

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1766 of 2019

Arising Out of PS. Case No.-187 Year-2019 Thana- GUTHANI District- Siwan

RAJESH KUMAR @ RAJESH PRASAD Son of Late Gulab Chand Gupta @ Gulab Chand Prasad Gupta Resident of Village - Main Bazar, Guthani, P.O. and P.S.- Guthani, Distt.- Siwan, At present resident at Flat No.301 B, Sri Ram Kunj Apartment Road No.4, Mahesh Nagar, P.S.- P.P.Colony, Town, Distt.- Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH PRINCIPAL SECRETARY, HOME DEPTT. GOVT. OF BIHAR, PATNA Bihar
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna. Bihar
3. The District Magistrate, Siwan. Bihar
4. The District Cooperative Officer, Siwan Bihar
5. The Block Cooperative Officer Bihar
6. The Senior Superintendent of Police, Siwan. Bihar
7. The S.H.O. guthani Police Station, Siwan. Bihar
8. Vinod Kumar Singh Son of Sri Ram Naresh Prasad Resident of Village - Jahangirpur, P.S.- Sarmera, Distt.- Nalanda at Present Co-operative Information Officer, Guthani, Distt.- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Prabhat Kumar Verma

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 01-05-2023 Heard learned counsel for the parties.

This application has been filed for quashing the
F.I.R. of Guthani P.S. Case No. 187 of 2019 dated 18.11.2019
registered for the offences under Section 409 of the Indian Penal
Code.

The prosecution story in short is given



hereinbelow:-

The Informant Vinod Kumar Singh, Co- operative Information Officer, Guthani lodged a written report in light of the Letter No. 1465 dated 16-10-2019, Letter No. 1604 dated 07-11-2019 and Letter No. 1634 dated 15-11-2019 alleging therein that the petitioner took a loan of Rs. 4,96,800/- from the Siwan Central Co-operative Bank Limited, Siwan but in spite of direction of the District Co-operative Officer, Siwan and by the undersigned the petitioner did not pay the loan amount.

The following order was passed on 29.01.2020:-

Learned counsel for the petitioner has submitted with reference to the allegations made in the letter dated 18.11.2019 issued under the signature of the Co-operative Extension Officer, Ghutani which is the basis of lodging the FIR that on a bare reading of the same it would appear that the FIR has been lodged by simply alleging that the petitioner is unable to refund his loan amount.

It is submitted that lodgment of a criminal case and initiation of prosecution in case of default of a loan repayment without there being any allegation of fraud or cheating of any nature and kind is only an abuse of the executive power of the Government Officer.

Learned counsel submits that the wheats purchased by the Vayapar Mandal were kept in the godown which was taken on rent and the said godown was subject matter of a recovery proceeding before the Debts Recovery Tribunal and in the said proceeding the godown together with the wheats kept therein were taken possession of



by the Recovery Officer. It is his submission that whatever be the consequence of the said taking over of the possession, in any case it is not more than a case of failure of the petitioner to refund the loan.

None appears on behalf of the State to assist this Court. In several cases taken up today, no assistance has been rendered on behalf of the State and this fact has to be taken note of by the learned Advocate General in order to take appropriate remedial measures.

Let this matter be listed after two weeks to enable the State to file a counter affidavit.

In the meantime, let notice be issued to respondent no.8 through both by ordinary process as well as under registered cover with A/D for which requisites etc. must be filed within one week, failing which this application shall stand rejected without further reference to a Bench.

List this matter on 17th February, 2020 under the same heading retaining its position.

The counter affidavit has been filed by the State.

The F.I.R. was filed by the informant as a Government servant, there is no need of personal service of notice upon him.

From reading of the F.I.R. it appears that for recovery of the loan amount, the present case has been registered.

In the opinion of this Court, the recovery of loan amount is a civil dispute and no offence is made out



against the petitioner.

The F.I.R. of Guthani P.S. Case No. 187 of 2019 is
hereby quashed.

(Sandeep Kumar, J)

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