

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81322 of 2019

Arising Out of PS. Case No.-45 Year-2018 Thana- MOHIUDDIN NAGAR District-
Samastipur

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VIRENDRA KUMAR GANDHI @ BIRENDRA KUMAR GANDHI, Age 45
Gender Male, Son of Late Krishana Lal Shrivastava Resident of Village -
Beur Side Anisabad, P.S. - Beur, District - Patna, At Present Residing At +
P.O. - Ghansoyi, P.S. - Ghansoi, District - Buxar.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Madhu Prasun, Advocate
		Ms. Renu Kumari, Advocate
For the Opposite Party/s	:	Mr. Abhay Kumar Roy, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-04-2024

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

2. The present application has been filed for
quashing the order dated 18.01.2019 passed by learned
S.D.J.M., Samastipur, arising out of Mohiuddin Nagar
P.S. Case No. 45/2018 dated 13.04.2018 (FIR No.
5133010180045) T.R. No. 3067/19, where cognizance
was taken for the offences under sections 406/420 of
the Indian Penal Code

3. Prosecution case in brief is based on the



application of the informant namely, Manju Devi addressed to the Additional Director General of Police, Economic Offences Unit, Bihar, Patna, wherein she stated that her husband was an Assistant Sub-Inspector, who died during 2004 Lok Sabha elections and whatever money she got after his death, she deposited in different schemes of 'Sahara India' through one Yashwant Bharti, who was 'Sahara India' coordinator and her money was reinvested vide conversion by the Manager on maturity inspite of payment. She further stated that due to scarcity of money, she is unable to marry her 24 years old daughter and education of her son is also being hampered. She is under medical treatment but she is not being paid her money inspite of maturity on the pretext of lack of fund and she is being forced to reinvest the same. She further stated that her total amount in different schemes is about Rs.10 Lakh and prayed to ensure her payments and action on the guilty after enquiry. It is further stated that under "F2 Scheme" her



money is matured on 01/06/2017 but she is not being paid inspite of regular visits. Under "Sahara T Scheme", She made investment on 31/12/2014, which was matured on 28/02/2017 and some disbursement was made showing loan by the said coordinator in collusion with the Manager as original bonds were in possession of the said Yashwant Bharti and she was not paid. It is also stated that similarly some more accounts in the name of her daughter and son got matured but they were not being paid. Lastly, She stated that the Petitioner had invested in 'Abode Bond', which was converted and reinvested in different accounts, which are going to mature in May 2018, and prayed to ensure all payments after enquiry.

4. It is submitted by learned counsel appearing for the petitioner that petitioner was not named in FIR but after investigation charge-sheet was submitted against him simply because he refused to return the amount to informant after maturity being cashier of the



Sahara India Branch, Samastipur. It is submitted that the thrust of allegation is available against Sahara India Agent, namely, Yashwant Bharti. While travelling over the argument, learned counsel submitted that financial hardship of Sahara India is a well known fact and out of a corpus created by the order of Hon'ble Apex Court, the payment was made and has been made to different investors with the company. It is further pointed out that however, in the present case, matter was compromised and out of said compromise, the money invested by informant in Sahara India is returned to her in terms of Annexure-5, which is the part of present petition. It is further submitted that cashier is a paid post and for any act of company, cashier cannot be held liable, and as such, it can be said safely that no *prima facie* case is made out against this petitioner, therefore, the present cognizance order is liable to be set aside/quashed. In support of his submission, learned counsel relied upon legal report of Hon'ble Supreme Court in the matter of



State of Haryana and Ors. Vs. Bhajan Lal and Ors.,
reported in ***1992 Supp (1) Supreme Court Cases***
335.

5. Learned APP while opposing the prayer of application submitted that petitioner also involved actively in alleged transaction but fairly conceded that he was not named in the FIR and employed as a Cashier.

6. It would be apposite to reproduce 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.”

7. In view of aforesaid factual and legal submission, as petitioner was a cashier, having no



control over financial and monetary transaction of Sahara India Branch, Samastipur, moreover, matter compromised between the parties, out of which informant received the entire amount in terms of her investment, as per Annexure-5 of the present petition, and, as such by taking a guiding note of guideline nos. 1, 5, 7 of **Bhajan Lal's Case (supra)**, the impugned order of cognizance dated 18.01.2019 passed by learned S.D.J.M., Samastipur, is hereby set aside and quashed *qua* petitioner with all its consequential proceedings.

8. 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
Uploading Date	19.04.2024
Transmission Date	19.04.2024

