

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29427 of 2023

Arising Out of PS. Case No.-14687 Year-2022 Thana- PATNA COMPLAINT CASE District-
Patna

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1. SANJEEV KUMAR Son of Late Bhaw Nath Jha Assistant General Manager (HRD), State Bank of India, Local Head Office, West Gandhi Maidan, P.O.- Bankipore, P.S.- Gandhi Maidan, District - Patna, Bihar - 800001
 2. Vikas Kumar Son of Late Om Prakash Bhagat Regional Manager, State Bank of India, Regional Business Office, Purnea, Kala Bhavan, P.S.- SC/ST Thana, District - Purnea, Bihar - 854301

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bipin Kumar Singh Son of Late Kailash Prasad Singh Village and Post - Ra-hatpur, P.S.- Lakhmaniya, District - Begusarai, Bihar - 801503, Presently at Meera Sadan, Flat No. A/103, Near Gola Road, P.S.- Rupaspur, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Apurv Harsh, Adv Mr. Manu Tripurari, Adv Mr. Prashant Bhardwaj, Adv Mr. Sujit Kumar, Adv
For the Opposite Party/s:	Mr.Umesh Prasad Singh, Sr. Adv Mr. Vaibhav Veer Shankar Adv Mr. Sameer Sawarn Adv

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 12-12-2023

The present application has been filed for seeking quashing of the cognizance order dated 15.02.2023 passed by Judicial Magistrate 1st Class, Patna in Complaint Case No. 14687 (C) of 2022 whereby and where under the learned Judi-



cial Magistrate, 1st Class, Patna has taken cognizance under Section 465, 466/34 of IPC and 66, 43 of IT Act against the petitioners and had issued summons in complete contravention of the settled law.

2. Learned Senior Counsel appearing on behalf of the petitioners submits that the Informant/Opposite party No. 2 made a written complaint dated 08.12.2022 alleging *inter alia* as follows: -

a) The opposite party No.2 is attached with the Local Head Office at Gandhi Maidan, Patna on the post of Chief Manager in Transit Position.

b) The accused No. 1 is the Assistant General Manager (HR) at State Bank of India, L.H.O., Patna and Accused No. 2 is the Regional Manager, State Bank of India, Regional Business Office, Purnea, Kala Bhavan, P.S.- SC/ST Thana, District-Purnea.

c) The opposite Party No.2 has been complaining about the corrupt behavior of the accused with senior officials time to time. On receiving such information, the accused have modified and created new record of complainant's Biodata, Leave & Attendance in HRMS Digital Record.

d) In April, June to September 2022 Salary slip 2 estab-



lishment and in May 2022 Salary slip 3 establishment was manipulated.

e) In October, 2022 Sanjeev Kumar marked him absent by making changes in salary data authorize.

f) On 01.10.2022, there was forgery in the Career Development System Role and in HR during August 2022, where it was shown that he was working with stressed assets recovery branch, when he was not even posted in said branch.

g) The accused interfered in the system Role by falsely converting his official position by changing important data related to service record, thereby causing mental and economic loss.

h) He gave complaint to the local SHO and even after 19 days the case was not registered and therefore complainant emailed the complaint to the SSP and hence this complaint.

3. It is submitted that the Judicial Magistrate 1st Class, Patna Sadar has taken cognizance under Section 465, 466/34 of IPC and 66, 43 of IT Act vide order dated 15.02.2023 without applying the judicial mind and without following the due process of law and issued summons to the petitioners herein to face the rigors of the trial.

4. Learned Senior Counsel submitted that the Complaint



Case No. 14687 (C) of 2022 is a fraud being played by the Opposite Party No. 2 on the Petitioners by using the process of the Court.

5. He further submitted no such incident has ever happened as alleged by the Opposite Party No.2. The facts stated in Complaint Case No. 14687 (C) of 2022 is a false story. Further, the Petitioners submit that Opposite Party No. 2 was hell bent for being posted in Patna and now has filed this case to get revenge from the Petitioners, believing them to be responsible for his transfer as Chief Manager, Lead Bank, Purnea vide CMC Office order dated 28.06.2022.

