IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 14884 of 2014

Arising Out of P.S. Case No.-204 Year-2007 Thana- K. HAT District- Purnea

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1. The Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul through the Chief Executive Officer.
2. Md. Ehsanul Haque, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
3. Chandar Mohan Thakur, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
4. Vijayanand Pathak, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
5. Bijendra Kumar Singh, Chief Executive Officer, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd,, Ganimat Hussain Path, Supaul.
6. Arvind Kumar Vishwakarma, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
7. Anil Kumar Das, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
8. Ranjan Kumar Gupta, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.
9. Vijay Kumar Khan, Member of the Board of Directors, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path, Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar

2. The Registrar, Co-operative Societies, Bihar, Patna at New Secretariate (Vikash Bhawan), Bailey Road, Patna.
3. The Secretary, Co-operative Department, Bihar, Patna.
4. The Joint Registrar, Co-operative Societies, Koshi Pramandal, Saharsa.
5. The Joint Registrar, Co-operative Societies, Purnea Pramandal, Purnea.
6. All District Co-operative Officers, Co-operative Societies, Koshi, Pramandal, Saharsa.
7. All Distinct Co-operative Officers, Co-operative Societies, Purnea Pramandal, Purnea.
8. Sri Laxmi Prasad Chauhan, District Officer, Supaul-cum-Liquidator, the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., Ganimat Hussain Path (Ward No. 8), Supaul.
9. Prem Sagar Upadhyay, Son of Late Gauri Shankar Upadhyay, Resident of Gulab Bagh, P.S.- Sadar, District – Purnea.

... ... Opposite Party/s

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with

Criminal Miscellaneous No. 6586 of 2017

Arising Out of Complaint C.A. No.-1848 Year-2006 Thana- PURNEA COMPLAINT CASE District- Purnia

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Md. Ehsanul Haque, Son of Late Md. Ganimat Hussain, Director, the Central Bank Employees Savings and Credit Self Support Society Limited, Resident of Ganimat Hussain Path, Ward No. 22, P.S.- Supaul, District- Supaul, presently Asst. Manager, Central Bank of India, Bihariganj, District- Madhepura.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Chandranarayan Mehta, Son of Late Yamuna Prasad Mehta, Resident of Bhupati, P.S.- Babu Barhi, District- Madhubani, Presently Branch Manager, the Central Bank Employees Saving and Credit Self Supported Co-operative Society Limited, Branch Supaul, Purnia.

... ... Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 14884 of 2014)

For the Petitioner/s	:	Mr. Ashhar Mustafa and Mr. Shailendra Kumar Verma, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P. Mr. M. K. Khare, A.P.P.
For the Opposite Party/s:		Mr. Sanjay Vikrant and Mr. Vikram Singh, Advocates

(In Criminal Miscellaneous No. 6586 of 2017)

For the Petitioner/s	:	Mr. Ashhar Mustafa and Mr. Shailendra Kumar Verma, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P. Mr. Parmeshwar Mehta A.P.P.
For the Opposite Party/s:		Mr. Sanjay Vikrant and Mr. Vikram Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 13-02-2019

Heard learned counsel for the petitioners; learned A.P.P. for the State and learned counsel for the Opposite Party No. 9 in Criminal Misc. No. 14884 of 2014.

2. Despite service of notice on Opposite Party No. 2 in Cr. Misc. No. 6586 of 2017, nobody appeared on his behalf when the matter was taken up and heard.

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3. Learned counsel for the petitioners at the very outset submitted that he was restricting his prayer with regard to K. Hat (Sahayak) P.S. Case No. 204 of 2007 arising out of Complaint Case No. 919 of 2007.

4. The petitioners have moved the Court under Section 482 of the Code of the Criminal Procedure, 1973 (hereinafter referred to as the 'Code') being aggrieved by the proceeding of K. Hat (Sahayak) P.S. Case No. 204 of 2007 arising out of Complaint Case No. 919 of 2007.

5. The petitioners at various points of time were members of the Board of Directors of the Central Bank Employees Savings and Credit Self Supported Co-operative Society Ltd., (hereinafter referred to as the 'Society') with its principal office at Supaul, except for petitioner no. 5, who was the Chief Executive Officer of the Society.

