IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.616 of 2022

Arising Out of PS. Case No.-56 Year-2021 Thana- KANKARBAG District- Patna

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Shrimati Nupur Sinha W/O- Sri Rajeev Ranjan R/O Village- Mugalpura Chouraha, P.S.- Khajekala, District- Patna

... ... Petitioner

Versus

1. The State Of Bihar Through Principal Secretary, Home Affairs, Bihar, Patna
2. Superintendent Of Police, Patna
3. Office In Charge Kankarbag Police Station
4. Mukesh Kumar Son Of Chulhan Saw R/O-Ashok Nagar Road No.-1, P.S.- Kankarbagh, Patna

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Arvind Kumar Singh, Advocate
For the State	:	Mr.Deepak Kumar, AC to GP-4
For the Respondent no. 4:		Mr. Sahjanand Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

8 24-11-2022 Learned counsel for the petitioner undertakes to remove all the S.R. Defects within two weeks from today.

2. Heard Mr. Arvind Kumar Singh, learned counsel for the petitioner, Mr. Sahjanand Sharma, learned counsel for the Respondent no. 4 and Mr. Deepak Kumar, learned AC to GP-4 for the State.

3. This writ application has been filed seeking quashing of the First Information Report being Kankarbagh P.S. Case no. 56 of 2021 dated 17.01.2021 for the offences alleged under Sections 406, 420, 504/ 34 I.P.C. and 138 of the Negotiable Instruments Act.

4. Earlier this Court had entertained this writ application on hearing from learned counsel for the petitioner that the petitioner admits the outstanding loan amount of Rs. 2,40,000/- and to that extent, she is ready to pay back the informant. From the earlier orders of this Court, it would appear that the petitioner has refunded Rs. 1,20,000/- by now to the informant.

5. Mr. Sahjanand Sharma, learned counsel for the informant admits receipt of Rs. 1,20,000/-. On 20.10.2022 when this case was taken up for consideration, learned counsel for the petitioner informed this Court that the petitioner will pay the balance amount of Rs. 1,20,000/-. An adjournment was sought to come back with instruction to say as to how and within how much period the petitioner will pay the balance amount of Rs. 1,20,000/-.

6. On the last date i.e. on 22.11.2022 when the matter was taken up, this Court took note of the fact that the petitioner had not refunded the balance amount of Rs. 1,20,000/- and the Court took a view that it would be a case of breach of undertaking given before this Court.

7. Today, learned counsel for the petitioner has submitted that the petitioner is not financially well off and she is not in a position to return the balance amount of Rs. 1,20,000/- in one go. On instruction, he submits that the petitioner undertakes to pay Rs. 40,000/- in every three months and in this way she would return the entire balance amount of Rs. 1,20,000/- in three equal quarterly installments. A prayer has been made to consider the request of the petitioner.

8. At this stage, this Court called upon learned counsel for the petitioner to argue the case on its own merit. Learned counsel has taken this Court through the allegations made in the First Information Report. From the allegations made in the F.I.R., it appears that the informant and the petitioner are well known to each other. The case of the informant is that with an intention to help the petitioner and her husband in running of a girls' hostel, he had provided them financial assistance of a sum of Rs. 6,82,000/-. The informant has narrated that he transferred Rs. 3,80,000/-and Rs. 95,000/- on two occasions through RTGS in the account of the petitioner. It is alleged that he provided Rs. 50,000/- in cash on two occasions to the petitioner and on one occasion a sum of Rs. 25,000/- was provided to her husband. The informant further claimed that he provided a sum of Rs. 10,000/- to the guard of the petitioner, Rs. 18,000/- to the kirana shopkeeper from where the petitioner was procuring her rations and Rs. 4,000/- to the gas cylinder vendor and in this manner he has paid Rs. 6,82,000/- to the petitioner and her husband.

9. It is further alleged that despite several demands by the informant to return his money, the petitioner issued a cheque bearing no. 008658 for a sum of Rs. 1,00,000/-, the said cheque stood dishonoured on presentation whereafter information was given to the petitioner and the petitioner transferred a sum of Rs. 60,000/- in the account of the informant. It is alleged that the rest of the amount has not been paid.

