IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67884 of 2023

Arising Out of PS. Case No.-393 Year-2023 Thana- MITHANPURA District- Muzaffarpur

1. Ajay Kumar, son of Raj Kumar Prasad, Resident Of Mohalla- 60, Sector- 28, Behind Tayal Motors, Faridabad, Haryana. At Present Zonal Manager, Bank of India, Yamuna Complex, Mithanpura Chowk, P.S.- Mithanpura, Distt- Muzaffarpur (As per Complaint Petition).
2. Ramanuj, son of Ramanand Singh, resident of Mohalla- Pusa Road, Near Charch, Rohua Apuchh, Muzaffarpur. At Present Chief Branch Manager, Bank of India, Motijhil, PS- Town, Distt- Muzaffarpur (As per Complaint Petition)
3. Abhishek, son of Sumendra Kumar Verma, Resident of Mohalla- Vivek Vihar Colony, Kahnani Garden Lane No.1, Near Vaishali R & D Management College, Mithanpura, Muzaffarpur. At Present Credit Manager, Bank Of India, Motijhil, PS- Town, Distt- Muzaffarpur (As per Complaint Petition)

... ... Petitioners

Versus

1. The State of Bihar
2. Abhishek Singh, son of Shambhu Prasad Singh, Resident of Mohalla- Raj Narayan Singh College, New Colony, Balughat, PS- Town, District- Muzaffarpur.

... ... Opposite Parties

with

CRIMINAL MISCELLANEOUS No. 67863 of 2023

Arising Out of PS. Case No.-393 Year-2023 Thana- MITHANPURA District- Muzaffarpur

Rajneesh Karnatak @ Rajnish Karnatak, son of Jugal Kishore Karnatak, Managing Director and CEO,Bank of India Star House C-5G Block Bandra Kurela Complex Bandra E Mumbai, Pin Code- 400051 (Maharashtra), R/o- F.No- 7-D, Shahnaz 90, Nepeansea Road Mumbai City PS- Malbar Hill Dist- Mumbai Maharasthra.

... ... Petitioner

Versus

1. The State of Bihar
2. Abhishek Singh son of Shambhu Prasad Singh R/o- South of Raj narayan Singh College New Colony Balughat Ps- Town Dist- Muzaffarpur

... ... Opposite Parties

Appearance :

(In CRIMINAL MISCELLANEOUS No. 67884 of 2023)

For the Petitioner	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Amresh Kumar, Advocate Mr. Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Ajay Kumar Jha, APP
For the Opp. Party No.2	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Upendra Kumar Choubey, Advocate Mr. Alexander Ashok, Advocate Mr. Vinay Kumar Sinha, Advocate

(In CRIMINAL MISCELLANEOUS No. 67863 of 2023)

For the Petitioner	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Amresh Kumar, Advocate Mr. Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Aditya Nr. Singh No.1, APP
For the Opp. Party No.2	:	Mr. Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Upendra Kumar Choubey, Advocate Mr. Alexander Ashok, Advocate Mr. Vinay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

COMMON ORAL JUDGMENT

Date : 12-11-2024

The petitioners of Criminal Miscellaneous No.67884 of 2023 are the Zonal Manager, the then Branch Manager and the Credit Manager of the Bank of India, Motijhil Branch, Muzaffarpur whereas, the petitioner of Criminal Miscellaneous No.67863 of 2023 is the Managing Director-cum- CEO of the aforesaid Bank.

2. In both these applications, the petitioners have prayed to quash the First Information Report i.e. Mithanpura P.S. Case No.393 of 2023 dated 07.09.2023 registered under Sections 420, 406 and 34 of the Indian Penal Code.