6. Learned Senior Counsel also submitted that the Petitioner no. 1 is posted as Assistant General Manager (HR) at Local Head Office, Patna of the SBI since 26.05.2022 & the Petitioner no. 2 is posted as Regional Manager at Regional Business Office, Purnea of the SBI since 16.05.2022. The HRMS department is not under control of the two petitioners herein. The HRMS department is manned by an Assistant General Manager, SMGS-V level officer of the Bank. The Human Resource Management System is a portal to be accessed by Officer/employee of the Bank where the service data is maintained in digitalized form and is subject to updation from time to time by the Con-



troller/HRMS Department.

7. Learned Senior Counsel for the petitioners further submits that the Opposite Party No. 2 is a disgruntled officer who is in the habit of creating frivolous litigation and threatening the officers of the Bank. As a matter of fact, earlier he has filed multiple cases at various forums, unsuccessfully and now has instituted this complaint case to harass the petitioners. The earlier cases filed by Opposite Party no. 2 in the recent past are (i) CWJC No. 24147 of 2018 filed on 12.12.2018 (challenging earlier transfer order dated 18.08.2018) (ii) CWJC No. 7148 of 2019 filed on 27.03.2019 challenging his non-promotion (iii) Title Suit no. 340 of 2021 filed on 04.10.2021 (seeking claim/compensation of Rs. 1,05,58,480.00; (iv) CWJC No. 13629 of 2022 (v) CWJC No. 8083 of 2023 (Token) challenging the voluntary vacation of the Opposite Party No.2 by the State Bank of India for absence from the duty after providing a show cause. Also, the Opposite Party no. 02 had filed CWJC No. 19201 of 2021 on 01.11.2021 and had challenged the election process of SBI Officer's Association which was disposed of by judgment dated 21.12.2021 and thereafter the Opposite Party no. 2 has filed a title suit before the Civil Court, Patna seeking declaration of election of the Officers Association as illegal.



8. Learned Senior Counsel further submitted that the Opposite Party No. 2 has abandoned his job by absenting from duty since 30.06.2022 and order to this effect has been recorded and communicated to the opposite party No. 2 by the Appointing Authority vide letter no. HR/IR/2031 dated 15.12.2022 in terms of the SBI Officer's Service Rules. The Opposite party had not reported at his place of posting at Purnea pursuant to CMC Office order dated 28.06.2022 posting him as Chief Manager, Lead Bank and was absenting from duty. The Opposite party no. 02 challenged the CMC Officer order dated 28.06.2022 by filing writ being CWJC No. 13629 of 2022, which has recently been dismissed for non prosecution vide order dated 13.04.2023 by this Court.

9. He next submitted earlier also the petitioner had absented from duty from 21.08.2018 to 03.10.2019. The Cadre Management Department at Corporate Centre of the Defendant Bank vide Letter No. HR CM:7626 dated 18.08.2018 posted the O.P. No. 2 to Inspection and Audit Department, Hyderabad. He was relieved from the Patna Circle on 20.08.2018 and was supposed to join the IAD, Hyderabad but in clear defiance of the departmental order O.P. No. 2 went on unauthorized absence.

10. Learned Senior Counsel further submitted that the



O.P. No. 2 instead of joining at the transferred place of posting filed frivolous representations for the purpose of buying time. The IAD, Hyderabad also vide Letter dated 02.05.2019 had advised the O.P. No. 2 that after being relieved from Patna Circle in August 2018, he has been absent from duty and that in terms of Rule 40(3) of the State Bank of India Officers Service Rules, he is to report for duty and submit satisfactory explanation of his absence within 30 days from the date of receipt of letter, failing which it shall be deemed that O.P. No. 2 had voluntarily vacated his service amounting to voluntary resignation from service without giving requisite notice.

11. Learned Senior Counsel for the petitioners submitted that the Opposite Party No. 2 has filed this false complaint case no. 14687 (c) of 2022 as also Title Suit No. 340 of 2021.

12. He submitted that it will be pertinent to mention that against the said transfer by the Cadre Management Department at Corporate Centre of the Bank vide Letter No. HR:CM:7626 dated 18.08.2018 (which he alleges to be malafide); the writ filed by O.P. No. 2 and numbered as CWJC No. 24147 of 2018, after detailed hearing was dismissed vide judgment dated 22.08.2019.

