

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37919 of 2019

In
CRIMINAL REVISION No.522 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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SANTOSH HALDANKAR @ SANTOSH GURUDAS HALDANKAR S/O
Late Gurudas presently posted as Vice President Legal and Company
Secretary, HDFC Bank Ltd., HDFC Bank House, Senapati Bapat Marg,
Lower Parel (W), Mumbai, P.S.-N. M. Joshi Marg, District- Mumbai, State-
Maharashtra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastava, Son of Late Hira Nand Prasad R/O Saket Bihar,
Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District- Patna.

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 32987 of 2019
In
CRIMINAL REVISION No.543 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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1. ARUN MOHANTY @ ARUN KUMAR MOHANTY Son of Late
Brundaban Chandra Mohanty Chief Compliance Officer, Mumbai, HDFC
Bank Ltd., HDFC Bank House, Senapati Bapat Marg, Lower Parel (W),
Mumbai, P.S. - N. M. Joshi Marg, District - Mumbai, State- Maharashtra.
 2. Priti Ranjan Dash Son of Late Janardan Dash Vice President Compliance,
Mumbai, HDFC Bank Ltd., HDFC Bank House, Senapati Bapat Marg,
Lower Parel (W), Mumbai, P.S. - N. M. Joshi Marg, District - Mumbai,
State- Maharashtra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastva Son of Late Hira Nand Prasad R/O Saket Bihar,
Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District - Patna.

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 33426 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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1. SANJAY DONGRE S/o Late Bindumadhav Dongre Was Head, Legal and Secretariat, HDFC Bank Ltd., HDFC Bank House, Senapati Bapat Marg, Lower Parel (W), Mumbai, P.S.- N.M. Joshi Marg, District- Mumbai, State- Maharashtra.
 2. Manikandan Ramanathan S/o Sri Ramnathan Was posted as State Head, WBO- Bihar, H.D.F.C. Bank Ltd., Jamal Road, P.S.- Kotwali, Patna- 800001, presently posted as Regional Operation Manager Chennai, HDFC Bank processing centre no. 110, Ceebros Building, Nelson Manickam Road, Aminjikarai, P.S.- K3 Aminjikarai, District- Chennai, State- Tamil Nadu.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Priya Ranjan Srivastava Son of Late Hira Nand Prasad R/o Saket Bihar, Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District- Patna.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 33800 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

RITESH KUMAR AGARWAL Son of Sambhu Dayal Agarwal Was posted as Branch Head, WBO, H.D.F.C. Bank Ltd., Plot No. 651, Jamal Road, P.S.- Kotwali, Dist-Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Priya Ranjan Srivastva Son of Late Hira Nand Prasad R/O Saket Bihar, Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District - Patna.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 34056 of 2019

In

CRIMINAL REVISION No.525 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

GOURAB ROY Son of Late Suchit Kumar Ray Regional Head Operation East and South, Whole Sale Banking Operations, HDFC Bank Ltd., 3A

Gurusaday Road, P.S.- Karaya Thana, District- Kolkatatta, State - West Bengal

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastva Son of Late Hira Nand Prasad Resident of Saket Bihar, Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District- Patna

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 34553 of 2019
In
CRIMINAL REVISION No.513 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District- Patna

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1. RANJAN SENGUPTA Son of Chandan Sengupta Was posted as Head RBCU East, HDFC Band Ltd., 3A Gurusaday Road, P.S.- Karaya Thana, District - Kolkata, State - West Bengal, presently posted as Circle Head Operation Silliguri, HDFC Bank Ltd, Bharat Bhawan, 136/115, Hillicart Road, P.S.- Silliguri, District - Silliguri, State- West Bengal.
2. Tapan Kumar Bakshi Son of Late Jitendra Nath Bakshi Was posted as State Head, Whole Sale Banking Operations, HDFC Bank Ltd., 3A, Gurusaday Road, P.S.Karaya Thana, District - Kolkata, State - West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastva Son of Late Hira Nand Prasad R/O Saket Bihar, Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District - Patna.