6. Learned counsel for the petitioners submitted that the Complaint Case No. 919 of 2007 was filed by the Opposite Party No. 9 claiming to be a depositor and making a grievance that despite the deposit having attained maturity, the money was not returned to him. Learned counsel submitted that in the said case, the Branch Manager and other employees of the society were also made accused. Learned counsel submitted that the members of the Board of Directors and the Chief Executive Officer of the Society have no role in managing of the accounts which is the responsibility of the local Branch headed by the Branch Manager. It was submitted that even the bye-laws do not confer any

responsibility upon the petitioners for such transactions which are to be dealt with at the local level. Learned counsel submitted that the local Branch had never referred the matter to the Board of Directors or the Chief Executive Officer of the Society for releasing any payment or amount and in such view of the matter also they cannot held responsible for any wrong doing. It was submitted that even if the grievance is accepted, still it would be a matter of repayment of the maturity amount which is purely civil in nature being a money claim and unless it is established by the Audit or otherwise that the funds of the Society have been misappropriated by the petitioners, no criminal proceeding can lie. Learned counsel submitted that after filing of the complaint case/ institution of F.I.R., there has been a significant development by which also the petitioners are now protected from the present criminal proceeding. It was submitted that in terms of the liberty given to one **Bhikhari Thakur**, who was a similarly situated investor, by a co-ordinate Bench of this Court on 03.02.2012 in C.W.J.C. No. 3179 of 2008, the Registrar, Co-operative Societies, Bihar, by order dated 16.04.2013 had directed for liquidation of the Society and appointed the District Magistrate, Supaul as the liquidator. It was submitted that the same was also published in the Bihar Gazette on 03.05.2013. Learned counsel submitted that once such development has taken place, the entire scenario had changed and Section 50 of The Bihar Self-Supporting Co-operative Societies Act, 1996 (hereinafter referred to as the 'Act') shall come into play. Learned counsel referred to the provision of Section 50(2) of the Act which is a bar for either institution or continuation of any suit or other legal proceeding, once a Society is in liquidation, except by leave of the Registrar and subject to such terms as he may impose. It was submitted that in the present case, once an order of liquidation had been passed and liquidator appointed, the pending complaint/ criminal case cannot proceed, which, in effect, would mean that the same has to terminate. Learned counsel drew the attention of the Court to Section 47 of the Act, which relates to the power of liquidator and sub-sections (2) and (3) of the same which authorize him to take action against any person who may have concealed, withheld or misappropriated any property of the Society. It was submitted that what has been alleged in the present case, such cause of action gives authority to the liquidator under the aforesaid provision of the Act to proceed in the matter, in accordance with law, and, thus, there cannot be multiplicity of litigations which even otherwise stand barred under Section 50(2) of the Act. Learned counsel submitted that the claim of the complainant/ informant is now to be looked into and dealt with by the liquidator and if such exercise reveals that there has been any misconduct or misappropriation or embezzlement, it is for the liquidator concerned to take/ initiate appropriate action/ proceeding before the appropriate forum, in accordance with law. It was submitted that in the present case, the liquidator being the District Magistrate of Supaul is fully competent to take action as may be required in the facts and circumstances which come to his notice.

7. Learned A.P.P. submitted that though the complaint case was registered much prior to the Society going into liquidation, but in view of the bar imposed by Section 50 (2) of the Act, such proceeding cannot continue.

8. Learned counsel for the Opposite Party No. 9 submitted that such proceeding can continue for the reason that the term “other legal proceedings” mentioned in Section 50(2) of the Act does not apply to criminal proceeding. In support of the same, learned counsel referred to the decisions of Delhi High Court dated 19.01.2001 in the case of **D.K. Kapur vs. Reserve Bank of India & Ors.** the relevant being at paragraph no. 14, where it was held that under Section 446(2) of the Companies Act, 1956 assessment proceedings before the Income Tax Officer was not barred. He further referred to a decision of the Hon’ble Supreme Court in the

case of **Parbatbhai Aahir v. State of Gujara**t reported as **AIR 2017 SC 4843,** the relevant being at paragraph no. 15, for the proposition that the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour and that the consequences of the act complained of upon the financial or economic system will weigh in the balance. However, on a direct query of the Court as to how the judgment in the case of **D. K. Kapur** (supra) is relevant since Section 446 (2) of the Companies Act, which relates to the jurisdiction of the Court which is winding up the Company, and which is not the issue involved in the present case, learned counsel did not have any answer. Similarly, with regard to the proposition emanating from the decision of the Hon'ble Supreme Court in the case of **Parbatbhai Aahir** (supra), on a query of the Court as to how such decision was relevant in the present case since there was no consideration with regard to there being any statutory bar and the judgment being rendered in a situation where the maintainability of the criminal proceeding was not in question, which also is not an issue in the present case, again learned counsel could not show to the Court the relevance or applicability of the aforesaid judgment.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. Clearly, as of now, due to the development having taken place after filing of the complaint/ F.I.R., by which a liquidator has been appointed under Section 45 of the Act, there is a bar under Section 50(2) of the Act to continuance of pending proceedings as well as institution of fresh one without the leave of the Registrar. The contention of learned counsel for the petitioners that Section 50(2) read with sub sections (2) and (3) of Section 47 of the Act clearly mandate that once a liquidator is appointed, all such grievances have to be raised before the liquidator and only he is authorized to take appropriate remedial measures before the appropriate forum with regard to any act of misappropriation of any property of the Society and also any wrong doing on the part of any person, which obviously includes the petitioners also, is well placed.

