IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48937 of 2015

Arising Out of PS. Case No.-39 Year-2012 Thana- JAMALPUR District- Munger

==

1. Shiv Narayan Tanti, Son of Late Karu Tanti
2. Nishant Kumar Kundan @ Nishant Kumar, Son of Deo Narayan Tanti,
3. Deo Narayan Tanti, Son of Late Karu Tanti, all resident of Gopal Road, Bind Singh Gali, Tanti Tola Sultanganj, P.S. - Sultanganj, District - Bhagalpur.

... ... Petitioners

Versus

1. The State of Bihar
2. Gandharv Kumar Pathak, son of Late Nageshwar Pathak, resident of Kalai, P.S. Sangrampur, District - Munger.

... ... Opposite Parties

==

Appearance :

For the Petitioners	:	Mr. Pankaj Sinha, Advocate Mr. Raunak Kumar Singh, Advocate
For the State	:	Md. Fahimuddin, APP
For the O.P. No.2	:	Mr. Ambrish Kumar Jha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 20-09-2023 Heard learned counsel for the petitioners and learned counsel for the informant-O.P. No. 2 as also learned APP for the State.

2. The present application survives only in respect of petitioner nos. 1 and 2. Petitioner no. 3 has already withdrawn himself from this case and the same is recorded in this Court’s order dated 15.05.2017.

3. On perusal of the First Information Repor which has been lodged on the basis of a Complaint Case No. 76(C) of 2012 filed in the Court of learned Chief Judicial Magistrate, Munger that in between the year 1997 and 2002, the informant claims to have deposited a sum of Rs.2,50,000/- at the instance of accused no.1, namely, Deo Narayan Tanti in a private organization/ bank, namely, "Jamalpur Karkhana Karamchari Paropkar Sahyog Samitee". In paragraph '1' of the complaint, it is stated that on the inducement made by accused no. 1, the informant had gone to his office.

4. The only allegation against petitioner nos. 1 and 2, who are brother and son respectively of said accused no.1 is that they were also present there and they had shown the informant some documents and photocopy of the passbook and got opened the passbook of the informant. It is alleged that after the year 2002, when the informant was in need of money and asked for payment, the accused persons were taking one or another pretext and did not pay the amount. He alleges that in the year 2010, at the time of his retirement when he demanded the money, the accused persons refused to pay. It is further alleged that some other persons who are named in paragraph '5' have also been duped.

5. Learned counsel for the petitioners submits that petitioner no. 1 and petitioner no. 2 both have been roped in the present criminal proceeding only to put pressure upon accused no.1. Petitioner no. 1 is a Junior Engineer in Minor Irrigation Department and at the relevant time, he was posted at Phulwari

Bandh Pramandal, Rajauli (Nawada) and in Flood Control Sub Division Mokama Camp, Bakhtiarpur from 01.07.1996 to 31.05.2002 and from 01.06.2000 to 04.10.2003 respectively. So far as the petitioner no. 2 is concerned, he was only 14 years old at the relevant time when the informant had allegedly opened the account. He has brought on record the registration receipt issued by the Bihar School Examination Board showing his date of birth as 14.01.1983.

6. Learned counsel for the petitioners submits that from the FIR itself it would appear that the informant claims to have deposited the money in a private bank. The said bank has not been made an accused. Further in the First Information Report, there is no statement as to what were the roles of these petitioners in the said bank. Learned counsel submits that in several judicial pronouncements, the Hon'ble Apex Court has held that in such cases where the offence is alleged against a company, the company would be a necessary party and the role of each and every person who is implicated as an accused because of his connection with the said company is to be mentioned in the complaint petition. Reliance in this regard has been made on the judgment of the Hon'ble Supreme Court in the case of **Aneeta Hada vs. Godfather Travels and Tours Private Limited** reported in **(2008) 13 SCC 703**.

7. Learned counsel submits that even as notice was served upon the informant-O.P. No. 2 in this case, O.P. No. 2 has not come with any stand denying the date of birth of the petitioner no. 2, therefore, it is evident that petitioner no. 2 was a minor and hence, he was implicated in this case because he happens to be the son of accused no. 1, namely, Deo Narayan Tanti. It is submitted that in the case of co-accused, namely, Gayatri Devi and Kiran Devi, who were wife and daughter of accused no. 1 respectively, this Court has exercised its inherent power under Section 482 in Cr. Misc. No. 7536 of 2014 and quashed the criminal proceeding vide order dated 02.07.2015. The case of petitioner nos. 1 and 2 stands on similar footing.

8. Learned counsel for the informant-O.P. No. 2 has opposed this application. According to him, all the family members of Deo Narayan Tanti were involved in running the bank/cooperative society, however, learned counsel submits that he has no instruction to say as to what were the roles of these petitioners. There is also no denial that petitioner no. 2 was minor at the relevant time.

9. Having regard to the facts and circumstances and the materials available on the record, on finding that the First Information Report does not disclose any role of these petitioners in the alleged opening of the account by the informant-O.P. No. 2

in the year 1997 and further that there is no denial that petitioner no. 2 was a minor at the relevant time and petitioner no. 1 was a Government Servant posted away from Munger District, this Court finds that the case of the petitioner nos. 1 and 2 stands on similar footing with that of the co-accused Gayatri Devi and Kiran Devi in whose case this Court has interfered and quashed the criminal proceeding vide Cr. Misc. No. 7536 of 2014.

10. This Court also finds force in the submission of learned counsel for the petitioners that in absence of the bank/cooperative society as an accused and there being no averment in the FIR with regard to the role of these petitioners in the said bank/society, this is a fit case in which the order taking cognizance is required to be set aside.

11. Accordingly, this Court sets aside the impugned order dated 02.08.2013 taking cognizance and issuance of summons as regards petitioner nos. 1 and 2 and quashes the criminal proceeding against them. The proceeding shall continue against accused no.1 in accordance with law.

12. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

U		T	