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 34859 of 2019
In
CRIMINAL REVISION No.530 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District- Patna

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1. BADAL MOHANTY Son of Sri Jogendra Mohanty was posted as Regional Head - Audit- East, HDFC Bank Ltd., 3A Gurusaday Road, P.S.- Karaya Thana, District- Kolkatta, State- West Bengal, presently posted as Regional Head- Audit- North, HDFC Bank Ltd., A111, Sector-4, P.S.- Sector 20 Noida, Noida- 201301, State Uttar Pradesh.
2. Abhijit Kamalia S/o Kailash Kamalia is posted as Vice President- Audit-

Kolkata, HDFC Bank Ltd., 3A Gurusaday Road, P.S.- Karaya Thana,
District- Kolkata, State West Bangal.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastava Son of Late Hira Nand Prasad R/o Saket Bihar
Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District- Patna.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 35364 of 2019
In
CRIMINAL REVISION No.552 of 2019

Arising Out of PS. Case No.-1077 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

SANJAY KARMAKAR S/o Late Sukumar Karmakar Presently posted as
State Head Bihar, Whole Sale Banking Operation, H.D.F.C. Bank Ltd., 651,
Jamal Road, P.S.- Kotwali, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priya Ranjan Srivastava Son of Late Hira Nand Prasad R/o Saket Bihar,
Mitra Mandal Colony, Anisabad, P.S.- Phulwari Sharif, District- Patna.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 37919 of 2019)

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr.Girijish Kumar, Advocate

For the Opposite Party/s : Mr.Nawal Kishore Prasad, Advocate
Ms. Jyoti Kumari, Advocate

(In CRIMINAL MISCELLANEOUS No. 32987 of 2019)

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr.Girijish Kumar, Advocate

For the Opposite Party/s : Mr.Nawal Kishore Prasad, Advocate
Ms. Jyoti Kumari, Advocate

(In CRIMINAL MISCELLANEOUS No. 33426 of 2019)

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr.Girijish Kumar, Advocate

For the Opposite Party/s : Mr.Anil Kumar Singh No. 1, Advocate
Ms. Jyoti Kumari, Advocate

(In CRIMINAL MISCELLANEOUS No. 33800 of 2019)

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr.Girijish Kumar, Advocate

For the Opposite Party/s : Mr.Sanjay Kumar, Advocate
Ms. Jyoti Kumari, Advocate

(In CRIMINAL MISCELLANEOUS No. 34056 of 2019)
For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Girijish Kumar, Advocate
For the Opposite Party/s : Mr. Nawal Kishore Prasad
Ms. Jyoti Kumari, Advocate
(In CRIMINAL MISCELLANEOUS No. 34553 of 2019)
For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Girijish Kumar, Advocate
For the Opposite Party/s : Mr. Nawal Kishore Prasad
Ms. Jyoti Kumari, Advocate
(In CRIMINAL MISCELLANEOUS No. 34859 of 2019)
For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Girijish Kumar, Advocate
For the Opposite Party/s : Mr. Nawal Kishore Prasad
Ms. Jyoti Kumari, Advocate
(In CRIMINAL MISCELLANEOUS No. 35364 of 2019)
For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Girijish Kumar, Advocate
For the Opposite Party/s : Mr. Nawal Kishore Prasad
Ms. Jyoti Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-11-2021

Heard learned counsel for the parties.

2. This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 10.01.2019 passed in Complaint Case No. 1077 (C) of 2018, passed by learned ACJM-III, Patna, by which learned Magistrate has taken cognizance of offences under Section 199 and 200 of IPC and issued processes against the petitioners for their appearance to face the trial.

3. Briefly stated, the facts of the case is that Opposite Party No. 2 filed complaint case before the learned CJM, Patna with following allegations:-

(a) Opposite Party No. 2 (Complainant) was appointed on the post of Branch Head, Patna-

Operations, issued under the signature of head H.R. Operation, HDFC Bank Ltd. Mumbai and Opposite Party No. 2 joined on 26.03.2012 at whole sale banking operation, Jamal Road, Patna.

(b) Opposite Party No. 2 (Complainant) duty was to properly re-check the clearing cheques and trade related documents before sending it to the Central Processing Units and while working Opposite Party No. 2 (complainant) an inquiry was initiated against him and he was put under suspension by order dated 25.02.2016 on charge of some serious lapses committed by him and thereafter he was terminated from service on 30.06.2016.

(c) RTI reply dated 02.12.2016 sent by Reserve Bank of India, intimated Opposite Party No. 2 (Complainant) that HDFC Bank has reported a fraud with reference number HDFC1601-0070 dated 11.03.2016 and a police complaint with Kotwali Police Station was lodged being Diary No. GD1143 dated 29.07.2016.

