IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3155 of 2022

Arising Out of PS. Case No.-340 Year-2021 Thana- LAHERIYASARAI District- Darbhanga

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1. Sailesh Kumar Son Of Late Anil Kumar Sinha Resident Of Village- Devnagar Janta Market, Chhota Govindpur, P.S.- Govindpur, District- Singhbhum East, Jharkhand.
2. Sandeep Kumar Son Of Late Anil Kumar Sinha Resident Of Village- Devnagar Janta Market, Chhota Govindpur, P.S.- Govindpur, District- Singhbhum East, Jharkhand.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivam
Ms. Vaishnavi Singh
Mr. Ritwik Thakur

For the Opposite Party/s : Mr. Akhileshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

14 01-12-2023 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for the Bank.

2. The petitioners apprehend their arrest in Laheriasarai P.S. Case No. 340 of 2021 registered for the offences punishable under Sections 419, 420, 406, 201/34, 120(B) of the Indian Penal Code, pending in the Court of learned Chief Judicial Magistrate, Darbhanga at Laheriasarai.

3. The prosecution case, in brief, is that the petitioners approached the Bank of India, Darbhanga Branch, for a term loan against security of immovable properties appertaining to khata number 7, plot number 148, 152, 154

situated in the District of East Singhbhum, Jharkhand. They disclosed to the bank authorities that the aforesaid lands had been acquired by them by virtue of registered sale deed number 3998 dated 05-08-2013 as well as sale deed number 3895, dated 31-07-2013. They have been coming in possession of the same as owner thereof. A legal opinion was sought by the bank from its empanelled lawyer, namely Anil Kumar Sinha, who submitted his report in favour of the petitioners asserting that the lands were free from encumbrances under the ownership of the petitioners. The said Anil Kumar Sinha is the father of the petitionersOn the basis of these documents, a term loan was sanctioned in favour of the petitioners on 24-03-2015, fixing a sum of Rs.62,176/- as EMI to be paid by the petitioners towards repayment of the principal amount with interest in connection with loan account number 485062610000020 of the petitioners. It has been alleged that the petitioners did not pay the monthly installments towards adjustment of the loan account and consequently a sum of rupees 48.03 lakhs became due against the petitioners till 30-05-2021. Thereafter, the bank took steps towards auctioning the mortgaged properties for recovery of the outstanding amount. Subsequently, a complaint was filed by one Anil Kumar Pandey, stating therein that he was one of the purchasers of the land appertaining to plot number 154, part of the mortgaged lands, which he acquired by virtue of registered sale deed dated 04-08-2014. The bank thereafter sought legal opinion from another empanelled lawyer Rakesh Kumar Sharma. After enquiry, it was traced out that both the petitioners had altogether executed 37 sale deeds in favour of different persons with respect to the lands mortgaged with the bank against the loan amount. It has further been alleged that 33 sale deeds were executed prior to the date of sanctioning of loan and 04 sale deeds were executed by the petitioners after 24-03-2015. It has been also alleged that the petitioners preferred S.A. No. 96 of 2019 before the Debts Recovery Tribunal, Ranchi, for a stopping the bank from auctioning the properties of the petitioners. The petitioners in the course of proceeding handed over 2 cheques of Rs.14 lakhs, bearing cheque no. 668759 and 018299, to the bank which were dishonoured after presentation in the bank for encashment. The petitioners have thus cheated the bank.

4. The learned Counsel appearing on behalf of the petitioners submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioner no. 1 has two criminal antecedents and petitioner no. 2 has no criminal

antecedent. The entire allegations levelled by the prosecution against the petitioners are false and concocted. The petitioners are the bonafide customers of the bank since 2012. They are the proprietors of Satyam Rice Mill. There is another loan account of the petitioners bearing account number 485030110000015. The petitioners owed a sum of Rs.4 Crores and odd to the bank in connection with loan account no. 485030110000015. He further submits that the petitioners had agreed to deposit a sum of Rs.30 Lacs before the Debts Recovery Tribunal, Ranchi, but the bank did not agree. The petitioners could not deposit the monthly installment in time in connection with term loan account due to some financial difficulty. As the petitioners could not satisfy the illegal demands of the bank authorities, they have been implicated in this case. He further submits that as a matter of fact the entire allegation levelled in the present written report is out and out a false allegation and the present loan which was sanctioned by the Bank was never disbursed to the petitioners and on the date the said Bank loan was released i.e. on 25.03.2015, on that day the entire amount was taken by the bank himself in lieu of loan amount of another account of petitioners i.e. Satyam Rice Mill account. The petitioners were depositing the EMI in the term loan as well as in Satyam Rice Mills but all of a sudden due to fall of business they started suffering loss and failed to deposit EMI and for realizing of the same the Bank has already proceeded under Debt Recovery Act (SARFAESI Act) before the Debt Recovery Tribunal, Ranchi bearing SA No.96/2019.

5. Learned counsel for the petitioners further submits that in the first information report it has wrongly been alleged that the Retainer Lawyer of the Bank is the father of the petitioners is itself out and out a false allegation and father of the petitioners was never a lawyer and he was an employee and he has never given any opinion with regard to any loan much less the loan in question to the bank in question or to any other bank. He further submits that the father of the petitioners is died and he has produced the death certificate of the father of the informant during the argument in the present case.