3. The informant (opposite party no.2), had instituted a complaint case before the learned Chief Judicial Magistrate, Muzaffarpur which was forwarded to the police under Section 156(3) of the Cr.P.C., based on which, the present FIR came to be instituted. As per the F.I.R., the informant is a dealer of TVS Motorcycle and was in need of money for his business and therefore, he approached the Bank of India, Motijhil Branch, Muzaffarpur for loan. The Bank sanctioned him a loan of Rs.7,70,000/- after the informant pledged 254 grams of gold ornaments of 22 carat by way of security. It has been alleged that the loan was received by the informant on 22.07.2020. On 07.10.2022, the informant received a notice from the Bank asking him to pay an amount of Rs.8,01,383.59/- towards repayment of loan which also included the interest. It has also been alleged that the informant has repaid the entire loan amount as on 31.03.2023 and received a statement from the Bank in that regard but on 01.03.2023 without giving any information to the informant the Bank revalued the pledged gold without notice to him and Rs.1500/- was deducted from his account illegally. It has also been alleged that the informant filed two applications requesting the Bank for returning the pledged gold weighing 254 grams but, the Bank on one pretext or the other did not return the same. Therefore, the Bank officials by misusing their official position did not return the gold ornaments pledged by the informant and thus they have cheated the informant.

4. Learned Senior Counsel for the petitioners submits that the informant had applied for a Bank loan after pledging 254 grams of gold in lieu whereof the Bank sanctioned an amount of Rs.7,70,000/- towards loan on 22.07.2020. Thereafter on 07.10.2022, a notice was issued to the informant for repaying the loan along with interest which was paid by the informant on 31.03.2023, as such, the loan which the informant had taken was repaid with interest and the Bank does not dispute the said contention of the informant. However, the informant alleges that though the Bank received the entire loan amount along with interest on 31.03.2023 and thereafter issued receipt but prior to that on 01.03.2023 itself the Bank got the pledged gold revalued since the informant failed to repay the loan within stipulated time. When the gold was revalued, it was found that the gold was spurious.

5. Learned Senior Counsel further submits that after the Bank came to know that the pledged gold was spurious, an FIR being Muzaffarpur Town P.S. Case No.406 of 2023, dated 22.05.2023 was registered against the informant under Sections 420 and 379 of the Indian Penal Code. In the aforesaid F.I.R. the Bank has alleged that the loan of the informant became NPA, thereafter notices were sent to the informant on 30.07.2022 and again on 07.10.2022, but loan was not repaid, thereafter, the pledged gold, as per Bank practice, was revalued by another valuer who reported to Mr. Ramanuj, the then Branch Manager that the pledged gold was impure and gold plated and the value of the gold cannot be ascertained without melting the ornament. Therefore, the loan was obtained fraudulently by pledging spurious gold.

6. It has been submitted by the learned Senior counsel for the petitioners that on a plain reading of the complaint which was filed before the Magistrate no offence as alleged is disclosed. In fact, no offence is made out against the petitioners who are the Managing Director, the Zonal Manager, the Branch Manager and the Credit Manager of the Bank and merely because the petitioners who are the Bank Officials of the Bank cannot be arrayed as an accused without any specific role attributable to them in the complaint.

7. It has also been submitted by the learned Senior Counsel for the petitioners that when the opposite party no. 2 came to know that a case has been lodged against him by the Bank for availing loan by pledging spurious gold, he as a counterblast filed the present complaint with a view to save his skin for the illegal act committed by him for which criminal case has been lodged by the Bank. The present complaint is nothing but a malicious one filed by opposite party No. 2 who has set the criminal law in motion with oblique and ulterior motive and for *mala fide* reasons.

8. Learned Senior Counsel next submits that the petitioner of Criminal Miscellaneous No.67863 of 2023 is the MD-cum-CEO of the Bank in question and he joined after the entire occurrence had taken place but prior to institution of Muzaffarpur Town P.S. Case No. 406 of 2023.

9. It is the further submission of the petitioners that the Complaint filed by the complainant is not supported by an affidavit and it is well settled law that before sending the petition under Section 156 (3) Cr.P.C there has to be an application under Section 154 (1) and 154 (3) Cr.P.C. However, in the present case, the learned Magistrate while passing the order under Section 156 (3) Cr.P.C has totally failed to consider the law laid down by the Hon'ble Supreme Court in the case of ***Priyanka Srivastava vs. State of U.P.*** reported in ***(2015) 6 SCC***

287.