(d) Opposite Party No. 2 (Complainant) in order to ascertain the truth with respect to said letters made application before the Public Information Officer, Kotwali P.S to provide the details of the said complaint then information was provided vide letter dated 20.02.2017 in which it was stated that HDFC lodged sanha on 29.07.2016 GD No. 1143 regarding loss of diary of HDFC Bank.

(e) Opposite Party No. 2 had lodged complaint before the National Stock Exchange of

India with regard to non reporting of fraud with Stock Exchange upon which, accused/petitioners reported National Stock Exchange of India vide letter dated 28.04.2017 that Opposite Party No. 2 is an accused and ex employee of the HDFC Bank and involved in fraud

(f) Opposite Party NO. 2(complainant) also came to know about the order dated 22.05.2017 addressed by the accused/petitioners to the National Stock Exchange of India where it was wrongly and intentionally mentioned that Opposite Party No. 2 committed fraud of Rs. 1.86 Crores.

(g) Criminal complaint with Kotwali PS was lodged against the Opposite Party No. 2 (Complainant) which further revealed that information dated 03.07.2017 GD No.1143 was registered on the basis of application made by R. Mani, State Head, HDFC Bank,Currency Chest, Jamal Road, Patna, with regard to loss of the General Diary.

(h) There was no wrong committed by Opposite Party No. 2 (complainant) to the HDFC Bank, however, accused persons knowingly and intentionally furnished wrong information to the Reserve Bank of India and National Stock Exchange of India that Opposite Party No. 2 (complainant) is an accused in criminal case of alleged fraud involving Rs. 1.86 Crores.

(i) Opposite Party No. 2 (Complainant) further got information from Registrar, Central Information Commission, that a fraud was committed

by certain employees including Opposite Party No. 2 of HDFC Bank in Bhagalpur Branch in connection with complaint bearing GD No.1143 dated 29.07.2016 lodged before Kotwali Police Station, however, Opposite Party No. 2 (Complainant) was never posted in Bhagalpur and always remained posted in Patna.

(j) Wrong information was given by the accused persons purposely and intentionally to malign the prestige and reputation of complainant so that he does not get suitable job.

4. Opposite Party No. 2 (Complainant) was examined on SA in which he supported the allegations as made out in the complaint petition and one witness Rakesh Kumar Verma was examined under section 202 of Cr.P.C who supported the allegations made in complaint petition and on the basis of S.A. of complainant and statement of witness, the trial court vide order dated 10.01.2019 took cognizance of the offence under section 199 and 200 of IPC and issued processes against the 11 accused persons named in the complaint petition.

5. Learned Sr. counsel for the petitioners submits as follows:-

(a) during course of regular branch audit of WBO Bhagalpur it revealed that entries in General Ledger (GL) account of outward clearing settlement were having debit outstanding balance of Rs. 186.84 lakhs which had not been reconciled over a period of

time and the balance was moved from WBO Bhagalpur branch to WBO Patna branch. During Internal investigation it was found that the balances were fraudulently managed over the period. In some cases payments were made without checking the funds realization status and upon follow-ups of the customers, the branch was booking a new schedule for the same amount and passing the credits i.e. amounts given credit to customers without receiving the same from the drawee Banks.

(b) During internal investigation it came to light that the above mentioned process had lot many lacunas which was not identified at both Branch Operations Manager/Cluster Head and State Head Level.

(c) The HDFC Bank had reported the incident to the Officer-in-charge of Kotwali Police Station, Patna where Station Diary No. 1143 dated 29.07.2016 was registered. Thereafter, follow up done with police on 09.06.2017(Annexure-4) on the GD Lodged first on 8.07.2016 (Annexure-5) and it was confirmed by the Kotwali Police Station that the matter is being investigated, subsequently HDFC Bank filed complaint Case No. 3582(C) of 2018, complaint was referred to to the Kotwali Police Station for investigation u/s 156(3) of the Cr.P.C by order dated 23.08.2018. The police on the basis of the said complaint instituted Kotwali P.S. Case No. 583 of 2018 registered on 03.09.2018 against the opposite party no. 2 and other accused persons.

(d) Thereafter, follow up done with police on 09.06.2017 on the GD lodged first on 28.07.2016 and it was confirmed by the Kotwali Police Station that the matter is being investigated.

