IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38949 of 2015

Arising Out of PS. Case No.-120 Year-2010 Thana- SALAKHUA District- Saharsa

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Md. Aquil Ahmad @ Md. Akil S/o Late Abdul Khaliqu Resident of Village Sakra Faridpur, P.S. Sakra, District Muzaffarpur.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate
Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr.Awdhesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 11-03-2024

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

2. The present application has been filed for quashing the order dated 05.12.2014 passed by learned Chief Judicial Magistrate, Saharsa, in connection with Salkhua P.S. Case No. 120 of 2010, where cognizance was taken for the offences under sections 406, 409, 420/34 of the Indian Penal Code, in connection with G.R. No. 1007 of 2010 arising out of Salkhua P.S. Case No. 120 of 2010.

3. Prosecution case in brief is that B.D.O. of

Salakhua Block lodged a written report addressing to officer in-charge of Salkhua P.S. with respect to defalcation of money of Indira Awas Yojna, stating therein inter alia that for the aforesaid defalcation a F.I.R. to be lodged against the employees, who were working in the Block, namely, Md. Noor Alam, Assistant Indira Awas Yojna, Sri Khusi Lal Sah the Panchayat Secretary, Sri Ajay Kumar, Block Welfare Officer and intermediary, namely Sri Arvind Yadav of village Kopariya and then Branch Manager U.B.I. (United Bank of India) Gospur Md. Aquil and in support thereof he had enclosed the Photo copy of letter of District Magistrate, Saharsa, dated 11.06.2010.

4. That on the basis of aforesaid written report Salkhua Police lodged a formal First Information Report (FIR) and registered a case as Salkhua P.S. Case No. 120 of 2010 dated 15.06.2010 for the offence under Sections 406, 409/34 of the Indian Penal Code.

5. It is submitted by learned counsel appearing

for the petitioner that petitioner arrayed as an accused in present case only for the reason that he was the Bank Manager of United Bank of India, Gospur Branch, Saharsa, Bihar, where account related with Indira Awas Yojna was under operation. It is submitted that allegation regarding cheating is specifically available against the local elected representative. While arguing the matter, learned counsel referred Annexure-2 of the present petition, which is certificate issued by Manager of UBI, Gouspur Branch dated 29.11.2013 stating thereof that petitioner was relieved on 21.01.2010 as a Manager of Gouspur Branch and in place of him one Mr. Hari Nandan Rajak joined as successor Branch Manager. It is submitted that from the perusal of report dated 04.06.2010, which is the part of FIR itself, it appears that occurrence mainly related with transaction, which alleged to be taken place on 18,19 and 21.04.2010, where first time the aforesaid transaction was came into knowledge of informant on 22.01.2010. It is further pointed out that an amount of Rs. 15000/- was alleged to be withdrawn on 9th of April, 2010 which was deposited again on 19th April 2010. While summarizing argument, it is submitted that the entire alleged transaction took place when petitioner was not the Branch Manager, and as such, the present case/proceeding *prima facie* appears absurd against this petitioner and would only amount to misusing process of court of law, only to harass the petitioner.

6. Learned APP while opposing the petition fairly conceded that as per Annexure-2, petitioner was relieved on 20.01.2010 as Branch Manager from Gouspur Branch of Saharsa, Bihar.

7. It would be 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."

8. In view of aforesaid factual and legal submission, as petitioner not appears to be posted as Branch Manager of Gouspur Branch of UBI, Saharsa on the alleged date of occurrence as raised through present FIR, accordingly, the impugned order of cognizance dated 05.12.2014 is appearing *prima facie* not

constituted any offence as alleged, the case of petitioner appears to be covered under guidelines as available under (1) (5) and (7) of the guidelines as available out of ***Bhajan Lal's Case (supra).***

9. Accordingly, impugned order of cognizance dated 05.12.2014 passed by learned Chief Judicial Magistrate, Saharsa, is hereby set aside and quashed *qua* petitioner with all its consequential proceedings.

10. 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
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