

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4838 of 2017

Arising Out of PS. Case No.-645 Year-2006 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

=====

Madhav Prasad Trivedi Son of Late Brajnandan Trivedi, Resident of Bank Colony, P.S. Gobarsahi Chowk Distt. Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Seema Sinha, W/o Late Pravin Kumar Sinha, Resident of Mohalla Madrani Lane, P.S. Mithanpura, District Muzaffarpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner	:	Mr. Chittaranjan Sinha, Senior Advocate
		Ms. Surya Nilambari, Advocate
For the State	:	Mr. Shyam Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL ORDER

- 3 15-09-2023 This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') in which the petitioner has prayed for quashing and setting aside the order dated 05.09.2012, passed by learned Judicial Magistrate, 1st Class, Muzaffarpur in Complaint Case No.645 of 2006 by which discharge application filed by the petitioner under Section 245 of the Code has been dismissed. The petitioner has also challenged the order dated 24.08.2013, passed by learned Additional Sessions Judge, Muzaffarpur in Criminal Revision No.259 of 2012 whereby the learned Sessions Court has rejected the revision application filed by the petitioner.



2. Heard Ms. Surya Nilambari, learned counsel for the petitioner and Mr. Shyam Kumar Singh, learned APP for the State. This Court has verified the records from which it is revealed that notice issued to opposite party no.2, original complainant, is duly served in 2019 itself. However, nobody has filed appearance on behalf of opposite party no.2. It is relevant to note that this petition is pending since the year 2017 and, therefore, this Court has no option but to proceed further with the matter.

3. Learned counsel for the petitioner has referred the averments and allegations made against the petitioner in the complaint and thereafter submitted that at the relevant point of time, petitioner was working as Branch Manager of Bela Industrial Region Branch, S.B.I., Muzaffarpur and the petitioner had nothing to do with the transaction which was carried out by accused Navin Kumar Sinha who is brother-in-law of the complainant.

4. It is submitted that ingredients of the offence punishable under Sections 406, 409, 419, 420, 467, 468 and 471 of the Indian Penal Code *prima facie* are not made out against the petitioner and, therefore, both the learned courts below ought to have allowed the proceedings filed by the petitioner.



5. At this stage, learned counsel for the petitioner has referred the order dated 13.10.2014 rendered by this Court in Criminal Miscellaneous No.122 of 2014, which was filed by Assistant General Manager of the Bank. It is submitted that the said accused also challenged the order rejecting his discharge application as well as the common order dated 24.08.2013, passed by the Sessions Court in Criminal Revision No.259 of 2012 and allied matters before this Court and this Court has allowed the petition filed by the said accused. Learned Advocate has referred the observation made by this Court in case of the co-accused. It is submitted that this Court has specifically observed that “I have no manner of doubt where Bank Officials are concerned they cannot be roped in the present criminal prosecution on vicarious and vague allegation.”

6. Learned counsel for the petitioner urged that this Court has quashed and set aside the proceedings filed against the co-accused who is similarly situated and against whom similar types of allegations are levelled, and similar type of order be passed by this Court and thereby this Court may quash and set aside the impugned orders passed by the learned court below.

7. On the other hand, learned APP has opposed this



petition and referred the reasoning recorded by the courts below while dismissing the discharge application as well as revision application filed by the petitioner and submitted that both the courts below have not committed any error while passing the impugned orders. Hence, this Court may not entertain the present petition. However, the learned APP is not in a position to dispute the fact that in the case of co-accused, namely, Bageshwari Sharan who was working as Assistant General Manager of the Bank, this Court has quashed and set aside the common order passed by the Sessions Court.

8. Having heard the learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that opposite party no.2 has filed private complaint before the concerned Magistrate Court against one Navin Kumar and two others, including the present petitioner. The said complaint is filed under Sections 419, 420, 120-B, 406, 409, 467, 468 and 471 of the Indian Penal Code. It is revealed that the allegations are levelled against the present petitioner and another bank official, i.e., original accused no.3, who was working as Assistant General Manager of the Bank that they have hatched up a conspiracy with the original accused no.1, Navin Kumar who is brother-in-law of the complainant and



thereby permitted the original accused no.1 to operate the account which was opened by the partnership firm. However, after the death of husband of the opposite party no.2, i.e., the complainant, the Bank officials have permitted the accused no.1 to deposit the cheques in the said account which was thereafter operated as a proprietorship concern. As the ingredients of the alleged offences are not made out against the petitioner, he filed discharge application under Section 245 of the Code before the learned Magistrate. However, the learned Magistrate, by the impugned order dated 05.09.2012, rejected the said application. It is relevant to note at this stage that the other two co-accused also preferred similar types of applications under Section 245 of the Code before the learned Magistrate and the learned Magistrate dismissed both the applications filed by the other two co-accused. Thereafter all the three accused filed Criminal Revision Nos.259 of 2012, 260 of 2012 and 261 of 2012 before the concerned Sessions Court. The Sessions Court, by way of impugned order dated 24.08.2013, rejected all the three revision applications filed by the three accused, including the present petitioner.

9. It would emerge from the record that co-accused Bageshwari Sharan, who had preferred Criminal Revision



No.260 of 2012, challenged the orders passed by the learned court below by filing Criminal Miscellaneous No.122 of 2014 before this Court and this Court vide order dated 13.10.2014 allowed the said petition and thereby quashed and set aside the proceedings filed by the original complainant against the said co-accused, copy of which is placed on record at page 29 of the compilation.

If the said order is carefully seen, it is revealed that while allowing the said petition, this Court has observed as under:

“In the facts and circumstances of the case, I have no manner of doubt where Bank Officials are concerned they cannot be roped in the present criminal prosecution on vicarious and vague allegation.

In view of such, the order dated 24.08.2013 passed by the Additional Sessions Judge, Muzaffarpur, in Cr. Revision No.260 of 2012 as also the order of non-discharge dated 05.09.2012 passed by the Judicial Magistrate, 1st Class, Muzaffarpur in Complaint Case No.645 of 2006 is hereby set aside in so far as the petitioner is concerned.

The application stands allowed.”

10. This Court has specifically observed that so far as Bank Officials are concerned, they cannot be roped in the present criminal prosecution on vicarious and vague allegation. It is not in dispute that the similar types of allegations are also



levelled against the present petitioner in the complaint filed by opposite party no.2, complainant.

11. In view of the aforesaid facts and circumstances of the present case, impugned orders dated 24.08.2013 and 05.09.2012, passed by learned Additional Sessions Judge, Muzaffarpur and learned Judicial Magistrate, 1st Class, Muzaffarpur in Criminal Revision No.259 of 2012 and allied matters and in Complaint Case No.645 of 2006 respectively are hereby quashed and set aside in so far as the petitioner is concerned.

12. The petition stands allowed.

(Vipul M. Pancholi, J.)

Sanjay/-

U		T	
---	--	---	--

