IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22963 of 2016

Arising Out of PS. Case No.-782 Year-2013 Thana- PATNA COMPLAINT CASE District- Patna

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1. Anupam Kumar Jha @ Anupam Kumar and Ors S/o Late Chandrama Ram, Bank Manager, Bandhan Bank, Earlier known as Bandhan Financial Services Pri Village- ChotkiNawada Near Bageswari Mandir, Post- GPO, P.S.- Kotabali, distt- Gaya, Pin- 823002.
2. Rajesh Kumar Maler alias Rajesh Malakar S/o Late Chandrama Ram, Cluster Team Leader, Bandhan Bank Earlier known as Bandhan Financial Service Village- ChotkiNawada Near Bageswari Mandir, Post- GPO, P.S.- Kotabali, distt- Gaya, Pin- 823002.
3. Bishwajit Kumar alias Bishwajit Sarkar S/o Sri Sushil Sarkar, Door Step Banking Officer, Bandhan Bank, Earlier known as Bandhan Financial S Village- South Salasala Bari, P.O. Chaparer Park, District and P.S. Alipur Duar, West Bengal.
4. Rajesh Kumar Yadav alias Rajesh Kumar S/o Shree Radhe Lal Gupta, Door Banking Officer, Bandhan Bank, Earlier known as Bandhan Financial Se At Anishabad, P.O. and P.S.- Anishabad, Town and district- Patna- 800001.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Vijay Paswan S/o Raghunandan Paswan Village- Dalisamchak, Post- Bhetgaon, P.s.- Barh, District- Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dayanand Singh
For the Opposite Party/s : Mr. Jharkhandi Upadhyay APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 05-05-2023 Service of notice on the Opposite Party No. 02 has been accepted to be valid.

Heard the parties.

This application has been filed on behalf of the petitioners for quashing the cognizance order dated 07.10.2015 passed by learned Judicial Magistrate, 1st Class, AM-II, Barh in

Complaint Case No. 782-C of 2013.

"The prosecution story in short is that wife of Complainant Mr. Vijay Paswan has opened an account in Bandhan Financial Services Private Limited and made her husband a nominee in that account. Thereafter, as per the terms of the micro loan availed by the borrower, the branch officials had asked her to deposit 45 premiums for a total amount of Rs. 19,125/- but the wife of the complainant only paid 35 premiums of Rs. 14,875/- in total till 7th of July, 2011 and on 3rd August 2011 she died. After the death of his wife the complainant alleges that the branch officials had stated that after the demise of the borrower, the complainant shall be eligible to claim Rs. 19125 and the interest thereon by way of death claim. The complainant reached the office in this regard but no one paid heed to his grievance."

Learned counsel for the petitioners submits that the petitioners are the employees of Bandhan Bank and the complainant has concealed the materials facts from the learned Magistrate. The actual fact is that under the Sristi Micro Loan Scheme, amount of Rs.17,000/- (Rupees Seventeen thousand only) was disbursed to Mrs. Kanchan Devi on 10.11.2010 who subscribed herself as a member of group punam and the complainant was made the nominee for the account as per guidelines of Circular No.11 (3)/10 dated 30 May 2010 of Bandhan Financial Services Pvt. Limited. It has been duly informed and agreed by the Borrower Mrs. Kanchan Devi (Wife of Complainant) that she will return the contractual amount in 45 monthly installments of Rs.425 per month. The Borrower died on 3rd August 2011 and prior to her death, the Borrower has deposited 35 premiums of Rs. 14, 875/- till July 2011.

It has further been submitted by the learned counsel for the petitioner that as per the circular No. 11(3)/10 dated "if a member or her spouse die during the tenure of Sristi and Suchana loan, loan outstanding would be waived off and the member shall not have to pay the outstanding amount" as per the then arrangement between Bandhan Bank and LIC. The account of Borrower was closed after giving waiver of future installments by Bandhan Bank and the dependents/legal heirs of Borrower were not required to make any further payment of the installments.

Learned counsel for the petitioners further submits that subsequently Bandhan Financial Services Pvt. Limited issued a Circular no. 31/10 dated 18.11.2010 which would govern the Suchana and Sristi micro loans which are disbursed with effect from 22.11.2010. The circular provides that in case the borrower dies, Bandhan Bank lodges the claim to LIC and receives the entire principal amount which is the Insurance amount from LIC and if the nominee settles the outstanding amount (if any) to Bandhan Bank, the Bank transfers the principal amount in favor of the nominee and in case nominee does not settle such outstanding amount, Bandhan Bank deducts such outstanding amount from the principal amount before transferring the principal amount to the nominee. The relevant portion of the circular covering the policy pertaining to settlement of deceased claims is during the tenure of loan, if the member dies, all documents related to her death to be submitted to LIC and only after LIC settles the claim, the nominee of the borrower would get back amount equal to the principal amount.

In his further submission learned counsel for the petitioners submits that in this case, the claim/allegation of the complainant that he is entitled for refund of amount deposited is incorrect and inapplicable in the light of disbursal date being 10.11.2010 and the second circular was only made applicable from 22.11.10 onwards. Since the present loan was disbursed on 10.11.2010 the circular No.11 (3)/10 dated 3rd May, 2010 was applicable in case of settlement of death claim. Moreover, the

Borrower had given her consent in the meeting of "group Punam" dated 12.05.2010 that, in an event of expiry of the borrower, the nominee can only claim the security amount (if any). There was no security amount taken from the Complainant during the disbursement of the micro loan and hence the Complainant cannot claim such security amount from Bandhan Bank.

It has further been submitted that there is no specific allegation against the petitioners. In the complaint, the statement of the complainant of SA and the statement of other witnesses and no offence is made out against the petitioners in view of the aforesaid submissions.

Learned APP for the State has opposed the application of the petitioners.

I have considered the submission of the parties.

The petitioners being employees of Bandhan Bank cannot be prosecuted vicariously 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***.

Moreover, there is no specific allegation against the petitioners and the present complaint has been filed against the petitioners with a *mala fide* intention.

Considering the aforesaid facts as well as also considering the law laid down by Hon'ble Supreme Court in the case of ***Punjab National Bank Vs. Surendra Prasad Sinha 1993 Supp (1) SCC 499*** and also in the case of ***State of Haryana Vs. Bhajanlal reported in 1992 SC 604,*** this application is allowed.

Accordingly, the order dated 07.10.2015 passed by learned Judicial Magistrate, 1st Class, AM-II, Barh in Complaint Case No. 782-C of 2013 is hereby quashed.

(Sandeep Kumar, J)

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