

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.874 of 2021

Arising Out of PS. Case No.-236 Year-2021 Thana- SHASTRINAGAR District- Patna

SHASHIDHAR JAGDISHAN S/o SRI C. JAGDISHAN MANAGING
DIRECTOR HDFC BANK LTD. SENAPATI BAPAT MARG, LOWER
PATEL (WEST), P.S.-N.M. JOSHI MARG, MUMBAI.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
DEPTT. OF HOME, GOVT. OF BIHAR, PATNA PATNA
2. THE DIRECTOR GENERAL OF POLICE, PATNA, BIHAR. BIHAR
3. INSPECTOR GENERAL OF POLICE, PATNA RANGE, BIHAR BIHAR
4. THE SENIOR SUPERINTENDENT OF POLICE, PATNA, BIHAR BIHAR
5. THE DEPUTY SUPERINTENDENT OF POLICE, SECRETARIAT,
PATNA. PATNA.
6. THE OFFICER-IN-CHARGE, SHASTRINAGAR P.S., PATNA PATNA.
7. RAMAN PRAKASH VASHISTA S/o NOT KNOWN SUB INSPECTOR
OF POLICE, SHASTRI NAGAR POLICE STATION, PATNA.
8. ASAD RAHMAN S/o ABDUL RAHMAN R/o SHOP NO.4, KESHAV
PALACE, KHAJPURA, BAILEY ROAD, P.S-SHASTRI NAGAR,
DISTRICT-PATNA.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 886 of 2021

Arising Out of PS. Case No.-236 Year-2021 Thana- SHASTRINAGAR District- Patna

DEEPAK NIGAM S/o SRI ANUP KUMAR NIGAM 3A, GURUSADAY
ROAD, P.S. KARAYA, DISTRICT-KOLKATA, STATE-WEST BENGAL,
PIN 700019, PRESENTLY POSTED AS REGIONAL HEAD,
INFRASTRUCTURE DEPARTMENT, HDFC BANK LTD. AT KOLKATA

... .. Petitioner/s



Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, DEPTT. OF HOME, GOVT. OF BIHAR, PATNA. PATNA
2. THE DIRECTOR GENERAL OF POLICE, PATNA, BIHAR PATNA
3. INSPECTOR GENERAL OF POLICE, PATNA RANGE, BIHAR. BIHAR
4. THE SENIOR SUPERINTENDENT OF POLICE, PATNA, BIHAR. PATNA
5. THE DEPUTY SUPERINTENDENT OF POLICE, SECRETARIAT, PATNA. PATNA.
6. THE OFFICER IN-CHARGE, SHASTRI NAGAR P.S., PATNA. PATNA.
7. RAMAN PRAKASH VASHISTA S/o NOT KNOWN SUB INSPECTOR OF POLICE, SHASTRI NAGAR POLICE STATION, PATNA.
8. ASAD RAHMAN S/o ABDUL RAHMAN R/o SHOP NO.4, KESHAV PALCE, KHAJPURA, BAILEY ROAD, P.S-SHASTRI NAGAR, DISTRICT-PATNA

... ... Respondent/s

with

Criminal Writ Jurisdiction Case No. 898 of 2021

Arising Out of PS. Case No.-236 Year-2021 Thana- SHASTRINAGAR District- Patna

SANDEEP GAUTAM S/o Late Suresh Lal Das Circle Head Bihar, HDFC Bank Ltd, situated at Krisnanyan near Police Check, Post Boring Road, P.S.- Sri Krisnapuri, Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna. Bihar
2. The Director General of Police, Patna, Bihar Bihar
3. The Inspector General of Police, Patna Range, Bihar Bihar
4. The Senior Superintendent of Police, Patna, Bihar Bihar
5. The Deputy Superintendent of Police, Secretariat, Patna. Bihar



6. The Officer In- Charge, Shastri Nagar, Police Station, Patna. Bihar
7. Raman Prakash Vashista S/o Not Known Sub Inspector of Police, Shastri Nagar, Police Station, Patna.
8. Asad Rahman S/o Abdul Rahman R/o Shop No.4, Keshav Palce, Khajpura, Bailey Road, P.S.- Shastri Nagar, District- Patna, PIN-800014.

