IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11711 of 2019
Arising Out of PS. Case No.-2 Year-1992 Thana- C.B.I CASE District- Patna

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Ashoke Kumar Biswas @ A K Vishwash Son of- Late B.K. Biswas Resident of R.K. Bhattacharjee Road,P.S-Kotwali,District-Patna. Pin-800001

... ... Petitioner

Versus

The Central Bureau Of Investigation India

... ... Opposite Party

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Appearance :
For the Petitioner/s : Mr.Krishna Chandra, Advocate
For the Opposite Party/s : Mr.Bipin Kumar Sinha, S.C.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date : 02-12-2019

Heard learned counsel for the petitioner and learned counsel representing the opposite party.

The petitioner in this case is seeking quashing of the order dated 01.11.2018 passed by learned Special Judge, C.B.I.-I, Patna in connection with Special Case No. 52/11 (RC02A/92) dated 20.01.1992.

By the impugned order the application filed by the accused-petitioner under Section 319 of the Code of Criminal Procedure for issuing process against other persons has been rejected by the learned court below.

In this case the allegation against the petitioner is that while he was posted as Special Assistant at UCO Bank, Frazor Road, Patna during the period 1983 to July, 1991 he entered in criminal conspiracy with other unknown persons and by abusing officials position, he made false credit entries in three accounts and withdrawn sum of Rs. 4,01,389.69/-. The FIR was registered under various provisions of the Indian Penal Code as well as under Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with section 13(1) (d0 of Prevention of Corruption Act, 1988 vide Special Case No. 52/11(RC02A/92) dated 20.10.1992.

After investigation Central Bureau of Investigation has submitted a chargesheet against the petitioner and cognizance of the offence has been taken. The petitioner is facing trial. It is the contention of the petitioner that in course of trial the prosecution witnesses have taken the name of certain persons who are said to have counter signed the cheques in question, therefore, they should be added as an accused and summons be issued to them.

Learned counsel for the petitioner submits that unfortunately the learned trial court could not appreciate the materials which were available on the record in course of trial and rejected the application.

A supplementary affidavit has also been filed on behalf of the petitioner with which he has brought on record the evidences of the prosecution witnesses which have been recorded in course of trial.

Learned counsel for the petitioner has taken this Court through the evidence of the prosecution witnesses and has given much emphasis on his argument that this petitioner had power only to pass a cheque up-to Rs. 10,000/-, therefore, the other persons/officers of the Bank who have counter signed the cheques are liable to be added as an accused. He has referred the evidence of prosecution witness no. 2 namely Vijay Kumar Verma who was posted as clerk-cum-typist during the relevant period.

Learned counsel has also referred the evidences of PW 3 Mahesh Kumar Sinha, PW 4 Ataur Rahman, PW 5 Amit Mishra and submits that these witnesses have stated that the cheques in question were counter signed by them. Since these witnesses have made statement that the cheques were counter signed by them, the contention of learned counsel for the petitioner is that there are materials on the record to suggest their participation in the alleged act of unlawful withdrawal from the Bank account and therefore, they should be added as an accused.

On the other hand, learned counsel representing C.B.I. submits that the contention raised on behalf of the petitioner is wholly misconceived and is devoid of any merit.

Learned counsel has taken this Court through the materials which were furnished in course of investigation and recorded in the chargesheet (Annexure '2'). It is his submission that it is the petitioner who had forged credit entries in all the accounts and had passed the cheques showing his satisfaction that the signature of the account holder on the cheque.

Having heard learned counsel for the petitioner and the opposite party and upon perusal of the records, this Court finds that the learned Special Judge, C.B.I.-1, Patna looked into the evidence of the prosecution witnesses and has taken a view that nothing is available against any person in the prosecution evidence to connect them with the present case.

This Court has also perused the statements of the prosecution witnesses. So far as PW 1 is concerned, he was working as the Clerk-cum-Typist during the relevant period and in his statement he has clearly stated that as per the procedure to make payment through cheque or withdrawal slip, the person who comes with cheque or withdrawal slip gets a token through the token clerk after obtaining his short signature on the backside of the cheque/withdrawal slip. Thereafter, the token clerk shall send the cheque /withdrawal slip to the passing officer who will after passing the cheque/withdrawal slip sent the same to the cashier for payment. The Cashier thereafter, takes a signature on the cheque/withdrawal slip form the token holder and after comparing the same, he makes the payment. He has further proved that in the ledger sheet all three accounts, except the entry of the interest amount, all other entries have been made by this petitioner and his short signature has been identified. The cheque books of the two accounts have also been issued by this petitioner. He has also proved the deposit slip of the account and has identified the signature of this petitioner. In his whole evidence he has not made any statement so as to raise any finger against any other officers of the Bank. The other prosecution witnesses have deposed and stated that it was the petitioner who was the passing authority and those witnesses were only putting their counter signature. They have also stated that some of their short signatures were forged. For example on Exhibit '7' the prosecution witness no. 3 has stated that his short signature has been forged by this petitioner.

In the facts and circumstances and the materials available on the record, this Court finds no illegality or infirmity in the impugned order.

The application is thus, dismissed.

(Rajeev Ranjan Prasad, J)

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