

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11656 of 2021

Arising Out of PS. Case No.-1899 Year-2016 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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1. KUMAR PRAKASH S/o Sri Binay Kumar Pathak presently working as Branch Manager, Chola mandalam Investment and Finance Company Ltd. and Resident of House no.7, Road No.1A, Shivpuri, Patna-800023, District-Patna.
 2. Bharat Sharma S/o Late Rameshwar Sharma presently working as Recovery Manager, Upper Branch at Chola mandalam Investment and Finance Company Ltd, and resident of Kadam Gali, Jagdev Nagar, Ara, Thana-Town, Pin-802302, District-Ara (Bhojpur).
 3. Ripu Sudan Dubey S/o Sri Niwas Dubey presently working as Junior Product Executive Upper at Chola mandalam Investment and Finance Company Ltd. and residing at Village-Bharasara, P.O-Kakila, P.S-Jagdishpur, District-Bhojpur, Pin-802158.
 4. Manish Singh S/o Rajendra Singh presently working as business Branch Manager at Chola mandalam Investment and Finance Company Ltd. and residing at Madanji Ka Hata, In front of Dr. Isha, Pakri Road, Ara, Thana-Town, District-Ara (Bhojpur), Pin-802301.
 5. Surajit Dutta S/o Sri Subodh Chandra Dutta presently working as Product Manager Refinance, Bihar at Chola mandalam Investment and Finance Company Ltd. at Grand Yunus Corporate Apartment, S.P. Verma Road, Second Floor, Patna-800001.
 6. Shashank Sahay S/o Sri Binod Kumar Credit Head, at Chola mandalam Investment and Finance Company Ltd. at Grand Yunus Corporate Apartment, S.P. Verma Road, Second Floor, Patna-800001.
 7. Sushant Kumar Singh S/o Sri Krishna Kumar Singh who is presently working as Credit Manager Head at Chola mandalam Investment and Finance Company Ltd. and residing at House of Sri amarjit Kumar Shiva Nagar, back of Beur Jail, P.S-Beur, District-Patna, Pin-800002.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Abu Amzad S/o Md. Gayasuddin Resident of Dharhara, P.S-Ara Town, District-Bhojpur.

... .. Opposite Party/s



Appearance :

For the Petitioner/s : Mr.Kuldeep Sahay

For the Opposite Party/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 06-07-2023 Heard the parties.

2. In view of the office notes dated 11.01.2023, it appears that opposite party no. 2 is avoiding appearance before this Court.

3. This application is filed for quashing of the cognizance order dated 23.01.2017 passed by the Learned ACJM IX of Ara, Bhojpur in Complaint Case No. 1899(C) of 2016 wherein cognizance has been taken under section 138 of Negotiable Instrument Act and order dated 27.05.2019 passed by the Learned Additional District and Sessions Judge VII, Ara in Criminal Revision application 98 of 2017 whereby the order dated 23.01.2017 was preferred to be revised.

4. The prosecution story is short is that the complainant Abu Amzad filed a complaint case before learned Chief Judicial Magistrate, Ara alleging that for the purpose of purchase of truck he contacted with M/s Chola Mandalam Investment and Finance Company Ltd where the accused named in complaint petition assured that if he will fulfill all the conditions than his loan will be sanctioned. Accordingly, he submitted the form in the company which were verified and as



security two blank cheques were taken by the company and Rs. 5,30,000/- was passed and vehicle was also insured on 26.09.2016 after deducting all the dues a cheque was issued in his name. When he deposited the said cheque in bank on 17.10.2016 than the said cheque was dishonored due to insufficient balance, again he deposited the cheque on 26.10.2016 but the same was again dishonored due to same reason. When he contacted the accused persons and asked reason for dishonor no plausible reason was given, then he sent a legal notice through advocate on 01.11.2016 but no satisfactory reply was given hence filed complaint.

5. He further submits that the complainant's brother namely Abu Anwar had purchased a vehicle TATA LPT 2515 bearing registration no. BR3G 3282 through finance from Shriram Transport Finance, Ara, Bhojpur. Later on, it was transferred to the complainant which is also evident from the screen Report/clearance issued.

6. He further submits that the statement made by the complainant is true to the extent that the complainant had applied for a loan under refinance of the vehicle and was granted the same. But the fact is that the complainant was already availing a loan facility from Shriram Transport Finance



against the same vehicle proposed for refinance before the Petitioner's employer company namely M/S Cholamandalam Investment and Finance Company Ltd. Later on, after being sanctioned the loan, the company issued cheque amounting Rs. 4,65,527/- in favour of the complainant as financed amount.

7. He further submits that the complainant, with an intention to cheat the Petitioner's company, not only concealed the fact that he was already availing a loan facility against the same vehicle but also showed that the vehicle is clear from any charge elsewhere, showed a fake NOC issued by Shriram Transport Finance and get a screen clearance from Transport Department, Government of Bihar.

8. He further submits that after releasing of cheque to the complainant, somehow, it came to knowledge to petitioner company that the screen report/Clearance was procured by way of submitting a false NOC which was not issued by Shriram Transport Finance Company Ltd.

9. He further submits that the release of amount even after knowing the facts which was concealed by the complainant which would have led to Non Performing Asset for M/S Cholamandalam Investment and Finance Company Ltd.

10. He further submits that none of accused have done



a single act which whispers any conspiracy or cheating with the complainant. It is only the complainant who approached the finance company, with intention to cheat the petitioner's company namely M/S Cholamandalam Investment and Finance Company Ltd.

11. He further submits that against the cognizance order dated 23.01.2017, passed by ACJM, IX, the petitioners had preferred a revision application before District and Session Judge, Ara vide Revision Petition no. 98 of 2017 and the Learned Additional District and Session Judge VII has been pleased to dismiss the petition vide order dated 27.05.2019.

12. He further submits that the instant case has been lodged by the complainant in mala-fide intension for wreck vengeance.

13. He further submits that from perusal of the order dated 23.01.2017 and 27.05.2019, it appears that the learned Court of Judicial Magistrate and Additional District and Session Judge VII, Ara has mechanically passed the aforesaid order without considering the materials available on the records and without applying its judicial mind.

14. It has been contended by the petitioners that impugned order has been passed in the teeth of the law laid



down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. And Another Vs. Special Judicial Magistrate (1998) 5 SCC 749*** and the prosecution of the petitioners is also malafide in view of the law laid down by the Hon'ble Supreme Court in the case of ***State of Haryana Vs. Bhajan lal, 1992 (1) SCC 355.***

15. The learned counsel for the petitioners further submits that in the case of commercial dispute, these kinds of malafide prosecution should not be entertained and they should be nipped at the bud.

16. The petitioners have also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Punjab National Bank. Vs. Surendra Prasad Sinha (1992) AIR 1815.***

17. Learned APP has supported the impugned order and has submitted that the prosecution of the petitioner cannot be allowed at the initial stage.

18. I have considered the submissions of the parties, it is the admitted position that the petitioners are the employee of M/s Cholamandalam Investment and Finance Company Ltd. and they have been made accused by the complainant in the complaint case who is borrower of M/s Cholamandalam Investment and Finance Company Ltd.

19. Moreover, the cognizance order which is non



reasoned cannot be sustained in the view of the law laid down by the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. And Another Vs. Special Judicial Magistrate (Supra)*.

20. The order dated 23.01.2017 passed by the Learned ACJM IX of Ara, Bhojpur in Complaint Case No. 1899(C) of 2016 is hereby quashed and the entire prosecution of all the accused in Complaint Case No. 1899(C) of 2016 including the petitioner is hereby quashed.

(Sandeep Kumar, J)

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