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 1091 of 2021

Arising Out of PS. Case No.-236 Year-2021 Thana- SHASTRINAGAR District- Patna

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1. NARENDRA SINGH @ NARENDRA PRATAP SINGH SON OF SRI RAM BARAN SINGH R/O - B.K.DATTA LANE, OPPOSITE LAXMI MARKET, NEW AREA JAKKANPUR, P.S.- JAKKANPUR, DISTRICT- PATNA, PRESENTLY POSTED AS CLUSTER HEAD, HDFC BANK LIMITED, BIHAR
2. ABHISHEK KUMAR @ ABHISHEK SINHA SON OF LATE OM PRAKASH SINHA R/O- FRIENDS COLONY, AASHIYANA, A.G.COLONY ROAD, P.S.- RAJIV NAGAR, DISTRICT- PATNA, PRESENTLY POSTED AS BRANCH MANAGER, RAJA BAZAR HDFC BANK LIMITED, PATNA, BIHAR
3. SHANTANU @ SHANTANU MUKHERJEE SON OF LATE GAUTAM MUKHERJEE R/O- KUNDU HOUSE, INDIRA LANE, N.C.GHOSH LANE, PHULWARI, PATNA - 800001, PRESENTLY POSTED AS PROJECT MANAGER, INFRASTRUCTURE DEPARTMENT, HDFC BANK LIMITED, BIHAR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, DEPARTMENT OF HOME, GOVT. OF BIHAR, PATNA BIHAR
2. THE DIRECTOR GENERAL OF POLICE, PATNA, BIHAR BIHAR



3. INSPECTOR GENERAL OF POLICE, PATNA RANGE, BIHAR BIHAR
4. THE SENIOR SUPERINTENDENT OF POLICE, PATNA, BIHAR BIHAR
5. THE DEPUTY SUPERINTENDENT OF POLICE, SECRETARIAT, PATNA BIHAR
6. THE OFFICER-IN-CHARGE, SHASTRI NAGAR POLICE STATION, PATNA BIHAR
7. RAMAN PRAKASH VASHISTA SON OF NOT KNOWN SUB INSPECTOR OF POLICE, SHASTRI NAGAR POLICE STATION, PATNA
8. ASAD RAHMAN SON OF ABDUL RAHMAN R/O - SHOP NO-4, KESHAV PALCE, KHAJPURA, BAILEY ROAD, P.S.- SHASTRI NAGAR, DISTRICT- PATNA, PIN- 800014

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 874 of 2021)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Girijish Kumar, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad
For respondent no. 8 : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Awadhesh Kumar, Adv.

(In Criminal Writ Jurisdiction Case No. 886 of 2021)

: Mr. P.K. Shahi, Sr. Adv.
For the Petitioner/s : Mr. Girijish Kumar, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad
For respondent no. 8 : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Awadhesh Kumar, Adv.

(In Criminal Writ Jurisdiction Case No. 898 of 2021)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Girijish Kumar, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, G.P. -5
For respondent no. 8. : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Awadhesh Kumar, Adv.

(In Criminal Writ Jurisdiction Case No. 1091 of 2021)



For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Girijish Kumar, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, G.P. -5
For respondent no. 8 : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Awadhesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

12 23.03.2022 Heard Mr. P.K. Shahi, the learned senior Advocate for the petitioners, Md. Nadim Seraj, the learned G.P. -5 for the State and Mr. Awadhesh Kumar Mishra, Advocate and Mr. Bindhyachal Singh, learned senior Advocate for respondent no. 8 in C.W.J.C. No. 874 of 2021.

2. All the above noted applications have been heard together and a common order is being passed.

3. Through these petitions, the petitioners seek quashing of the F.I.R. of Shastri Nagar P.S. Case No. 236 of 2021 dated 05.07.2021, registered for offences under Sections 406, 409 and 120B of the Indian Penal Code.

4. The petitioners are the Managing Director, HDFC Bank Ltd; Eastern Region Head, Infrastructure Department of the HDFC Bank; Circle Head, Bihar, HDFC Bank; Cluster Head, HDFC Bank; Branch Manager, Raja Bazar, HDFC Bank; and Project Manager, Infrastructure Department, HDFC



Bank respectively.

