

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1010 of 2019

Arising Out of PS. Case No.-360 Year-2018 Thana- KOTWALI District- Munger

Bachchu Ram S/o Late Ganga Ram Resident of Purab Sarai Road near Durga
Asthan, Prem Gali, P.S.- Kotwali, District- Munger

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Deptt. Of Co-Operative, Govt. Of Bihar, Patna.
2. The Managing Director, the Munger Jamui Central Co-operative Bank Limited, Court area Head Office Munger
3. The Branch Manager, Munger Jamui Central co-operative Bank limited At Bata Chowk, P.S.- Kotwali, Munger

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Sanjay Kumar Pandey, Advocate
For the Respondent-State:	:	Mr.Raj Ballabh Prasad Yadav, AAG-XI
For the Bank	:	Mr. Bindhyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-11-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing for the Munger-Jamui Central Co-operative Bank Limited.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the first information report (for short 'FIR') of Munger Kotwali P. S. Case No. 360 of 2018 dated 04.09.2018 registered under Sections 188, 406, 420 read with 34 of the Indian Penal Code.

3. The FIR in Munger Kotwali P. S. Case No. 360 of



2018 has been registered on the basis of the written report submitted by one Balgovind Pandit, Branch Manager, Munger-Jamui Central Co-operative Bank Limited, Munger to the officer-in-charge, Kotwali Police Station, Munger on 04.09.2018.

4. In the written report, the informant has alleged that altogether 17 borrowers including the petitioner had taken loan from Munger Branch of the Bank. The borrowers were required to return the loan amount with interest. Since they failed to repay the loan amount, the matter was taken to the Permanent Lok Adalat, Munger. The Permanent Lok Adalat passed award in terms of compromise arrived at between the parties. As per the award of the Permanent Lok Adalat, the borrowers were required to deposit amount agreed upon by them. However, they failed to comply the award in spite of repeated reminders given to them.

5. The informant has alleged that the borrowers have violated the terms of the agreement and have cheated the Bank and misappropriated the amount taken as loan.

6. Learned counsel appearing for the petitioner has submitted that the allegations made in the FIR would not attract the ingredients of the offences alleged. According to him, non-



payment of loan amount by a borrower cannot be a subject matter of criminal prosecution unless there is any element of cheating or fraud. It is not a case where the informant has alleged any element of cheating or fraud on the part of the borrowers rather the only allegation in the FIR is that the borrowers failed to repay amount and when the matter was taken to Permanent Lok Adalat, an award in terms of the compromise arrived at between the parties was passed, but they failed to comply with the award passed by the Permanent Lok Adalat. The said act, by no stretch of imagination, can be viewed as an offence punishable under penal code.

7. Learned counsel appearing for the Bank has contested the matter. He said that it is only out of fear of criminal prosecution the borrowers are repaying some amount to the Bank. He contended that the Bank had no other option but to institute an FIR as the borrowers were adamant not to comply the award passed by the Permanent Lok Adalat.

8. On the other hand, learned counsel appearing for the State fairly submitted that the award of Permanent Lok Adalat was executable as a decree made by civil court in view of Section 22-E(5) of the Legal Services Authorities Act, 1987 and the informant ought to have resorted to the execution



proceeding for execution of the award instead of filing a criminal case.

9. Having heard learned counsel for the parties and perused the materials on record, I find substance in the submissions made by the learned counsel appearing for the petitioner and the State.

10. Along with the FIR, a chart showing name and address of borrowers, date of issuance of loan, amount advanced as loan, demand of loan, settlement amount, date of award by Lok Adalat and balance deposit has been annexed.

11. On perusal of the chart, it would appear that the name of the petitioner Bachchu Ram appears at serial 16. In the said chart, a total sum of Rs.1,92,425/-appears to be balance to be deposited by the petitioner. It would further appear that the loan amount advanced to the petitioner was Rs.2,50,000/-. Apparently, certain amount was deposited by the petitioner after taking loan from the Bank.

12. There is no allegation of fraud or dishonest inducement against the petitioner. There is also no allegation that the petitioner had dishonest intention right from the beginning.

13. A default to honour commitments to repay



borrowed funds amounts to a breach of contract. Any breach to repay debt is not a criminal offence. The only right to the aggrieved person is to approach the civil court to attach and sell securities or other unencumbered properties and recover the due amount.

14. Mere breach of contract can not give rise to criminal prosecution either under Section 406 or Section 420 of the IPC unless fraudulent or dishonest intention is shown right at the beginning when the offence is alleged to have been committed.

15. Similarly, there cannot be any criminal prosecution for non-compliance of the award passed by the Permanent Lok Adalat. I further find that the ingredients of the offence punishable under Section 188 of the IPC are completely wanting in the present case.

16. Learned counsel for the State has rightly submitted that the remedy available to the petitioner was under Section 22-E(5) of the Legal Service Authorities Act, 1987 under which the award could have been executed as a decree of civil court. Instead of filing an execution case before the civil court for recovery of the amount awarded by Permanent Lok Adalat, the Bank has chosen to initiate criminal prosecution as a short cut



for recovery of the loan amount.

17. Simply because the respondents no. 2 and 3 feel that the execution proceedings may not adequately protect the interest of the Co-operative Bank, they can not be allowed to convert an essentially civil dispute to a criminal proceeding with a motive to put pressure on the borrowers.

18. In **M/s Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors. [AIR 2006 SC 2780]**, the Supreme Court observed:-

“... There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.”

(emphasis mine)

19. In **G. Sagar Suri vs. State of UP & Ors. [2000 (2) SCC 636]**, the Supreme Court observed:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a



serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.” (emphasis mine)

20. Keeping in mind the ratio laid down by the Supreme Court in the aforesaid cases as also the discussions made hereinabove, this Court is of the considered opinion that allowing the prosecution to continue in the present case would amount to an abuse of the process of the court.

21. In **State of Haryana and Ors. vs. Choudhary Bhajan Lal and Ors. [AIR 1993 SC 1348]**, the Supreme Court held that the power under Article 226 of the Constitution of India could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and cases where the allegations made in the first information report or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence to make out a case against the accused may be quashed.

22. The aforementioned principle laid down by the Supreme Court in the **State of Haryana and Ors. vs. Choudhary Bhajan Lal and Ors. (supra)** is squarely applicable in the instant case.



23. Accordingly, the FIR of Munger Kotwali P.S. Case No.360 of 2018 and the entire criminal prosecution arising therefrom are hereby quashed.

24. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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