13. It is also argued that the petitioners did not commit



any forgery or manipulation of service record or data as alleged. It is not in dispute that O.P. No. 2 was posted as Chief Manager at SAMB Patna/SARB Patna uptill 21.05.2022 and after closure of SAMB, Patna was repatriated to Patna Circle by Stressed Asset Management Vertical of the Bank vide Letter dated 21.05.2022. Upon repatriation to Patna Circle by SAM, he was required to report to Patna Circle (HR Department, LHO, Patna) for eventual posting by competent authority. It is necessary to highlight here that OP. No. 2 despite being relieved on 21.05.2022, reported to the HR department only on 30.05.2022 and was on unapproved absence from 23.05.2022 to 27.05.2022. On being posted by the Circle Management Committee of Patna Circle vide order dated 28.06.2022 as Chief Manager, Lead Bank, Purnea, the O.P. No. 2 did not join at Purnea, his place of posting on one pretext or the other. It is pertinent to mention that due to his abstention from joining his assignment as Chief Manager, Lead Bank, Purnea; the HRMS ID of the Opposite party no. 02 remained only at SAMB/SARB Patna & he continued to receive salary through HRMS till September 2022.

14. Thereafter the O.P. No. 2 filed an undated application before Chief General Manager, LHO, Patna for posting at Patna Center (received on 29.06.2022), which was turned down and



intimated vide email dated 20.07.2022 and he was directed to report to his new assignment immediately.

15. He also submitted that after the aforesaid application was turned down, with utter dismay the Opposite Party no. 02 responded with another excuse being that since he was not relieved he could not have undertaken his new assignment at Purnea to which the HR Department again vide emails thoroughly explained the context of CMC order being a composite order and accordingly he was advised to report to his place of posting and raise concern with respect to medical leave and absenteeism with his controller at Purnea. But despite clear and specific direction by the CMC and HR department in this regard, he neglected to pay any heed to the departmental order and remained on unauthorized leave.

16. Learned Senior Counsel next argued that the O.P. No. 2 filed a representation dated 19.09.22 insisting on relieving process, which was responded by the HR department on 26.09.22 clearly specifying that Opposite Party no. 02 has been relieved from the date of CMC order on 28.06.22 and should join his new assignment at the earliest.

17. Thereafter O.P. No. 2 made representation vide Letter dated 15.10.2022 to the highest authority at the Patna Circle



which was examined at the seniormost level and O.P. No. 2 was advised vide Letter dated 20.10.22 to report at the place of posting.

18. Learned Senior Counsel for the petitioners further submitted that the Opposite Party no. 2 got served a legal notice dated 01.11.2022 in the name of the petitioner no. 01 threatening him with filing criminal case for conspiracy which was responded vide reply dated 15.11.2022.

19. It is also submitted that the Opposite party no. 2 did not assume his duties as Chief Manager, Lead bank, Purnea and had abandoned his job by absenting from duty since 30.06.2022 and order to this effect has been recorded and communicated to the opposite party No. 2 by the Appointing Authority vide letter dated 15.12.2022 in terms of the SBI Officer's Service Rules.

20. The Opposite party no. 02 has been leveling personal attack on the petitioner no. 01 in communications made with the Bank, when in fact the petitioner no. 01 has only performed his assignment as Assistant General Manager (HR), LHO, Patna of the Bank without being vindictive towards the Opposite party no. 02.

21. He argued that the petitioners have no motive for acting in such manner as alleged in the complaint rather the O.P.



No. 2 who is a disgruntled employee trying to have choice posting in Patna and rejection of the same after due consideration by the department led to the malafide for such false implication by O.P. No. 2, just in order to harass the Petitioners.

22. Learned counsel for the petitioner has submitted the HRMS record of the Opposite Party no. 02 has only been updated by the HRMS department. As the O.P. No. 02 had not reported at his place of posting at Purnea, the status of the OP no. 02 was in transit and ID could not be transferred by SAMB/SARB vertical. Moreover, the OP no. 02 was receiving salary from the month of June 2022 onwards to which he was not entitled. His salary payment through HRMS was to be stopped as he was absenting from duty.

23. As the Opposite Party no. 02 did not assume his assignment as Chief Manager, Lead Bank, Purnea, the Petitioner no. 02 has only issued show cause to the Opposite party no. 02 to join duty within 30 days and to offer satisfactory explanation for the same vide letter dated 21.10.2022 in terms of Rule 40(3) of the State Bank of India Officers Service Rules.