10. Learned Senior Counsel for the petitioner has relied upon the following decisions :-

(i) ***Ravindranatha Bajpe vs. Manglore Special Economic Zone Limited & Ors. (Manu/SC/0715/2021);***

(ii) ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 (Supp) 1 SCC 335.***

(iii) ***ICICI Bank and Ors. vs. The State of Bihar and Another (CR. Misc No. 5034 of 2018).***

(iv) ***Bank of India vs State of Jharkhand & Others (Cr. M.P. No. 261 of 2016).***

(v) ***K Virupaksha and Anr. vs. The State of Karnataka & Anr.*** reported as ***AIR OnLine 2020 SC 419.***

11. By making the aforesaid submissions, learned Senior counsel for the petitioners submits that the present case is nothing but an abuse of the process of the Court as the same has been instituted with *mala fide.*

12. Per contra, learned Senior Counsel for the opposite party no.2 submits that if the allegation of the Bank as alleged in the FIR are taken to be true then also the Bank officials who had sanctioned and disbursed the loan ought to have been made accused in the FIR instituted by the Bank but the Bank very conveniently has recorded that *prima facie* none of the officials of the Bank were responsible for the disbursement of the loan based on spurious gold and even the valuer, who had valued the gold earlier based on which the loan was disbursed, has also not been made an accused in the FIR.

13. Learned Senior Counsel for the opposite party no.2 also submits that the cause of action arose on 01.03.2023 when the Bank without notice de-sealed the pledged gold ornaments in his absence and an amount of Rs.1500/- was debited from his account though the pledged gold ornaments were earlier scientifically examined by a valuer in presence of the then Bank officials and thereafter sanction letter was issued.

14. It is next submitted that admittedly 254 grams of gold was pledged with the Bank for obtaining the loan, the gold was valued by the valuer of the Bank, thereafter, the authorities of the Bank after being satisfied with the purity of the ornaments disbursed the loan but since the informant is a businessman and for reasons beyond his control, he could not repay the loan in time, as such, the account became NPA for which two notices were issued against him. In pursuance of the said notices, the informant cleared the loan as on 31.03.2023.

15. Learned Senior Counsel for the opposite party no.2 further submits that the ornaments pledged were of his mother and it cannot be construed that the valuer who valued earlier had given a false report and the subsequent valuer who valued the ornaments behind his back gave a proper report. It is submitted that it absolutely does not stand to reason that why the Bank accepted the amount of Rs.8 lakhs and odd without disclosing that the ornaments were found spurious and why the FIR was instituted on 02.05.2023.

16. It is next submitted by learned Senior Counsel for the opposite party no.2 that the Bank has instituted the present FIR after the loan account has been settled by the opposite party no.2 as an afterthought in order to coerce the opposite party no.2 so that he does not ask for his ornaments. It is further submitted that before getting the ornaments valued for the second time, the Bank could have asked the opposite party no. 2 to be present so that the ornaments could have been valued in his presence after ascertaining that the ornaments being subsequently valued are the same which were pledged at the time of obtaining loan.

17. It is also submitted that as per the FIR instituted by the Bank, it manifests that Bank was aware after 01.03.2023 that ornaments were spurious then why the FIR came to be instituted after informant cleared the loan on 31.03.2023.

18. Learned Senior Counsel for the opposite party no.2 further submits that section 420 of the Indian Penal Code provides cheating and dishonestly inducing delivery of property, which has been defined under section 415 of the Indian Penal Code, according to which, if any person is deceived to deliver any property, which act causes damage and harm to the person in body, mind, reputation or property is cheating and illustration (f), (g) and (h) squarely covers the case of the opposite party no.2.

19. He also submits that section 406 of the Indian Penal Code is punishment for criminal breach of trust which has been defined under section 405 of the Indian Penal Code, according to which, whoever being in any manner entrusted with property, dishonestly misappropriates, which is under legal contract even implied and the present case is squarely covered under illustration (e).

