IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51678 of 2018

Arising Out of PS. Case No.-1823 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

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1. Rahul Pandey S/o Diwakar Pandey, Chief Manager, Dena Bank, Boring Road Branch, P.S.- S.K. Puri, District- Patna at present posted as Chief Manager, Lakshmi Nagar Branch, New Delhi.
2. Mayank Kumar, S/o Ramashankar Prasad, Senior Manager, Dena Bank, Zonal Office, Kankarbagh Main Road, P.S.- Kankarbagh, District- Patna, at present posted at Petoda Branch, Mehsana, Gujarat.
3. Annasahaeb Devgouda Patil S/o Shri Deva Gouda Mala Gouda Patil, Zonal Manager now retired, Dena Bank, Zonal Office, Kankarbagh Main Road, P.S.- Kankarbagh, District- Patna.
4. Rishi Prasad @ Rishi Kumar S/o Shri RC Singh Manager Legal, Dena Bank, Zonal Office, Kankarbagh Main Road, P.S.- Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Bindu Devi W/o Sri Anil Kumar Singh, resident of Rajapur, Mainpura, P.S.- Patliputra, District- Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Shivendra Kumar Roy, Advocate
For the Opposite Party/s : Mr. Ravindra Kumar , Advocate
Mr. Sandeep Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
Date : 15-05-2024

1. The present application has been filed for quashing the order of cognizance dated: 07.12.2017 passed by learned A.C.J.M., Patna in Complaint Case No. 1823(C) of 2016 whereby cognizance under Section 354 of the I.P.C. has been taken against the petitioners.

2. The allegation in the complaint in brief is that the complainant claimed herself as a housewife and the accused

persons are the Officers working in the Dena Bank (for brevity "the Bank"). It has been alleged that on 01.06.2016 the complainant visited Boring Road Branch of the Bank in order to enquire about loan from the Bank, which the complainant needed for business purpose as stated in the complaint petition. After arriving at the Bank, the complainant / Opposite Party No. 2 met the petitioner no. 1 but instead of giving attention on the requirements of the complainant, the accused no. 1 started staring at the complainant in an inappropriate manner and asked the complainant to come to Zonal Office. The complainant visited the Zonal Office of the Bank on the same day i.e. on 01.06.2016. The petitioner no. 1 then introduced the complainant with the petitioner no. 2 and other accused persons over there. The complainant expressed her desire to get loan for business purpose. Thereafter, the petitioners / accused persons took her before the petitioner no. 3. The other accused persons left the complainant in the chamber of the petitioner no. 3. The petitioner nos. 2 & 3 touched the shoulder of the complainant and started talking irrelevant things with the complainant and also made indecent demand. When the complainant tried to leave the chamber, the petitioner no. 3 put his hand around her waist with bad intention and the petitioner no. 2 also placed hand on the shoulder of the complainant. It has also been alleged that the petitioner no. 1 asked the complainant to come in a hotel which was very shocking to the complainant.

3.The learned Magistrate after examining the complainant on S.A. with four witnesses, took cognizance against the petitioners under Section 354 of the I.P.C. *vide* the impugned order dated 07.12.2017.

4. Mr. Shivendra Roy, learned counsel for the petitioners argued that the present complaint has been filed in abuse of the process of the court in order to harass the petitioners who are the high officials of the Bank. According to him the complaint has been filed by way of proxy litigation at the behest of some disgruntled borrowers, who might have been refused loan by the accused persons. The complainant is not known to the accused persons and she never visited the Bank for loan. She has been set up by some other persons.

5. Referring to the complaint as well as the S.A. of the complainant, learned counsel submits that in the complaint she has stated that she visited the Bank for grant of loan for her business purpose but in her S.A. she has said that she needed the loan for the purpose of education of her children who are Intermediate students. There is contradiction in the statement of

the complainant made in the complaint and the S.A. The complaint has been lodged on the basis of concocted story with malicious intention to harass the petitioners. This is nothing but abuse of the process of law.

6. Learned counsel also contended that as per the complaint, she (complainant) visited the Bank in busy hours of business at about 12:00 in the afternoon. The possibility that petitioners would indulge in such activities during busy hour of the bank is highly improbable. The learned Magistrate has taken cognizance without application of mind in a mechanical manner. To support his argument he relied upon the judgment of the Hon'ble Supreme Court reported in AIR 2010 SC 201 (M.N. Ojha & Ors Vs. Alok Kumar Srivastav & Ors.) and one another judgment of the Calcutta High Court passed in CRR 426 of 2020 (Ms. Tanisha Chanda & Ors. Vs The State of West Bengal & Anr.).

7. On the other hand, Mr. Ravindra Kumar, learned counsel assisted by Mr. Sandeep Kumar Pandey, learned counsel appearing for the Opposite Party No. 2 argued that the learned Magistrate has taken cognizance after examining the complainant on S.A. and four witnesses. The Magistrate has found *prima facie* case against the accused persons and has

issued summons to them to face trial.

8. I have heard learned counsel for the parties and have perused the complaint as well as the impugned order taking cognizance. Upon reading of the complaint on its face value it appears that the complaint has been filed on the basis of concocted story full of absurdity inasmuch as the accused persons being high officials of the Bank can not commit such kind of offence in the busy working hours of the Bank. Further, after reading between the lines, this Court comes to the conclusion that the present complaint is in the nature of proxy litigation at the behest of some other dissatisfied borrower of the Bank. The complaint appears to be malicious with an intent to harass the petitioners, who were discharging their official duties being public servants.

9. The Hon'ble Supreme Court in M.N. Ojha Case (Supra) has held that interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in public interest. But at the same time the High

Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no fair -minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

10. The consequence of event in the present case and the contradiction in the complaint and the S.A. of the complainant suggests that criminal proceeding has been maliciously instituted with an ulterior motive at the behest of some other persons. The complainant appears to have been set up by some other dissatisfied borrower. The complaint was lodged in order to harass public servants from discharging their official duty without fear and favour.

11. In the backdrop of the aforesaid discussion, I come to the conclusion that it is a case in which this Court should exercise its jurisdiction under Section 482 of the Code of Criminal Procedure in order to prevent the abuse of the process

of the court and in order to secure substantial justice for the petitioners.

12. In the result, this application is allowed.

13. The order taking cognizance dated 07.12.2017 passed in Complaint Case No. 1823(C) of 2016 and the entire proceeding are set aside.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21-5-2024
Transmission Date	21-5-2024