

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11239 of 2021

Arising Out of PS. Case No.-3326 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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1. AMIT MUKHERJEE S/o Lt. Nirmal Mukherjee Posted as Zonal Credit Head, ICICI Bank 31, Chowringhee Road, Hall and Anderson Building, 2nd Floor, P.S.-Park Street, District-Kolkata 7000156.
 2. Sabyasachi Basu S/o Lt. Santi Shekhar Bose Posted as Zonal Head Mortgage, ICICI Bank 31, Chowringhee Road, Hall and Anderson Building, 2nd Floor, P.S.-Shakespeare Sarani, District-Kolkata 700016.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Sanjeev Verma S/o Shri Devendra Nath Verma Resident of Krishna Niwas, Progressive Colony, P.S.-Kankarbagh, District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dayanand Singh
For the Opposite Party/s : Mr.A.G

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 01-08-2023 Heard the parties.

2. This application has been filed on behalf of the petitioner for quashing the order dated 14.02.2020 passed by learned Additional District Judge, XXI, Patna in Cr. Revision No. 660 of 2019.

3. As per the prosecution case, the complainant had taken home loan from the State Bank of India. After some days three persons came to the complainant who claimed themselves



to be the officials of the ICICI bank. They offered the complainant that if he will deposit the loan amount taken from the SBI in the account of ICICI Bank, he will be granted a loan of Rs. 75 lakh at very low interest and after being convinced the complainant did the same. After some days when the complainant went to the ICICI Bank Branch to enquire about the same, he came to know that only 13 lakh was approved in his favour as loan and upon further enquiry he was threatened to face dire consequences. After being cheated, the complainant moved to the Civil Court vide Complaint Case No. 3326 C of 2019 and the learned Magistrate took cognizance against the accused persons.

4. It has been submitted by the learned counsel for the petitioners that the petitioner No. 1 who is accused No. 06 in the complaint case was posted as National Credit Manager in Mumbai and present posted as Zonal Credit Head at Kolkata and petitioner No. 02 who is accused No. 7 in the complaint case was posted as Retail Credit Head and presently posted as Zonal Head Mortgages at Kolkata and they have no role whatsoever in connection with the incident and in the complaint case also the complainant has not whispered about any specific allegation levelled against the petitioners.



5. Learned counsel for the petitioners submits that it is the settled principle of law that civil disputes should not be given a colour of criminal case and both the learned ADJ, XXI, Patna and the learned ACJM III, Patna have taken cognizance against the petitioners in a mechanical manner without discussing the materials available on record.

6. Learned counsel for the petitioners submits that the root of the complaint case arises from a loan amount of Rs. 1,66,80,955/- which has been taken by the complainant from the ICICI bank and upon being defaulter of the same, the complainant lodged this false and fabricated case against the petitioners and other accused persons.

8. Learned counsel for the petitioners further submits that the company has not been made accused in the complaint case and therefore the company officials cannot be held vacariously liable in view of the law laid down by the Hon'ble Supreme Court in the case of ***R.Kalyani Vs. Janak C. Mehta*** 2009 (1) SCC 516.

9. Learned counsel for the petitioners further submits that this case has been instituted only to pressurize the senior officials of the bank.

10. It has further been submitted by the learned



counsel for the petitioners that the present is a malicious prosecution and the petitioners being employees of the bank are being prosecuted in the present case not in their personal capacity but because they have been working for the bank in question.

11. The petitioners have also relied upon the Judgment of *R.Kalyani Vs. Janak C. Mehta 2009 (1) SCC 516* in support of their submission that the complainant has not made the company as an accused in the present case and therefore the company officials cannot be held vicariously liable.

12. It has further been submitted that there is no allegation against the petitioners in the complaint.

13. Learned counsel for the O.P. No. 02 and learned APP for the State has opposed the application.

14. It has been submitted by the learned counsel for the O.P. No. 02 that from reading of the complaint as well as the evidence of the witnesses examined it will appear that there are materials available against the petitioner for taking cognizance.

15. The learned counsel for the O.P. No. 02 has further submitted that criminal offence is made out against the petitioners.

17. I have heard the submission of the parties.



18. It is an admitted fact that the complainant had taken loan from State Bank of India and thereafter, the loan was transferred to an account of ICICI Bank.

19. The petitioner No. 01 was National Credit Manager of ICICI Bank Limited in Mumbai and petitioner No. 02 was Zonal Credit Manager posted at Kolkata and from perusal of the materials it is clear that they have no role to play in the present case.

20. The loan of the complainant became NPA and for recovery of the loan amount the process of auction was initiated for recovery of the loan after the O.A. No. 82 of 2021 was filed in DRT, Patna which is pending and the bank has also filed four complaint cases against the borrower i.e. the complainant for dishonoring of four cheques.

21. In my opinion the present case filed by the borrower against the bank officials is nothing but an abuse of the process of the Court.

22. Such kind of malicious prosecution should not be allowed to continue otherwise the bankers will not be able to work and take decision in the loan matters.

23. Moreover, from reading of the complaint it also appears that there is not even a whisper of allegation against the



petitioners, though, the witnesses in their statement made during enquiry have said that they have seen the petitioner which seems to be false as the date of visit of petitioners is not mentioned.

24. Considering the aforesaid facts and also considering the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajanlal reported in 1992 SC 604* and the recent Judgment of the Hon'ble Supreme Court in the case of *Gagan Banga Vs. Samit Mandal and Anr* passed in *Contempt Petition (Civil) No. 774 of 2023 in Criminal Appeal No. 463 of 2022*, this application is allowed.

25. Accordingly, the order dated 14.02.2020 passed by learned Additional District Judge, XXI, Patna in Cr. Revision No. 660 of 2019 is hereby quashed with regard to the petitioners.

(Sandeep Kumar, J)

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