24. He next submits that it is relevant to submit that the Opposite party no. 02 after being served notice of vacation from bank's service has been communicating on e-mails stating filing



of criminal cases against bank's Officials.

25. It is also submitted that the Petitioners were cooperative with the Opposite Party No.2 so that he could continue with his service in the Bank but his conduct as an officer of SBI was unbecoming.

26. He submits that there is no proof or evidence to substantiate the claim/allegations of Opposite Party No. 2 and this entire ruckus has been created to harass the Petitioners.

27. He argued that no witness has supported the case of the Opposite Parties nor any incriminating evidence is on record to prove the case of Opposite Party No. 2.

28. It is further submitted that the ingredients of Section 465, 466/34 of IPC and 66, 43 of IT Act which defines forgery with respect to public record and tampering/manipulation of data as referred under Section 43 of the IT Act is simply not made out as the HRMS record of an Officer/employee is always updated by the HRMS Departments/Controllers of the Officer/employee. As a matter of fact, after vacation from Bank's service, the HRMS record of Opposite party no. 02 has been updated and for excess salary received through HRMS from June 2022 onwards has been sought from Opposite Party no. 02.



29. It is also submitted that the bickering conduct of O.P. No. 2 with respect to his transfer outside Patna has been a contested issue for which he has been time and again filing frivolous cases, including but not limited to filing of CWJC No. 24147 of 2018 which after detailed hearing was dismissed vide judgment dated 22.08.2019. It is further pertinent to state that transfer is a policy decision and fastening criminal liability when O.P. No. 2 himself chose to be absent and not abide by the departmental order is a clear example of malafide. The same has been held as a ground for quashing such prosecution in the seven principles enumerated in the landmark case of State of *Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.

30. Learned Senior Counsel for the petitioners further submitted that even as per the complaint and the documents attached therein, no offence has been made out in the complaint and only on mere allegation of forgery in the software/HRMS ID this case has been proceeded with.

31. It is also submitted that the Petitioners, who are working as employees with State Bank of India and are presently posted at Patna and Purnea respectively are honest & diligent public servants and therefore the Magistrate could not have pro-



ceeded against them without obtaining sanction.

32. It is further submitted that the act of the petitioners being in due discharge of their official duty, the same cannot be constituted as personal liability, rather the action of the petitioners are protected by Section 197 of Cr.P.C. by which prior sanction is mandatorily required before taking cognizance of any offences including offence under Section 465, 466/34 of IPC and 66, 43 of IT Act, but the learned Judicial Magistrate 1st Class, has taken cognizance of the offence without obtaining prior sanction U/S.197 of Cr.P.C. against the petitioners and thereby, the proceeding against the petitioner is not maintainable in the eye of law.

33. The learned Senior Counsel appearing for the complainant- opposite party No. 2 has submitted that the present order taking cognizance cannot be quashed as the allegations levelled against the petitioners are serious in nature. He has further submitted that the defence of the petitioners cannot be seen at this stage. He has also submitted that the complainant after being harassed by the Bank has filed cases against the Bank Officials. Because of this, the present complaint cannot be disbelieved.

34. I have considered the submissions of the parties.



35. The petitioner No. 1 is Assistant General Manger (HR) at Patna and the petitioner No. 2 is the Regional Manager at Purnea and it has been submitted by them that the HRMS Department is not under their control but is manned by Assistant General Manager, SMGS-V level officer of the Bank.

36. The complainant has been fighting a number of litigations against the bank and its officials which has been detailed above by the petitioners and the complainant has been absenting himself from duty and has been on unauthorized leave after having been transferred to Hyderabad.

37. From the facts which have been argued on behalf of the petitioners, it appears that the present prosecution of the complainant against the petitioners has been filed with malafide intention to wreak vengeance against these petitioners. This kind of malafide prosecution should not be allowed to continue in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal* reported in **1992 Supp. (1) SCC 335** and, therefore, the present application is allowed.

38. Accordingly, the cognizance order dated 15.02.2023 passed by Judicial Magistrate 1st Class, Patna in Complaint Case No. 14687 (C) of 2022 whereby and whereunder the Judi-



cial Magistrate, 1st Class, Patna has taken cognizance under
Section 465/466/34 of the Indian Penal Code and Sections 66
and 43 of Information Technology Act against the petitioners is
hereby quashed.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.12.2023
Transmission Date	19.12.2023

