IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21728 of 2019

Arising Out of PS. Case No.-300 Year-2016 Thana- MUZFFARPUR COMPLAINT CASE District- Muzaffarpur

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JAYANT KUMAR Son of Sri Madho Singh Presently working as Sales Manager HDFC Bank Ltd., Branch- Choti Saraiyaganj, Jawaharlal Road, Muzaffarpur, Post - H.P.O., P.S.- Town, District- Muzaffarpur - 842001

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Ram Sahay Singh Son of Sri Gena Singh Resident of Anant Kamtaul, P.S.- Kudhani, District- Muzaffarpur

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Dayanand Singh
For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 08-08-2023 Heard learned counsel for petitioner and learned Additional Public Prosecutor.

2. This application is filed for quashing the impugned order dated 26.08.2016 passed by learned Judicial Magistrate 1st Class, Muzaffarpur in Complaint Case No. 300 of 2016 by which the learned Magistrate has taken cognizance under Section 420 of the Indian Penal Code, 1860 against the petitioner.

3. The Complainant had filed the present complaint case 300/2016 Trial No. 2680/2018 before the Learned Chief Judicial Magistrate, Muzaffarpur, making following allegations:

i) The Complainant is a Borrower of HDFC Bank Ltd.

And the Complainant alleges that the Complainant fell into the trap of Accused No.1 i.e. dealer who enticed the Complainant in purchasing an Eicher Tractor and also induced him in believing that the dealer shall manage loan from the Petitioner.

ii) It is further submitted by the learned counsel for the petitioner that the Complainant alleged that he fell into the trap of the dealer and on 07.11.2014, the tractor was delivered to the Complainant at his business complex, however no documents of the vehicle was delivered to the Complainant.

iii) It is next submitted by the learned counsel for the petitioner that the Complainant further alleges that the Accused No. 1 in the complaint assured the Complainant that the Accused No.1 shall manage all the loan affairs along with insurance of the vehicle in question and its registration. It is further contended by the Complainant that after sometime of the delivery of the vehicle, Rs. 3 Lakhs had been sanctioned by the Petitioner.

iv) It is next submitted that in the year 2014, the Complainant had been asked by the accused persons to deposit 5 blank cheques of Allahabad Bank of his saving account along with 36 cheques of Allahabad Bank of his current account with installment amount of Rs. 11,838/-, but later on all the cheques were returned to the Complainant except one which is still under possession of the Accused No.1.

v) It is further submitted by the learned counsel for the petitioner that the Complainant alleges that the vehicle in question met with an accident on 25.05.2015 causing lot of damages over its body and when the said incident was informed to the insurance company, the surveyor of the company asked for various documents. Since the Complainant was not in possession of any document, the Complainant was not entitled to receive any insurance amount.

vi) It is further submitted by the learned counsel for the petitioner that complainant further alleges that the vehicle in question was received by the Complainant on 07.11.2014 at his own business complex but reply of legal notice on behalf of Accused No.1 shown it on 10.01.2015. Further, the delivery challan 07.11.2014 was not received by the Complainant.

vii) It is further submitted that the Complainant got the tractor repaired at his own cost of Rs. 80,000/- and that such conduct of the Petitioner shows his intention to breach the trust reposed by the Complainant and to cheat the Complainant by inducing the Complainant to avail loan from the Bank and by not providing the documents of the vehicle as a result of which the vehicle is still lying idle in the premises of the Complainant.

viii) It is further alleged by Complainant that the Petitioner has committed offence u/s 409,420, 468, 469, 470 and 471 of IPC for forgery, criminal breach of trust and for committing fraud and cheating with the Complainant by inducing her to avail loan from the Bank but not providing a single chit of paper of the vehicle delivered to the Complainant and prayed for taking cognizance of offences and issue process against the accused persons.

ix) Thereafter, vide order dated 26.08.2016, the Learned Judicial Magistrate, First Class, Muzaffarpur took cognizance of such offence upon deposition by the witnesses and issued summons upon the Petitioner u/s 420 of IPC.

4. Learned counsel for the petitioner submits that the Petitioner has been arrayed as Accused No. 2 in the instant Complaint Case and presently he is working as Sales Manager, HDFC Bank Ltd., Muzaffarpur.

5. Learned counsel appearing on behalf of the petitioner has submitted that in the complaint case, no specific allegation of any overt act has been made against the Petitioner. All allegations are vague and very general in nature and are mainly against other accused persons, still cognizance under

Section 420 of Indian Penal Code has been taken by Learned Judicial Magistrate First Muzaffarpur, Patna in Complaint Case No. 300 of 2016 against the Petitioner, which is not only bad in the eyes of law but is abuse of the process of law. There is no material either in the complaint and even the evidence adduced on behalf of the Complainant does make out any case against the Petitioner u/s 420 of IPC.

6. Learned counsel for the opposite party no. 2 submits that the petitioner has cheated the opposite party no. 2 by not providing the necessary papers.

7. Learned Judicial Magistrate 1st Class, Muzaffarpur has ignored the fact that from the plain reading of the allegations made in the complaint case, it is apparent that the matter related to non-providing of the vehicle papers. The fact that the documents pertaining to the vehicle in question was to be furnished by the Accused No. 1 who is a dealer, to the complainant and not by the Bank, which merely renders financial services to the customers, has been ignored by the Learned Judicial Magistrate, 1st Class, Muzaffarpur.

8. Heard the submission of the parties.

9.From the reading of the complaint, no offence of cheating is made out against the petitioner. There is no allegation of fraudulent intention on the part of the petitioner since the beginning of the transaction and as such no offence of cheating as defined under Section 415 of Indian Penal Code be fastened against the petitioner. Further, the allegation of the Complainant that no document pertaining to the vehicle was furnished to him does not concern the petitioner as the same is the responsibility of the dealer who is an Accused No. 1 in the instant complaint case. Therefore, the impugned cognizance order dated 26.08.2016 is bad in the eyes of law and therefore fit to be quashed.

10. From reading of the complaint, it appears that no offence is made out against the petitioner whatever offence which is alleged may be madeout against the dealer and not the employee of the insurance company.

11. Considering the materials available or record, I find that the prosecution of the petitioner is abbuse of the process of this Court. Therefore, of the petitione is allowed.

12. Accordingly, the impugned order dated 26.08.2016 passed by learned Judicial Magistrate 1st Class, Muzaffarpur in Complaint Case No. 300 of 2016 is hereby quashed with respect to petitioner no. 1 and prosecution against the other accused persons shall continue.

13. The trial Court is directed to get the trial expedited with regard to other accused persons.

(Sandeep Kumar, J)

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