20. Learned Senior Counsel for the opposite party no.2 further submits that the intention of the petitioners' side is very much clear from the fact that when they were informed through notice dated 03.04.2023 and reminder on 25.04.2023 in between they lodged Muzaffarpur Town P.S. Case No. 406/23 dated 22.05.2023 to save their own skin. Moreover, suddenly a sum of Rs.1500/- was debited from the Saving Bank account of the opposite party no.2 on 01.03.2023 for payment to the second gold valuer and an SMS to this effect was sent on his mobile phone. Subsequently, the opposite party No.2 deposited Rs. 3,00,000/- on 20.03.2023 and Rs. 4,15,000/- on 31.03.2023 and thus liquidated the entire dues leaving a credit balance of Rs. 752.20 in his gold loan account.

21. It has been submitted by learned counsel for the opposite party no.2 that on 31.03.2023 itself, the loan was completely repaid and therefore the opposite party No.2 wrote a letter dated 03.04.2023 to the Bank to handover gold ornaments as the same was urgently required for use during a marriage in the family. The value of the pledged items as on 12.10.2023 at the prevailing market rate was approximately Rs. 14,00,000/- at the rate of Rs. 5405 per gram. Thus, it is obvious that all the accused persons in conspiracy with one another for personal gains have went behind the back of opposite party no.2 to give effect to their dishonest intent. The cause of action has happened during their incumbency and therefore they cannot turn around and shift the blame on others or their predecessors.

22. It has also been argued that the decision rendered in the case of ***Priyanka Srivastava vs, State of U.P.*** *(supra)* which has been relied upon by the petitioners, does not apply to the facts of the present case as in that case the prosecution wanted the case to be transferred but if the Court itself deals with the matter, no affidavit is required.

23. It has also been argued by the opposite party no.2 that other decisions relied upon by the petitioners are not applicable in the facts and circumstances of the present case.

24. Learned counsel for the opposite party no.2 has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Mrs. Dhanalakshmi vs. R. Prasanna Kumar and Ors.*** reported as ***AIR 1990 S.C. 494*** and has submitted that in the said case, it has been held that on looking to the case of prosecution if no offence disclosed from four corner of the First Information Report/Complaint then only interference is required, which is not the present case rather in present case as *prima facie* offence is made out against the petitioners. Moreover, in the case of ***State of Bihar vs. P.P. Sharma*** reported as ***1991 (2) PLJR 11*** it has been held that if *prima facie* offence appears the same cannot be quashed.

25. By making the aforesaid submissions and by relying upon the aforesaid judgments, it has been submitted by learned counsel for the opposite party no.2 that the petitioners have committed offence against opposite party no. 2 for which they is liable to be prosecuted and opposite party no. 2 be compensated. Hence, the present case is fit to be dismissed with cost.

26. I have considered the submissions of the parties and perused the materials on record.

27. From the records of the case, it appears that the opposite party no.2 had approached the Bank for availing gold loan and in pursuance thereof, 254 grams of gold ornaments of 22 carat was pledged as security and a loan amount of Rs.7,70,000/- was sanctioned and disbursed in favour of the opposite party no.2. The loan tenure was two years in which the principal amount was to be paid in two yearly installments and interest was to be paid in every six months. Since the opposite party no.2 failed to repay the loan amount with interest, his loan account became NPA of the Bank. The Bank therefore, sent notices to the opposite party no.2 twice for payment of outstanding dues but the loan amount was not settled by the opposite party no.2. Ultimately, an empanelled gold smith was called for valuation of the pledged loan ornaments in order to auction the same to recover the outstanding loan amount. However, it was reported by the valuer that the pledged gold is impure and gold plated on other metal and therefore, cannot be valued without melting. When this fact came to the notice of the Bank officials, the Chief Manager of the Bank has filed an F.I.R. vide Town P.S. Case No.406 of 2023 for the offence under sections 420 and 379 of the Indian Penal Code against the opposite party no.2 on 22.05.2023. However, thereafter, the informant instituted a complaint case before the Chief Judicial Magistrate, Muzaffarpur, which was forwarded to the Police under section 156(3) of the Cr.P.C. and accordingly, the present F.I.R. i.e. Mithanpura P.S. Case No.393 of 2023 dated 07.09.2023 was registered under sections 420, 406 and 34 of the Indian Penal Code.

