IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1124 of 2016

Arising Out of PS. Case No.-362 Year-2016 Thana- LAKHISARAI District- Lakhisarai

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Pappu Singh, Son of- Sheo Nandan Singh, Resident of Village- Shawandih, P.S.- Lakhisarai, District- Lakhisarai.

... ... Petitioner

Versus

1. The State of Bihar, through the Superintendent of Police, Lakhisarai.
2. The Superintendent of Police, Lakhisarai.
3. The Sub-Divisional Police Officer, Lakhisarai Sadar, District- Lakhisarai.
4. The S.H.O. Lakhisarai Police Station, District- Lakhisarai.
5. The S.H.O. Kabaiya Police Station, District- Lakhisarai.
6. Shri Shailendra Kumar, Senior Branch Manager, Bihar Gramin Bank Lakhisarai, P.S. Kabaiya, District-

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Adv.
For the State	:	Mr. Anil Kumar, Adv.
For the Bank (Respondent. No. 6):		Mr. Ranjeet Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 15-02-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar Gramin Bank.

2. This writ petition has been filed by the petitioner for quashing the FIR of Lakhisarai (Kabaiya) P.S. Case No. 362 of 2016 registered under Section 406 of the Indian Penal Code (for short 'IPC').

3. Initially a complaint petition vide Complain Case No. 64 C of 2016 was filed by the respondent no. 6 Shailendra Kumar, Senior Branch Manager, Bihar Gramin Bank on 12.01.2016 against the petitioner for the offence committed under Section 406 of the IPC in which it has been stated that on 05.04.2013 the

petitioner had taken loan of Rs. 18,00,000/- for purchasing a truck from Bihar Gramin Bank, Lakhisarai Branch vide A/c No. 31010610003773. Prior to taking the said loan, an agreement was entered into between the parties in which the petitioner had agreed to repay the loan amount within sixty months with interest. After taking loan the petitioner purchased a truck, which was indemnified by an insurance policy purchased from the Bajaj Allianz Insurance Company, Bhagalpur Branch. Since the petitioner failed to repay the installment of the loan, the interest increased. Despite a notice given to the petitioner on 21.03.2014, he failed to repay the loan amount. Again, on 27.09.2014, a legal notice was sent to him, but he failed to liquidate the loan amount.

4. It is further alleged that on 04.11.2015, when the complainant went to the house of the petitioner along with the other officers of the bank, the petitioner flatly refused to repay the loan amount. He was called in the bank several times and was requested to repay the loan amount, but he paid no heed to the request made by the complainant. Till 08.01.2016, an amount to the tune of Rs. 20,73,177/- had been found due against the loan advanced to him.

5. On the basis of the aforesaid allegations, a prayer was made that the complaint be sent to the police for investigation

under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C').

6. At the request of the complainant, the learned Chief Judicial Magistrate, Lakhisarai referred the complaint to the police for investigation under Section 156(3) of the Cr.P.C pursuant to which Lakhisarai (Kabaiya) P.S. Case No. 362 of 2016 was registered under Section 406 of the IPC against the petitioner and the investigation proceeded.

7. Learned counsel for the petitioner submitted that even if the entire allegations made in the FIR are accepted to be true at its face value, none of the ingredients of offence punishable under Section 406 of the IPC would be attracted. The allegations made are civil in nature. The same does not disclose commission of the alleged offence. Admittedly, the petitioner had taken loan from the Bank on 05.04.2013 of Rs. 18 lacs for the purchase of a truck. Thereafter, the truck was purchased and was insured under a policy issued by the Bajaj Allianz Insurance Company, Bhagalpur Branch. He started repaying the loan and, in the process, Rs. 3,95,000/ was repaid to the bank till 31.05.2014. Thereafter, in the month of September, 2016 a sum of Rs. 50,000/- was again paid to the Bank towards installment.

8. He contended further that though an agreement was made between the parties to return the said loan amount within 60 months i.e. within 5 years, surprisingly even before expiry of 60 months, the bank has instituted the first information report (for short 'FIR') against the petitioner, which is nothing but an abuse of the process of the court. He pleaded that since major mechanical fault occurred in the truck in question, the same was taken to workshop for repair. However, all kinds of damage has done to the vehicle in the workshop. The vehicle could not run on the road for quite a long time as a result of which the petitioner sustained huge loss. His inability to repay the loan amount was not deliberate rather the same occurred due to unavoidable reasons and compelling circumstances.

