

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48149 of 2023

Arising Out of PS. Case No.-12187 Year-2022 Thana- PATNA COMPLAINT CASE District-
Patna

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S.N. SINHA @ SATISH NARAYAN SINHA SON OF SRI LAL NARAYAN
RESIDENT OF E 3 3 SADHNA PURI, ROAD NO. 6D, P.S.
GARDANIBAGH, DIST. PATNA

... .. Petitioner/s

Versus

1. The State of Bihar BIHAR
2. ARVIND KUMAR CHAUDHARY SON OF LATE DR. RAM BADAN
CHAUDHARY RESIDENT OF P/2, VIDYAPURI, KANKARBAGH, PS-
PATRAKAR NAGAR, DIST- PATNA

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan

For the Opposite Party/s : Mr.Arun Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

2 01-08-2023 Heard learned counsel for the petitioner, learned APP

for the State and the learned counsel for the O.P. No. 02 Shri

Uma Shankar Singh.

2. This application has been filed on behalf of the

petitioner for quashing the order dated 03.05.2023 passed by

learned ACJM-VIII, Patna in Complaint Case No. 12187 C of

2022.

3. Learned counsel for the O.P. No. 02 in presence of

the O.P. No. 02 has agreed that the prosecution of the petitioner

is illegal and therefore, it may be quashed.

4. I should have quashed the prosecution of the

petitioner on the basis of this statement only but seeing the



mental status of the O.P. No. 02, it is better to dispose of the case after examining the complaint.

5. The prosecution case in short is that the house of the complainant was auctioned by the Punjab National Bank in a fraudulent way for recovery of the bank dues.

6. Learned counsel for the petitioner submits that this case has been lodged against the petitioner because he has appeared as a counsel in the DRT and the name of the petitioner has not appeared anywhere in the complaint petition.

7. Learned counsel for the petitioner further submits that the complaint case has lodged to circumvent the process of auction sale for recovery of the dues of the bank which was taken as loan and a pure civil dispute has been given the colour of a criminal case.

8. Learned counsel for the petitioner also relies on the Judgment of Hon'ble Supreme Court in the case of *Vijay Kumar Bhai Vs. State of Bengal and Ors (2022) 7 SCC 124* in which the Hon'ble Apex Court has held that lodging of a criminal case for civil dispute is an abuse of the process of the Court.

9. Learned counsel for the petitioner further submits that the sub-ordinate Courts have issued summons mechanically



which is against the law laid down by the Hon'ble Apex Court as the trial Court has not discussed any material whatsoever on the basis on which the it has taken cognizance against the petitioner.

10. Learned counsel for the petitioner further submits that the property which was auctioned was entrusted to the Bank at the time of sanctioning of the loan amount through an agreement in which it has been mentioned that in case of default of payment of the loan amount, the bank is entitled to sale the property.

11. It is also relevant to mention here that on the same facts the complainant has also filed several complaint cases against other accused persons just to harass the accused persons.

12. From reading of the complaint and submission of the parties, it appears that the complainant is in the habit of filing cases against the bank officials, auction purchaser, the lawyer for the bank, the presiding officer of the bank and the presiding officer of the Debts Recovery Tribunal (D.R.T.).

13. These prosecutions have been initiated by the O.P. No. 02 only because he lost his case in D.R.T. Patna.

14. A borrower who loses his case in DRT, cannot be allowed to become a loose canon.



15. The Magistrate Aditya Kumar who has taken cognizance in the matter should have applied his mind before passing the order of cognizance. He should be cautious in future while dealing with such kind of frivolous complaint.

16. The Hon'ble Supreme Court in the case of ***Pepsi Food Ltd Vs. Special Judicial Magistrate*** reported in ***(1998) 5 SCC 749***. Paragraph No. 28 of the aforesaid judgment reads as follows:-

(28) Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

17. Though, the other co-accused against whom cognizance has been taken have not approached this Court but



this Court is of the *prima facie* view that in the interest of justice, this kind of malicious prosecution cannot be allowed to continue and this Court should not wait for filing of separate applications for quashing of prosecution of the other co-accused/s.

18. In view of the aforesaid facts, this application is allowed.

19. Accordingly, the order dated 03.05.2023 passed by learned ACJM-VIII, Patna in Complaint Case No. 12187 C of 2022 filed for the offence under Section 406 read with Section 34 of the Indian Penal Code, is hereby quashed.

20. Furthermore, the prosecution of other co-accused persons against whom cognizance has been taken namely Anjana Singh, Dr. Shipra Rai, Dr. Ajit Singh, Pratut Kumar Singh and S.K. Tiwari is also hereby quashed.

(Sandeep Kumar, J)

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