(e) During the audit of the bank the aforesaid frauds were detected, and thus except opposite party no. 2 all six (6) employees who connived with the opposite party no. 2 and cause loss to the HDFC Bank have accepted their negligence in writing dated 16.03.2016,, that on account of their failure or negligence loss has been caused to the bank and all were terminated along with Opposite Party No. 2 for said act of negligence.

6. It is further submitted by learned senior counsel appearing on behalf of petitioners that Kotwali Police had submitted a report to the learned Magistrate vide letter dated 19.12.2018 which is part of present complaint case that the two separate FIRs have been lodged one by terminated employee Pravin Kamal Kishore and another by Rakesh Kumar Verma who is a witness in the said complaint with respect to issue involved in present case and matter is under investigation and one FIR has also been filed by the HDFC Bank Ltd, against Opposite Party No. 2(Complainant) and others which is also under investigation, in such view of the matter, there was no occasion for the learned Magistrate to proceed with the

complaint case.

7. It is submitted that Opposite Party No. 2 (complainant) has filed title suit no. 213 of 2017 before the Civil Court Patna challenging his termination order by HDFC Bank and the dispute raised by the Opposite Party No. 2 (complainant) is purely civil in nature and no criminal offence is made out. The allegations made in the complaint even they are taken at their face value and accepted in its entirety do not *prima facie* constitute any criminal offence and ingredients in order to constitute offence under Section 199 and 200 of IPC is completely lacking in the complaint petition as well as materials placed before the learned Magistrate.

8. The only issue raised by learned Senior counsel for the petitioners, is that HDFC Bank is a banking company incorporated and registered under the Companies Act and the petitioners are officers of the said bank employed under different capacities **as follows:-**

Sri Arun Mohanty, Chief compliance Officer, HDFC Bank Ltd., Sanay Dongre-Head, Legal & Secretarial, HDFC Bank Ltd., Santosh Haldankar-Vice President, legal & Secretarial, HDFC Bank Ltd., Priti Ranjan Das-Vice President, Compliance, HDFC Bank Ltd., (All having the address of HDFC Bank Limited, HDFC Bank House, Senapati Bapat Marg, Lower Parel,

Mumbai-400013). Gourab Roy-Regional Head, East, Operation, HDFC Bank Ltd, Gurusaday Marg, Kolkata-700019, Badal Mohanty-Regional Head, East, Audit, HDFC Bank Ltd. Gurusaday Marg, Kolkata-700019, Manikandan Ramanathan-State Head, WBO-Bihar, HDFC Bank Ltd, Jamal Road, Patna-800001, Abhijit Kamalia-Vice President-Audit, HDFC Bank Ltd, Gurusaday Marg, Kolkata-700019, Ranjan Sengupta-Regional Branch Control Unit, HDFC Bank Ltd, Gurusaday Marg, Kolkata-700019, Tapan Kumar Bakshi-State Head-W. Bengal & Bihar, HDFC Bank Ltd, Gurusaday Marg, Kolkata-700019, Sanjay Karmakar-State Head-WBO-Bihar & Jharkhand, HDFC Bank Ltd., Jamal Road, Patna-800001 and Ritesh Kumar Agarwal, Branch Head, WBO, HDFC Bank Ltd., Plot No. 651, Jamal Road, P.S Kotwali, District-Patna.

9. It was submitted on behalf of petitioners that they have nothing to do with the day to day activities of the bank and petitioners have no role whatsoever in connection with the present complaint and no specific allegation against the petitioners have been made in the entire complaint and the allegations are general and omnibus in nature. Petitioners have been roped in this criminal case without there being any specific role attributed to them or showing their participation in the alleged offence with the sole purpose of settling his dispute by initiating this criminal prosecution.

10. It is well established principle of law that criminal liability cannot be fastened upon the officers of the company of being vicariously liable for the affairs of the company when the company itself has not been made an accused

11. Learned Sr. counsel for the petitioners has relied upon following judgments passed by Hon'ble the Apex Court:-

AIR 1992 SC 604, 2006(3) PLJR 139, 2019(1) PLJR(SC) 215, 2011(13) SCC 412 and 2013(4) SCC 505, **Maksud Saiyed Vs. State of Gujarat** since reported in (2008) 5 SCC 668 and **S.K. Alagh Vs. State of Uttar Pradesh** since reported in (2008) 5 SCC 662, **Indian Oil Corporation Vs. NEPC India Ltd & Ors** since reported in (2006) 6 SCC 736 as also **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.** since reported in **2005 CriLJ 4140.**

12. The Hon'ble Supreme Court in the case of **Thermax Ltd. & Ors Vs. K.M. Johny & Ors** since reported in (2013) 4 SCC 412, has held as follows:-

“38. Though Respondent No. 1 has roped all the Appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with Appellant-Company by initiating the criminal prosecution, it is pointed out that Appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of Appellant No. 1-Company,

who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the Appellant-Company.”