9. He has argued that institution of the present FIR on mere asking of the complainant without approaching the officer in charge of the police station under Section 154 (1) of the Cr.P.C is also contrary to the law laid down by the Supreme Court in ***Priyanka Shrivastava Vs. State of U.P. [(2015) 6 SCC 287]***

10. Per contra, learned counsel appearing for the State submitted that since there is an allegation that the petitioner was sanctioned a loan from the Lakhisarai Branch of Bihar Gramin Bank for purchase of a truck and the petitioner had agreed to repay

the loan amount in sixty installments and has failed to do so, the ingredients of the offence punishable under Section 406 of the IPC are clearly attracted. He further contended that under Section 156(3) of the Cr.P.C, the Magistrate has got discretionary power to direct the police to investigate into a complaint filed under Sections 190 and 200 of the Cr.P.C. Hence, no illegality can be found with the order by which the learned Chief Judicial Magistrate directed the police to institute an FIR and investigate the same.

11. Learned counsel appearing for the bank has also supported the contentions advanced by the learned counsel for the State. He contended that the ratio laid down by the Supreme Court in ***Priyanka Shrivastava*** (Supra) would be of no consequence in the present case as the FIR has been instituted on the basis of an official complaint by the Branch Manager of Gramin Bank. He contended that simply because the petitioner has made payment of certain installments initially, he cannot take a plea that the intention was not dishonest at the time when the loan amount was advanced.

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

13. As seen above, the FIR has been instituted under Section 406 of the IPC.

14. Section 406 of the IPC prescribes punishment for criminal breach of trust defined in Section 405 of the IPC.

15. Section 405 of the IPC reads as under:-

> **“405. Criminal breach of trust**
>
> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

16. A careful reading of Section 405 of the IPC shows that a criminal breach of trust involves following ingredients:-

(a) A person should have been entrusted with property, or entrusted with any dominion over the property;

(b) A person dishonestly misappropriates or converts to his own use or disposes of that property or willfully suffers any other person to do so; and

(c) Such misappropriation, conversion, use or disposal of property is in violation of any direction in law prescribing the mode in which such trust is to be discharged.

17. In the instant case, the admitted case of the complainant bank is that the bank had advanced loan to the petitioner for purchasing a truck. It is not a case of the bank that after obtaining the loan amount, the petitioner did not purchase the truck. It also stands admitted that after taking loan truck was indemnified by an insurance policy purchased from an insurance company. The petitioner started repaying the loan amount. The statement of accounts for the period 04.04.2013 to 05.03.2016 issued by the bank has been brought on record by the petitioner as Annexure-2 to this application. A perusal of the same would also show that the petitioner returned certain amount to the bank against the loan advanced to him.

18. The action of the petitioner in purchasing the truck, getting it insured and repaying certain installments would make it clear that there was no dishonest intention on his part at the time of taking loan.

19. A mere breach of agreement does not, ipso facto, constitute the offence of criminal breach of trust contained in

Section 405 of the IPC without there being clear case of entrustment.

20. There is nothing in the FIR that any property was entrusted to the petitioner at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 of the IPC punishable under Section 406 of the IPC.

21. A default to honour commitment to repay borrowed fund would simply amount to a breach of contract. Any breach of contract to repay debt is not a criminal offence.

22. With a view to expedite the process of recovery, banks and financial institutions have been provided with special remedies through setting up of Debt Recovery Tribunals. They have also been empowered to enforce securities with the intervention of the courts.

23. As the allegations made in the complaint did not disclose commission of any offence justifying investigation by a police officer, the direction issued by the Magistrate in exercise of power conferred under Section 156(3) of the Cr.P.C for investigation of the case is patently bad in law.

24. Furthermore, in ***Priyanka Srivastava*** (Supra) the Supreme Court held as under :

> "… there has to be prior applications under Section 154(1) and 154(3) while filing a petition under

> Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed….”

25. After saying so, the Supreme Court further observed as under :-

> “ We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3)...”

26. In the instant case, I find that except only one sentence in para 11 of the complaint that when the complainant went to the Police Station, the police officer present there advised him to file complaint in the court, there is no averment that any written report or oral statement was made to the Officer-in-Charge of the Police Station in respect of the offence alleged. There is also no statement that on failure of police to institute the FIR, the

complainant took any action under Section 154(3) of the Cr.P.C. and any report in writing was sent to the Superintendent of Police concerned through registered post. There is also no affidavit in this regard by the complainant.

27. In that view of the matter, there is no hesitation in coming to the conclusion that the requirements of filing an application under Section 156(3) of the Cr.P.C were also wanting in the direction issued by the learned Magistrate for institution of the FIR on the complaint filed by the Branch Manager of the Gramin Bank is clearly in contravention to the ratio laid down by the Supreme Court in ***Priyanka Srivastava*** (Supra).

28. In view of the discussions made above, the FIR of Lakhisarai (Kabaiya) P.S. Case No. 362 of 2016 and the entire investigation conducted in connection with the said case are hereby quashed.

29. The application stands allowed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	