated 04/06/2014 passed in Misc.-17/14/C.R. No. 2081/2013 by Sri Ankur Gupta, learned Judicial Magistrate 1^{st} Class, Darbhanga, whereby and where under without application of his independent judicial mind to the facts of the case and in a most mechanical and*

> *arbitrary manner, learned Judicial Magistrate came to a finding that prima facie case to be made out under sections 406, 409, 467, 468, 471, 420, 120(B)/34 of the Indian Penal Code against the petitioners and summons have also been ordered to be issued against them, as required u/s 204 Cr.P.C. The petitioners also pray for quashing of their consequential criminal prosecution in the aforesaid case.”*

3. The case has been registered on a written complaint by ten persons of a Self Help Group made to the D.I.G., Darbhanga dated 01.02.2013 alleging misappropriation and defalcation of Rs. 1,70,000/- belonging to the Self Help Group against the petitioners.

4. The petitioners, being members of a Self Help Group, are alleged to have defalcated the money in connivance with the Bank officials by withdrawing the amount after taking the signature of the members/office bearers of the Self Help Group on plain/bank papers for the purpose.

5. Learned counsel for the petitioners submitted that the allegation was misconceived for the reason that all transactions were in accordance with law which have been certified by the report of the Branch Manager who has explained the transaction. It was further submitted that the amount of loan also had been taken by the Self Help Group and accordingly adjustments have been made. Learned counsel submitted that the police had also

submitted final form against the petitioners and on the basis of protest, cognizance has been taken. It was submitted that the Self Help Group, in order to save itself from the liability of loan payment to the Bank has filed the case.

6. Learned A.P.P., upon going through the case diary, submitted that many witnesses have categorically stated that the petitioners were keeping the pass book and other documents of the Self Help Group and that they had taken signature from the authorized signatory of the Self Help Group and in connivance with Bank officials had taken out the money which they had misutilized for their own purpose without giving it to the concerned office bearers of the Self Help Group for being used for the purpose the money was taken out. Learned counsel submitted that the police, despite many witnesses having supported the allegation, had wrongly submitted a final form based on the communication of the Branch Manager, who himself was the accused. Moreover, it was submitted that the allegation does not relate to there being withdrawal without the required instruments being signed and rather the allegation is that on blank documents of the Bank signatures/thumb impressions were taken and without the beneficiary being informed or aware of money being taken out and the same was also not given to the persons whom it was

required to be given. Thus, learned counsel submitted that the Bank only giving details of the transaction, is absolutely of no relevance in the present case as there is no allegation of any wrong calculation or computation done by the Bank and the allegation is specifically with regard to fraudulent withdrawal of money from the account by the petitioners in connivance with the Bank officials. It was submitted that the petitioners were keeping the documents relating to the Bank with them and were the persons who actually used to operate the account, and thus, at this stage, it cannot be said that they have not committed any offence, which has to be thrashed out in a full trial.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. As has rightly been submitted by learned A.P.P., there being materials available in the case diary itself and further the statement of the opposite party no. 2 on solemn affirmation and another witness which indicates commission of the offences for which *prima facie* case has been held to be made out against the petitioners, is justified, both in law as well as on facts. Further, this Court finds that the Court below has rightly proceeded to issue process against the petitioners under Section 204 of the Code.

8. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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