IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8664 of 2016

Arising Out of PS. Case No.-2094 Year-2011 Thana- BEGUSARAI COMPLAINT CASE District- Begusarai

==

Md. Aqubal Alam @ Md. Alam Son of late Md. Dabiruddin resident of Village Sahebganj Po Champah Nagar Police Station University thana , Bhagalpur ward no. 10, District Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar

2. Nafis Ahmad S/O Late Sayeed Ahmad Resident Of Ward No. 32, Begusarai, Ps. Begusarai, Dist. Begusarai.

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
	:	Ms. Aastha Ananya, Advocate
For the Opposite Party/s	:	Mr. Arun Kumar Pandey, APP

==

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-03-2024

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 06.05.2015 passed in Complaint Case No. 2094C of 2011, where learned Judicial Magistrate, 1st Class,

Begusarai took cognizance for the offence punishable under Sections 420, 409 and 120 (B) of the Indian Penal Code against the petitioner.

3. Despite of service O.P. No. 2 remains unrepresented.

4. From the crux of complaint petition it appears that complainant approached the Branch Manager of the United Bank of India, Begusarai Branch for sanctioning of loan to start a business and had visited the bank with his son Nafish Ahmad and Babu Saheb. The accused no.1 Branch Manager, had assured the complainant that the loan will be sanctioned to him and directed him to submit document of land for mortgaging the same by way of security. The complainant in good faith handed over the documents of his land to accused no.1 Branch Manager. The accused no.1 made the complainant to sign on several documents and the complainant put his signature believing that his loan is being sanctioned by the accused no.1. The complainant made several efforts for the release of the loan amount and the said loan amount credited in his account but no information in this regard was not given to him, as to whether loan was sanctioned or not. The complainant was under an impression that his loan documents were being processed and

will get the loan amount but was surprised when he received a demand notice dated 30.08.2010 issued by accused no.2, whereby an amount of Rs.36,96,736.61/- was directed to be deposited, as the borrower M/s. Jaya Pharma has failed to paid loan. The complainant had not kept his document of land for availing loan facility in favour of accused no.3. Infact, the complainant does not know accused no.3 and never met him. Thus accused no.1 and 2 in collusion with accused no.3 had kept the document of the complainant as collateral security for loan availed by accused no.3 and made the complainant equally liable for the said amount, which was not taken by the complainant nor he had mortgaged the said document for availing the loan facility by accused no.3. The complainant had been cheated as the accused persons under false promise and with criminal intention for wrongful gain had utilized the document for sanctioning loan fraudulently to accused no.3. Thus under conspiracy the complainant has been put to wrongful loss and the entire amount has been misappropriated. The address and father name of the complainant is wrongly furnished in the demand notice. The complainant further alleged that loan was sanctioned to a fake person. The land of the complainant is being fraudulently seized by the bank and the same will be attached and auctioned for recovery of said amount. Therefore, the allegation of cheating, fraud and criminal conspiracy was committed by accused/petitioner.

5. Learned counsel appearing on behalf of petitioner submitted that complainant/O.P. No. 2 namely Syed Ahmad Khan was mortgager and the guarantor for the obtaining the loan in favor of M/s. Jaya Pharma, who approached United Bank of India, Begusarai Branch, where petitioner was alleged to be posted as Branch Manager. It is submitted that from the statement of complainant being inquiry witness, it appears that occurrence is of the year 2007, when this petitioner was not posted as Branch Manager of the United Bank of India at Begusarai Branch rather he was posted as Incharge Branch Manager between 29.04.2008 to 26.06.2009. Thereafter he was transferred to the Cooch Behar Branch, West Bengal Branch. It is submitted that when M/s. Jaya Pharma failed to pay the loan in time being a guarantor and mortgager, having co-extensive liability proceeding under 13 (3) read with 13 (3) of the SARFAESI Act, 2002 was initiated against O.P. No. 2 alongwith M/s. Jaya Pharma for recovery of loan, which was for sum of Rs. 36,96,736.61 and just to circumvent and pressurize the bank and to check proceedings under SARFAESI Act, present

complaint was filed arraying petitioner as an accused. It is submitted that petitioner was not implicated by name rather by designation, which even as per the cognizance order appears of year 2007 when petitioner was not posted in capacity of Branch Manager with the United Bank of India, Begusarai Branch. It is submitted that in aforesaid factual background no, *prima facie*, case under Sections 409, 420 and 120 B of the IPC appears to be made against petitioner and as such cognizance order dated 06.05.2015 is fit to be quashed.

6. It would be apposite at this stage to reproduce Section 409 and 420 of the IPC for the sake of convenience:-

> **409. Criminal breach of trust by public servant, or by banker, merchant or agent.**—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent,
> commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> **420. Cheating and dishonestly inducing**

delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

7. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others 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."

8. In view of aforesaid factual and legal discussions, it appears that the occurrence is of the year 2007, where petitioner was not posted as Branch Manager of the United Bank of India, Begusarai Branch. He was Incharge Bank Manager for the period of 29.04.2008 to 26.06.2009. Thereafter he was transferred to Cooch Behar Branch, West Bengal. It also appears that present complaint petition was filed only with an ulterior motive as to pressurize bank and petitioner and check the proceedings initiated under SARFAESI Act, which is pending against O.P. No. 2 and initiated in terms of order dated 30.08.2010 as issued by United Bank of India (annexure 3 of the petition). The implication of petitioner only appears for the reason that he was Incharge Manager for a subsequent period, when alleged transaction took place with the bank. Accordingly no, *prima facie*, case as alleged under Section 409 and 420 is made out against petitioner and therefore impugned order of cognizance dated 06.05.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 2094C of 2011, pending before learned Judicial Magistrate, 1st Class, Begusarai is hereby quashed and set aside.

9. The application stands allowed.

10. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	