5. All the writ petitions were listed before this Bench on 03.09.2021 pursuant to the order passed by the Hon'ble Supreme Court in SLA (Crl.) No. 6167 of 2021 in the case of one of the petitioners (Shashidhar Jagdishan) in Cr. W.J.C. No. 874 of 2021, asking the High Court to take up the matter for hearing at the earliest.

6. The respondent no. 8 has alleged in the F.I.R. that he had leased out the premises, namely, Shop No. 4, Keshav Palace, Khajpura, Bailey Road, Police Station – Shastri Nagar to the HDFC Bank on 26.11.2009 on a monthly rental of Rs. 65,000/- for a period of nine years. According to the terms of agreement, the rent has to be increased by 15 % after the expiry of three years. In the year 2018, when the period of 9 years has expired, the rent payable by the HDFC Bank was Rs. 85,962/- (Rs. Eighty Five Thousand Nine Hundred Sixty Two). At the time of lodging of the F.I.R., the rental had increased to Rs. 98,856/- (Ninety Eight Thousand Eight Hundred Fifty Six).

7. It is the case of the respondent no. 8 that the demised premises was vacated by the HDFC Bank on 30.06.2019. At that time, an amount of Rs. 35,92,743/-



(Thirty Five Lakhs Ninety Two Thousand Seven Forty Three) was due as against the HDFC Bank. It has thus been alleged in the F.I.R. that all the accused persons, under conspiracy and with a common intention, misappropriated the amount for personal use in violation of the terms of agreement. It has also been alleged that the respondent no. 8 had taken a car loan in his name from the HDFC Bank against which EMI of Rs. 43,236/- (Forty Three Thousand Two Hundred Thirty Six) was being deducted per month. The wife of respondent no. 8 had also purchased a car in her name by taking credit card.

8. The accusation against the petitioners are that they neither paid the rental nor adjusted the due amount against the car loan/credit card. For such act of omission and commission, respondent no. 8 claims to have suffered damages worth Rs. 22,00,000/-(Rs. Twenty Lakhs) till 21.06.2021.

9. The petitioners, as noted above, are the Managing Director and employees of the HDFC Bank Ltd, a registered banking company engaged in the banking and financial services, having its registered office at Mumbai. The HDFC Bank has various branches across the country, one of which branch was being run from the demised premises belonging to



the respondent no. 8.

10. It is the case of the petitioners that the respondent no. 8 had offered space to the Bank on monthly rental for which a lease agreement was entered into between the parties on 24.11.2009 for a period of nine years. One of the covenants of the lease agreement was that in the Municipal Zoning /user rules, the demised premises may be used for commercial purposes and the lessor shall obtain all consents, permissions and approvals as may be necessary in law or otherwise and that the lessor shall indemnify and shall keep indemnified the lessee at all times from and against any suit, eviction, action, claim or demand whatsoever arising by reason of the lessee relying on the aforesaid covenant of the lessor or otherwise.

11. The afore-noted property of respondent no. 8 was put under mortgage by him with Dena Bank, Maurya Lok Complex, Dak Bunglow Road, Patna against the money borrowed by him under loan. Since there was a default in repayment of loan, a SARFAESI proceeding was initiated against him. In the aforesaid proceeding, Dena Bank took symbolic possession of the premises on 14.01.2016. It has also been brought to the notice of the Court that respondent



no. 8 had filed C.W.J.C. No. 5880 of 2016 in which HDFC Bank was also impleaded as party respondent, which was dismissed and in the appeal, namely, L.P.A. No. 1409 of 2016 preferred by the respondent no. 8 seeking the quashing of the public notice for sale of assets through E-auction and of the possession notice by the Dena Bank, was dismissed.

12. It has been submitted on behalf of the petitioners that respondent no. 8 / informant had fraudulently availed a loan of Rs. One Crore from the Punjab National Bank also by submitting a fake title deed as mortgage to secure the loan, for which Punjab National Bank had lodged an F.I.R. bearing No. 542/2017 with Gandhi Maidan Police Station, Patna.

13. As noted above, the premises in question was sold in E-auction by Dena Bank under the SARFAESI Act, 2002 to one Kaushlendra Kumar. Aforesaid Kaushlendra Kumar had approached the HDFC Bank for securing the rent of the premises. While all this was being done, the HDFC Bank vacated the said premises on 30.06.2009. In the SARFAESI Appeal No. 101 of 2018 before the DRT, the HDFC Bank had sought permission to deposit the lock and key of the said premises. Under the orders of the Tribunal, the HDFC Bank Ltd. handed over the lock and key to



respondent no. 8/ informant in compliance of the order passed by the DRT.