10. Sections 47 and 50 of the Act, being relevant are reproduced hereinbelow:

> *47. Powers of liquidator. – (1) The liquidator may-*
>
> *(a) retain lawyers, accountants, engineers, appraises and other professional advisors;*
>
> *(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the Co-operative Society;*

(c) carry on the business of the Co-operative Society as required for an orderly liquidation;

(d) sell by public auction any property of the Cooperative Society;

(e) do all acts and execute any documents in the name and on behalf of the Co-operative Society;

(f) borrow money on the security of the property of the Co-operative Society;

(g) settle or compromise any claims by or against the Co-operative Society;

and

(h) take all other steps that he considers necessary for the liquidation of the Co-operative Society and distribution of its properties and funds.

(2) Where a liquidator has reason to believe that any person has in his possession or under his control, has concealed, withheld or misappropriated any property of the Co-operative Society he may apply to the court for proceeding into the matter in accordance with law.

(3) Where the proceeding under sub-section (2) discloses that a person has concealed, withheld or misappropriated property of the Co-operative Society, the Court may order that person to restore the property of pay compensation to the liquidator on behalf of the Co-operative Society.

4. No liquidator or his relatives shall purchase, directly or indirectly any part of the stock-in-trade, debts or assets of the Co-operative Society.

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50. Bar of jurisdiction of court. – (1) Save as otherwise expressly provided in this Act, on Civil or Revenue Court shall have any jurisdiction in respect of any dispute required by section 40 to be referred to the Cooperative Tribunal, or recovery proceedings under section 41 or dissolution under sections 43 and 44.

(2) While a Co-operative Society is in liquidation under section 45, no suit or other legal proceedings shall be proceeded with or instituted against the liquidator as much (sic) or against the Co-operative Society or any member thereof on any

matter touching the affairs of the Co-operative Society, except by leave of the Registrar and subject to such terms as he may impose."

11.From the aforesaid, it is clear that the terms "other legal proceedings" referred in Section 50(2) of the Act shall cover criminal proceedings also. Further, while defining the power of the liquidator in Section 47, sub sections (2) and (3) of the same give him the power to proceed against any person for concealing, withholding or misappropriating any property of the Society. Moreover, Section 47(1)(b) also confers on the liquidator the power to bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the Co-operative Society. This clearly provides that if any criminal conduct is found attributable to any person connected with the affairs of the Society, the liquidator has the power to institute criminal proceedings also. In that view of the matter also, the present complaint case is not fit to continue.

12. Further, as discussed earlier, the Court finds that the judgments in **D.K. Kapur** (supra) and **Parbatbhai Aahir** (supra) would not apply to the facts and circumstances of the present case.

13. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of K. Hat (Sahayak) P.S. Case No. 204 of 2007 (Complaint Case No. 919 of 2007),

including all consequential orders which may have been passed, as far as it relates to the petitioners, stand quashed. However, the Court would observe that it would be open to the Opposite Party No. 9 to move before the liquidator with regard to his grievance which has to be considered by the liquidator, at the appropriate stage, in accordance with law.

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14. The petitioner has moved the Court for the following relief:

> *"That the present application is being filed under Section 482 of Cr.P.C. for quashing of order dated 11.05.2007, by which Learned S.D.J.M., Purnia has taken cognizance against thirteen accused persons including the petitioner under Section 409 of Cr.P.C. in connection with complaint case, bearing C.A. No. 1848 of 2006."*

15. It is not in dispute that the basic issue which has been decided in the other case is the same in the present case and also relates to the same Society, except for the fact that the then Branch Manager of the Society at Purnea has filed this case against the petitioner who was a member of the Board of Directors of the Society at the relevant time.

16. Thus, the Court finds that the present case shall also be governed by the decision rendered in the connected case.

17. Accordingly, adopting the reasons in the case decided above, the present application also stands allowed. The entire criminal proceeding arising out of C.A. No. 1848 of 2006, including the order taking cognizance dated 11.05.2007, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

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