10. In the subsequent paragraph of the F.I.R., the informant talks of his repeated demands for refund of money and then the threat given to him by the petitioner saying she would falsely implicate the informant in a case. The informant claims that he has got an outstanding amount of Rs. 6,22,000/- against the petitioner and her husband but they seem to have misappropriated the money using the same for their own purposes. The informant apprehended that this petitioner may indulge in commission of any such act which may endanger the life of the children of the informant.

11. Learned counsel for the petitioner submits that on a bare reading of the F.I.R. it would appear that the petitioner himself admits that the loan was friendly. Against the cheque issued to him which stood dishonoured, the petitioner had transferred Rs. 60,000/- in his account. It is his submission that the informant never served any demand notice against the dishonoured cheque and no complaint had been filed under the provision of the Negotiable Instruments Act, 1881 for the alleged dishonour of the cheque. It is his submission that in the nature of the allegations made in the F.I.R, no offence under Sections 420, 406, 504 and 506/34 I.P.C. would be prima-facie made out. It is his submission that the alleged threat perception of the informant is only hypothetical and not a single instance is provided to say that the petitioner or her husband had indulged in any such act would have given a bonafide apprehension in the mind of the informant that the petitioner may be involved in commission of any act endangering the life of the children of the informant. Learned counsel, therefore, submits that these ornamental allegations have no basis and till date no material has come in course of investigation to support such allegations.

12. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the Case of **State of Harayana v/s Bhajan Lal** reported in **1992 Supp.(1) SCC 335 = AIR 1992 SC 602** and on the another judgment of **Inder**

Mohan Goswami and Another v. State of Uttranchal and Others, (2007) 12 SCC 1. It is submitted that in the case of **Inder Mohan Goswami** (supra), the Hon'ble Supreme Court has in Paragraph '37' of the judgment referred an earlier judgment of Hon'ble Apex Court in the case of **Indian Oil Corporation versus NEPC India Ltd.** reported in **(2006) 6 SCC 736** wherein the top court put a word of caution saying that there is a trend to convert a civil dispute in a criminal proceeding. Learned counsel submits that a criminal proceeding launched for the sole purpose of recovery of money would only be an abuse of the process of the court. He has further relied upon the judgment of the Hon'ble Supreme Court in **R.P. Kapoor vs. State of Punjab** reported in **1960 AIR (SC) 866.**

13. While the case was being heard, this Court called upon learned counsel for the informant(Respondent no. 4) to take a stand as to whether on refund of the balance amount of Rs. 1,20,000/-, the informant would agree for quashing of the First Information Report.

14. Learned counsel for the informant has in fact, submitted before this Court that the informant was not looking for prosecution of the petitioner and it is true that he had provided a friendly loan to the petitioner and her husband which the petitioner has failed to repay. In such circumstances, it is submitted that if the petitioner abides by her undertaking to refund the balance amount of the admitted dues on her part within the aforesaid period as offered by the learned counsel for the petitioner, the informant would not object the quashing of the F.I.R. subject, however, to reserving his rights to seek recovery of the amount, if any through legal recourse in civil proceeding.

15. Having taken note of the stand of the parties hereinabove, this Court is of the considered opinion that learned counsel for the informant has taken a fair stand and that helps the cause of justice. As agreed, the petitioner shall refund the balance amount of Rs. 1,20,000/- to the informant in three quarterly installments of Rs. 40,000/- each. It will be the bounden duty of the petitioner to ensure that a sum of Rs. 40,000/- is transferred in the account of the informant within every three months and upon completion of nine months the entire amount of Rs. 1,20,000/- must be credited to the account of the informant. This would, however, not be taken to mean and understand that the informant can ignore payment of the installment as agreed in every three months. Breach of this undertaking shall be taken as contempt of this Court and it may be termed as playing fraud upon this Court which may invite criminal contempt against the petitioner.

16. The First Information Report being Kankarbagh P.S. Case no. 56/2021 is quashed, subject to the petitioner abiding by her undertaking. It will be open for the informant to apply for appropriate remedy as may be advised to him for recovery of money, if any, against the petitioner.

17. This application stands disposed of accordingly.

18. Certified copy of this order shall be made available only after removal of the defects

(Rajeev Ranjan Prasad, J)

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