14. All the details have been provided in the writ petitions with respect to holding of the loan since July 2015 to December 2015 and the factum of car loan/credit card availed by the respondent no. 8 and his wife respectively from the bank and the reason for the same not being adjusted against the rental of the premises, which was vacated on 30.06.2019. On these grounds, it has been urged on behalf of the petitioners that no offence as alleged in the F.I.R. can at all be said to have been made out against the petitioners.

15. On 09.02.2022, when the matter was being heard, this Court had observed as follows:-

“Heard the counsel for the parties.

A supplementary affidavit has been filed on behalf of the petitioners stating that the HDFC Bank Ltd. vacated the demise premises belonging to the complainant (respondent No. 8) on 30.06.2019. The monthly rental was not being paid since 01.08.2016, the HDFC Bank had come to learn that the premises had been auction-sold by DENA Bank. However, the total rental due against HDFC Bank for having occupied the



premises in question from 01.08.2016 to 30.06.2019 comes to Rs. 23,17,827.50/-, which, according to the petitioners, has been calculated after deducting the TDS and security deposit in favour of the complainant (respondent No. 8).

The calculation chart of the arrears of rent has been brought on record by Annexure – 14 to these applications.

Mr. P.K. Shahi, the learned Senior Advocate has submitted that the aforesaid amount shall be deposited before the Debt Recovery Appellate Tribunal, Allahabad by the next date.

Let these cases be listed on 09th of March, 2022 for final determination.

In the meanwhile, it would be open for the complainant (respondent No. 8) to enter into any kind of negotiation with the petitioners for ending the litigation at all fronts.

Interim order, if any, shall continue in the meantime.”

16. A second supplementary affidavit has been filed on behalf of the petitioners, sworn by the authorized signatory for the HDFC Bank Limited that an amount of Rs.



23,17,827/- as arrears of rent had been deposited by the HDFC Bank. Be it noted that this Court had observed that the rental of the premises till the time HDFC Bank had vacated the same ought not to remain with the Bank notwithstanding the litigation, symbolic taking over of the possession of the premises by Dena Bank and auction-sale of the same to aforesaid Kaushlendra Kumar. This was to avoid any unjust enrichment of the HDFC Bank of which the petitioners are the employees.

17. From the perusal of the accusation, the offences under Section 406 and 409 and 120B of the IPC charged against the petitioners do not appear to have been made out for the reason that Section 406 prescribes punishment for criminal breach of trust as defined under Section 405 of the I.P.C. For any offence to be punishable under Section 406 IPC, the prosecution is required to prove that the accused was entrusted with the property and that he misappropriated it or converted to his own use. The ingredients of Section 406 is thus not satisfied in the present prosecution.

18. In State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604, the hon'ble Apex Court has laid down the guidelines, listing the circumstances in which the prosecution cannot be



sustained in the eyes of law. It has rightly been urged on behalf of the petitioners that there has been a growing tendency in the present times in business circles to convert a pure civil dispute into the criminal cases. In an effort to settle civil disputes in claims which do not involve any criminal offence, criminal cases are filed to put pressure on the other party, which attempt ought to be deprecated and discouraged.

19. In view of the decision of the Hon'ble Supreme Court in the case of State of West Bengal Vs. Swapan Kumar Guha & Ors., AIR 1982 SC 949; Pepsi Foods Ltd and Another Vs. Special Judicial Magistrate and Others, 1998 (5) SCC 749; Indian Oil Corporation Vs. NEPC India Ltd., 2006 AIR (SC) 2780, in the event of none of the offences charged against the petitioners having been made out continuing with the investigation / prosecution in the subject F.I.R. would tantamount to permitting abuse of the process of the Court.

20. The entire amount payable as rental by the HDFC Bank of which the petitioners are the employees have been discharged.

21. Under the aforesaid circumstances, this Court deems it appropriate to direct for and quashes the subject F.I.R. namely, Shastri Nagar P.S. Case No. 236 of 2021 and



all other consequent proceedings thereto.

22. The petitions stand allowed.

(Ashutosh Kumar, J)

Rishi/sunilkumar

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