

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55686 of 2023**

Arising Out of PS. Case No.-933 Year-2019 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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BIPIN KUMAR TIWARI @ BIPIN TIWARI S/O PRABHUNATH TIWARI
R/O 18 NO, PANDITPURA, KABIRPUR, PS. MUFASSIL, SIWAN,
BIHAR-841243

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR BIHAR
2. MOSMAT ASMITA DEVI W/O LATE MANOJ KUMAR R/O VILLAGE-
JALAYA, P.O.- PASTPAR, O.P. PATARGHAT, PS. SAURBAZAAR, DIST.
SAHARSA

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh Mr. Dhananjay Kashyap
For the Opposite Party/s	:	Mr. Jai Narain Thakur
For the State	:	Mr. Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 25-07-2024

Heard the parties.

2. The present application has been filed on behalf of the petitioner for quashing the order dated 17.02.2020 passed by the learned Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 933 of 2019 and also for quashing the order dated 29.03.2023 passed by the learned Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 933 of 2019 by which the



NBW has been issued against the petitioner.

3. As per the prosecution case, the husband of the complainant has taken a loan from the Cholamandalam Finance Company in order to purchase a Tractor. It is alleged by the complainant that her husband regularly made the payment of the installments and the final payment of Rs. 51,000/- was also made to the accused persons to deposit the same in the Finance Company but the accused persons have not deposited the said amount with the Finance Company. It is further alleged that on 4.8.2019, the accused persons came to the house of the complainant and hurled abuses to her and when the complainant objected the same, the accused persons disrobed her and took her signature on blank papers and also threatened her to get her all properties registered in their names using the blank papers on which the signature of the complainant was taken and because of the same the complainant has filed this complaint. On the complaint of the opposite party no. 02 cognizance has been taken under Section 409, 420, 504, 506 of Indian Penal Code against Rinku Yadav and Branch Manager, Cholamandalam Finance Company, Saharsa vide order dated 17.02.2020.

4. It has been submitted by the learned counsel for the petitioner that when cognizance has been taken against



the accused persons in the complaint, the Complainant moved an application giving the name of the petitioner who is the Branch Manager, Chola mandalam Finance Company and acting on the same, the learned Court below, without taking cognizance against the petitioner, directly issued non-bailable warrant against the petitioner vide order dated 29.03.2023 which is bad in the eyes of law.

5. It has further been submitted by the learned counsel for the petitioner that from perusal of complaint petition, S.A., and cognizance order it is clear that the Complainant has specifically named three persons namely Rinku Kumar Yadav, Rohit and Ravi Shankar Prasad as accused and the enquiry witness has supported the case of complainant against the accused persons. Moreover, the petitioner was never involved in any offence as has been alleged by the complainant and the learned Court below has passed the impugned order dated 29.03.2023 directing issuance of the Non-bailable warrant against the Petitioner without taking cognizance against the Petitioner solely on the basis of an application filed by the Complainant.

6. It has also been submitted by the learned counsel for the petitioner that the impugned order dated



29.3.2023 is a non-speaking order and no reason has been assigned therein for issuance of the non-bailable warrant against the petitioner and therefore, the same may be set aside.

7. Learned APP for the State has opposed the prayer of the petitioner.

8. The cognizance was taken on 17.02.2020 against the accused persons who were named in the complaint petition and the petitioner is not named as an accused in the complaint petition. Subsequently, the complainant filed an application and prayed that NBW may be issued against the Branch Manager Bipin Kumar Tiwari(the petitioner), though, one Ravi Shankar Prasad was already named in the complaint petition who was the Branch Manager of the Chola Mandam Finance Company.

9. In the opinion of this Court, when cognizance was taken against the named accused persons, no additional accused could be proceeded against by the opposite party no. 02 and the impugned order dated 29.03.2023 by which warrant of arrest has been issued against the petitioner is a non-speaking order and no new accused could have been added when earlier the branch manager was already named in the Complaint petition.



10. Accordingly, the order dated 29.03.2023 passed by the learned Judicial Magistrate, 1st Class, Saharsa in Complaint Case No. 933 of 2019 by which the NBW has been issued against the petitioner, is hereby quashed.

11. This application is partly allowed to the extent as indicated above.

(Sandeep Kumar, J)

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