28. It appears from the records of the case that the exercise of the revaluation of the pledged gold ornaments was done only when the opposite party no.2 defaulted in making the payment and the process of auctioning was initiated after following the due process and after serving due notice to the opposite party no.2. The allegations were levelled against the Bank officials by way of the complaint petition only after the officials of the Bank instituted an FIR against the opposite party no.2. Upon perusal of the complaint petition, there appears no case of dishonest or malicious intent to defraud the opposite party no.2 by the Bank officials. The actions of the Bank officials cannot be deemed criminal unless there is clear and concrete evidence of *mala fide* intention to defraud or personal benefit derived from such actions, on the contrary the actions of the Bank officials were *bona fide* and aimed at recovering the loan amount against the pledged gold ornaments and in consonance with the procedures laid down in this regard i.e. Fraud (Prevention & Detection) Risk Management Policy of the Bank of India. Therefore, the actions of the petitioners, who are the Bank officials, are in consonance with the procedures laid down and therefore, cannot attract criminal culpability.

29. By way of a supplementary affidavit, the petitioners have brought on record the letter dated 04.03.2023 which indicates that the Bank has removed earlier gold valuer namely, Rajesh Kumar, who had valued the gold ornaments pledged by the opposite party no.2 at the time of obtaining the loan and vide letter dated 25.05.2023 the Zonal Manager, Agriculture Finance Department, Muzaffarpur Zonal Office has requested the General Manager, Fraud Risk Management Department, Head Office, for de-listing the earlier gold valuer namely, Rajesh Kumar from Stardesk and IBA portal.

30. The present complaint case is a mere counter blast to the F.I.R lodged by the Bank against the opposite party no.2 alleging therein that the opposite party no.2 with dishonest intention of causing wrongful loss to the Bank and wrongful gain to himself fraudulently obtained the loan on the basis of spurious gold ornaments.

31. In the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors. (supra),*** the Hon'ble Supreme Court has delineated the circumstances where an F.I.R. or the charge-sheet can be quashed, which are as follows:-

> *"(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 information 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 any 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 person 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 Act concerned (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 Act concerned, 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."

32. In view of the aforesaid reasons discussed hereinabove and applying the law laid down in the case of ***Bhajan Lal*** (***supra***), I am of the view that the present F.I.R. has been instituted with an ulterior motive and also as an afterthought. Even if the contents of the complaint petition are taken to be true on its face value the essential ingredients of the offences alleged are not made out.

33. Moreover, from perusal of the complaint petition instituted before the Chief Judicial Magistrate would reveal that the complaint petition is not supported by an affidavit.

34. Paragraph nos.29 to 31 of the decision rendered in the case of ***Priyanka Srivastava & Anr. vs. State of U.P. & Ors.*** (supra) read as under:-

> *"29. At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this*

route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. *In our considered opinion, a stage has come in this country where Section 156 (3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154 (1) and 154 (3) while filing a petition under Section 156 (3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156 (3) be*

supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

35. From reading of the complaint petition, I find that the complainant has not filed any affidavit as mandated by the Hon'ble Supreme Court in the aforesaid case. Therefore, on this count also, the F.I.R. is not sustainable.

36. In view of the aforesaid discussions, I am of the view that the continuation of the criminal proceeding against the petitioners would be an abuse of the process of the Court as the complaint case is a malicious one. Accordingly, both the applications are allowed and the First Information Report i.e. Mithanpura P.S. Case No.393 of 2023 dated 07.09.2023 registered under Sections 420, 406 and 34 of the Indian Penal Code and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A.
Uploading Date	20.11.2024
Transmission Date	20.11.2024