6. A detailed counter affidavit has been filed on behalf of the Bank and in reply to the said counter affidavit learned counsel for the petitioners submits that the original deeds which was supplied to the Bank at the time of applying for loan consisted of a large area of land, i.e. about 78.66 decimals of land (39.33 + 39.33 in each deed), the valuation of which at the time of applying for loan would be about more than

Rs. 1.5 Crores. He further submits that the petitioners wanted a small loan for renewing their another loan account which was on the verge of becoming an NPA account, and on advise of the bank officials the petitioners applied for availing the present loan. At the time of applying the alleged loan the petitioners still owned more then 13 decimals of land out of the two deeds, the valuation of which would easily cover the loan amount of Rs. 48 Lakhs, and that is the reason that the loan was processed and all these facts were in full knowledge of the Bank Officials.

7. Learned counsel for the petitioners further submits that for availing a loan of Rs. 48 Lakhs the lands worth more then 1.5 Crores will be mortgaged, and that is the reason that the Bank has cleverly left out the valuation reports at the time of filing of the present farcical FIR as well as during hearing of the present application. He further submits that the petitioners are businessmen and were running a rice mill and in course of business, disputes had arisen resulting in lodging of the cases, which the petitioners have honestly disclosed. He further submits that the petitioners still have title and ownership over more than 13 decimals of land and with respect to that portion an equivalent loan amount was sanctioned.

8. Learned counsel for the petitioners further

submits that only because the father's name is similar to the employees' name the Bank is asserting them to be the same person, and absolutely no documentary proof is being brought on record for substantiating the said allegation, i.e. joining letter or identity proof of the said employee (i.e. empanelled lawyer) in order to ascertain the truth.

9. He lastly submits that when it is a case of non-repayment of loan for which already steps have been taken by the O.P. No. 2 i.e. Bank for recovery before appropriate forum.

10. Learned counsel for the Bank as well as learned counsel for the State opposed prayer for anticipatory bail and submitted that the most of the properties said to have been mortgaged by the petitioners with the bank, for securing loan, were in fact, not under the ownership and possession of the petitioners at the time of sanctioning of loan. They had already been alienated. The remaining lands covered under the mortgage, were also transferred by the petitioners after securing the loan amount.

11. A detailed counter affidavit has been filed on behalf of the Bank, in para-7 of which it is stated that the prosecution story is based on documentary evidence and on bare perusal of the number of the sale deeds (web copy enclosed)

executed by the petitioners prior to availing the loan itself will signify the very conduct of the two petitioners, who intentionally suppressed this material facts and mortgaged the immovable property even though on date of mortgage the petitioners were largely having no ownership title and therefore, should not have mortgaged the two sale deeds.

12. He further submits that when the Court query about the empanelled lawyer, Anil Kumar Sinha, it is alleged that he is the father of the petitioners, the Court directed to find the details about Anil Kumar Sinha, then a detailed counter affidavit has been filed on behalf of the Bank in which it is stated that the respondent through its local office got the Information that Anil Kumar Sinha, Advocate is the father of the petitioners who have filed the present Criminal Miscellaneous case but ironically the two petitioners claim that his father, Anil Kumar Sinha, is no longer alive and in support of the same no death Certificate has been enclosed and this goes on to signify the very conduct of the two petitioners who to take undue advantage and for vested malafide reasons even declared his father dead. This has been done for two fold reasons: firstly to safeguard and to protect themselves and secondly even to protect their father namely, Anil Kumar Sinha, who is still

practicing in Jamsedpur Civil Court. He further submits that he sought for the direction from this Court in the interest of justice require DNA Test so that indirect denial and very claim of the two petitioners that their father is no longer alive can be established by this Court by giving necessary direction so that the parentage of the petitioners with Advocate, Anil Kumar Sinha, practicing in Jamsedpur Civil Court and resident of Teacher's Colony, Dimna Road, Mango, jamsedpur, District East Singbhum be established to the satisfaction of this Hon'ble Court.

13. He further submits that in addition to above the Forensic Audit carried in respect of another Loan Account namely, M/s Satyam Rice Mill which is a partnership Firm of which the two petitioners are partners along with one Mr. Ganesh Ghosh being the third partner the Forensic Audit Report, dated 18/08/2023 has been confirmed by Chartered Accountant namely, Komandoor & Co LLP that fraud has been committed by the petitioners in their another account namely, Satyam Rice Mill in which outstanding balance is above 7.3 crores. Moreover at Page 31 of the Forensic Audit Report dated 18/08/2023, it is also recorded that the payment of Rs. 36,72,000/- was also paid to one, Anil Kumar Sinha and the petitioners is directed to

confirm to which Anil Kumar Sinha he paid the aforesaid amount. However, on the basis of aforesaid figure it can be said with certainty that payment was made to Anil Kumar Sinha, who is father of the petitioners and not to any third party in the name of Anil Kumar Sinha.

14. Having gone through the arguments of the parties and after perusal of the records, it is clear that although it is a civil nature dispute between the parties but the petitioners know this fact that they have already sold the said land which was mortgaged to the Bank prior to taking the loan and, thereafter, he cheated the Bank.

15. Considering the facts and circumstances of case, I am not inclined to enlarge the petitioners on anticipatory bail. The prayer for anticipatory bail of the petitioners is hereby rejected.

16. However, if the petitioners surrender before the learned Court below within a period of six weeks from today and seek for regular bail, the learned Court below shall pass the order on the same day in accordance with law.

(Anjani Kumar Sharan, J)

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