

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46081 of 2015

Arising Out of PS. Case No.-718 Year-2011 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Rajan Kumar Son of Late Kamla Prasad Singh, Resident of Village - Muraura, Police Station - Biharsarif, District - Nalanda at present posted as Branch manager, Ekangarsarai Nalanda Central Co-operative Bank Ltd., Biharsarif, Naland.
 2. Shashi Bhushan Kumar, Son of Late Nathuni Raut, Resident of Village - Sakra Faridpur, Police Station - Sakra, District - Muzaffarpur, the then managing Director, Nalanda Central Co-operative Bank Ltd. Biharsarif, Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sanjay Prasad, Son of Late Brahmadeo Mahto, Resident of Village - Ongari, Police Station - Ongari, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Uday Chand Prasad, Advocate Mr. Manoj Kumar, Advocate Ms. Pooja Praser, Advocate
For the Opposite Party/s :		Mr. Tarun Prasad Mandal, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2024

1. Heard learned counsel appearing on behalf of
the parties.

2. At the outset, it would be appropriate to
mention that petitioner no. 1, namely, Rajan Kumar died



during the pendency of present application, where his name was deleted vide order dated 26.07.2023 of this Court, and as such, now the present application survives only against petitioner no. 2, namely, Shashi Bhushan Kumar.

3. The present application has been filed for quashing the order dated 28.11.2014 passed by learned Judicial Magistrate, 1st Class, Hilsa, Nalanda, in Complaint Case No. 718(C) of 2011 where charges were framed by the learned Jurisdictional Magistrate for the offences under sections 323/34, 504/34, 379/34, 406/34 of the Indian Penal Code, where cognizance was also taken for aforesaid offences vide order dated 01.02.2012.

4. As per the case of prosecution, one Sanjay Prasad, the complainant, filed a Complaint Case No. 718(C) of 2011 alleging therein that he was the Chairman of PACS, Ongari, District- Nalanda, and when he visited Central Co-operative Bank Ltd. of



Ekangarsarai Branch, for preparing a Bank Draft for Rs. 50,000/- and handed over the cash of Rs. 5000/-with Form to Branch Manager Rajan Kumar, in the meantime, Managing Director/petitioner Shashi Bhushan Kumar came in the Bank and refused to prepare the same. Dispute appears arises as petitioner refused to prepare Kisan Credit Card in favour of opposite party no. 2/complainant from his branch. On protest by complainant, petitioner started abusing to the complainant and assaulted him also, where witnesses of complaint case saved him and brought outside. Cash of Rs. 5000/- and form were refused to return to opposite party no. 2/complainant by petitioner.

5. It is submitted by learned counsel that no *prima facie* case, for which the cognizance was taken by learned trial court is made out against petitioner from the bare perusal of the complaint petition on its face. It is submitted that the petitioners visited Central Cooperative Bank Ltd., Ekangarsarai, District Nalanda



for preparing bank draft of Rs. 50,000/-, where occurrence is alleged to be taken place. It is pointed out that the thrust of allegation as to take away cash and also of assaulting is available against petitioner no. 1, who is now dead, where the implication of this petitioner is appearing for the reason that he is the Managing Director of said cooperative bank. It is submitted by learned counsel that on very next day of the occurrence, the petitioner visited again in said co-operative bank and deposited cash of Rs. 99,500/- and also withdraw the cash of Rs. 30,090/-, where no problem was faced by him while during bank business, despite of presence of the petitioner.

6. Heard learned APP in-charge for the State. Opposite party no. 2 remains un-represented despite of the service of notice.

7. It would be apposite to quote the provision of Sections 379 and 406 of the Indian Penal Code, which reads as under:-



"379 Punishment for theft.

-Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

"406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

8. It would be further apposite to re-produce para 102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.,*** reported in ***1992 Supp (1) Supreme Court Cases 335,*** which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to



give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a



criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In view of aforesaid factual and legal discussions, it appears that the petitioner, namely, Shashi Bhushan Kumar was present in cooperative bank in capacity of Managing Director of the Co-operative Bank, where the thrust of allegation is available against co-accused Rajan Kumar, who is now dead. It further appears from perusal of complaint on its face that no *prima facie* case appears to be made under Sections 379 and 406 of the Indian Penal Code against petitioner, where implication appears out of ulterior motive and to settle the personal score. The case of petitioner is covered under guideline no. 7 of Bhajan Lal's Case



(supra).

10. In view of aforesaid, the cognizance order dated 28.11.2014 passed by learned Judicial Magistrate, 1st Class, Hilsa, Nalanda, in Complaint Case No. 718(C) of 2011 and all its consequential proceedings qua petitioner is hereby quashed and set aside.

11. Accordingly, this application stands allowed.

12. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2024
Transmission Date	06.03.2024