13. In a recent judgment of the Hon’ble Apex Court in the case of **Ravindranatha Bajpe Vs. Mangalore Special Economic Zoned Ltd. & Ors Etc.** since reported in **AIR 2021 SC 4587**, has held as follows:-

“8.3. As held by this Court in the case of **India GHCL Employees Stock Option Trust v. India Infoline Limited**, since reported in **(2013) 4 SCC 505**, in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the Accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as

an Accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.

9. From the order passed by the learned Magistrate issuing the process against the Respondents herein-Accused Nos. 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against Respondent Nos. 2 to 5 and 7 & 8. Merely because Respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against Respondent Nos. 1 to 8 herein-original Accused Nos. 1 to 8 for the offences punishable Under Sections 427, 447, 506 and 120B read with Section 34 Indian Penal Code.

14. Per contra, leaned counsel for the Opposite Party No. 2(complainant) has argued that complaint discloses the offences committed by the petitioners for which they are personally liable and prima facie case is made out against the petitioners for commission of offence under Section 199 and 200 of IPC on the basis of complaint petition S.A of complainant and statement of witnesses as well as documents enclosed with the complaint petition, as such, there is no error in the order passed by the learned Magistrate.

15. It is further submitted that at the stage of summoning the accused, the only consideration is whether a prima facie case is made out on the basis of the statement of the complainant on oath and the material produced at this stage and the detailed examination on merits is not required and defence of the accused cannot be looked into by the High Court while considering the petition under Section 482 of Cr.P.C.

16. Learned counsel for the Opposite Party No. 2 (complainant) has relied on judgment of this Court in the case of **Niro Devi Vs. State of Bihar (Criminal Miscellaneous No. 36523 of 2014)** and **Heera Verma & Ors Vs. State of Bihar (Criminal Miscellaneous No. 48696 of 2013)**

17. Learned counsel for the Opposite Party No. 2 (complainant) has further relied upon a judgment of the Hon'ble Apex Court, in the case of **Kamladevi Agarwal Vs. State of West Bengal and Ors**, since reported in **(2002) 1 SCC555, M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors**, Cr. Appeal No. 330 of 2021-LL2021 SC 211 and **State of Madhya Pradesh Vs. Kunwar Singh** since reported in **2021(3) RCR(Criminal)734**, para 8 of which is quoted hereinbelow:-

“8. Having heard the submissions of the learned Counsel appearing on behalf of the Appellant and the Respondent,

we are of the view that the High Court has transgressed the limits of its jurisdiction Under Section 482 of Code of Criminal Procedure by enquiring into the merits of the allegations at the present stage. The fact that the Respondent was a signatory to the cheques is not in dispute. This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the 'Janani Mobility Express' under the National Rural Health Mission. At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction Under Section 482 of Code of Criminal Procedure. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final report has been submitted Under Section 173 of Code of Criminal Procedure, after investigation.”

18. Heard counsel for the parties and perused the material available on record and complaint petition as well as S.A of complainant and statement of sole witness. It appears that no allegations have been made against any of the petitioners that they had anything to deal with personally in discharge of their official duty. The order of the Magistrate summoning the

accused must reflect that he has applied his mind to the facts of the case, nature of allegation and role of persons as arrayed as accused in complaint petition.

19. Indian Penal Code, save and except some provisions specifically providing, therefore, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. Even complaint petition and material placed on record does not disclose commission of any offence and moreover necessary ingredients in order to constitute offence under Sections 199 and 200 of IPC is wanting in present case.

20. For the reasons as stated above, the order dated 10.01.2019 passed in Complaint Case No. 1077 (C) of 2018, passed by learned ACJM-III, Patna, as far as same relates to petitioners is not sustainable either in fact or in law and is accordingly quashed.

The criminal miscellaneous petitions are allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2021
Transmission Date	