IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78254 of 2023

Arising Out of PS. Case No.-1248 Year-2022 Thana- PATNA COMPLAINT CASE District- Patna

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Anup Branch Manager H.D.F.C. Bank @ Anup Srivastava Son Of Late K.K.P Srivastava Presently Posted As Branch Manager Of Kankarbagh Branch At Hdfc Bank Ltd., P.S. Kankarbagh. Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Akhilesh Kumar Son Of Late Ombhu Prasad Resident Of Village- P.D. Lane, Near Devi Sthan, Mahendru, Ps- Pirbahore, Distt- Patna

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Dayanand Singh, Advocate
For the Opposite Party/s : Mr.Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 26-09-2024

Heard the learned counsel for the petitioner and learned APP for the State.

2. None has appeared on behalf of the opposite party no. 2 despite valid service of notice.

3. This application has been filed for quashing the impugned order dated 16.02.2023 passed by the learned Additional Chief Judicial Magistrate-XIII, Patna in connection with Complaint Case No. 1248 of 2022.

4. The facts of the case in short are that the opposite party no. 02 and his brother has filed the present complaint case before the Chief Judicial Magistrate, Patna stating therein that the opposite party no. 02 and his brothers were residing at Patna in their respective share of ancestral house peacefully as the said ancestral house has been partitioned mutually between them. It has been alleged by the opposite party no. 02 that neither he has any knowledge about the loan taken from the HDFC Bank nor he has received any amount of the loan from the bank and he came to know about the loan amount only after an advertisement of auction was published in the local newspaper by the HDFC Bank for auctioning his house. It is further alleged by the complainant-opposite party no. 02 that the petitioner, in connivance with one Dhananjay Prasad, by forging the documents, mortgaged the share of house in question for the purpose of taking loan and when he went to the HDFC Bank to enquire into the matter, the officials of the bank asked him to pay the loan dues and if he will not do so, he will have to face consequences. It is further alleged that when the opposite party no. 02 went to Dhananjay Prasad for asking him about the said loan, he started using foul language and also threatened the opposite party no. 02. It is further alleged by the opposite party no. 02 that the loan has been taken on his share of house also without his knowledge and therefore, the petitioner being the branch manager is also equally responsible and he may also be punished and therefore the present complaint has been filed against him also.

5. It has been submitted by the learned counsel for the petitioner that the petitioner is innocent and he has no role to play in the alleged occurrence as he is not the authorized person for sanctioning and disbursal of loan. It is further submitted by the learned counsel for the petitioner that accused no. 1 (Dhanajay Prasad) and the opposite party no. 02 had approached the bank and they had applied for loan and accordingly, at the request of the said borrowers, the HDFC bank has granted a financial assistance in the form of loan against property to the tune of Rs. 42 lakhs through loan against property facility vide loan agreement dated 2.1.2018 and issued loan account number 82922180.

6. Learned counsel for the petitioner has also submitted that in order to secure the said loan account together with all its related dues, the said borrowers created equitable mortgage in favour of the HDFC Bank by way of deposit of title deeds of the house in question for repayment of dues. It has also been submitted that the said mortgaged property is a secured asset within the meaning of SARFAESI Act and when the borrowers defaulted in repayment of the installments in violation of the said loan agreement, the said loan account has been declared as non-performing asset.

7. Learned counsel for the petitioner further submits that as there was a huge amount to be paid on the part of the borrowers, a statutory demand notice dated 23.10.2020 has been sent to the borrowers asking them to pay the same but despite the valid service of the demand notice, no effort was made by the borrowers for repayment of the loan dues. It is further submitted by the learned counsel for the petitioner that HDFC Bank vide said possession notice dated 9.8.2021, informed the borrowers, in particular and the public, in general not to deal with the property in question as the same have an outstanding dues against it.

8. It has further been submitted by the learned counsel for the petitioner that the Impugned Order dated 16.2.2023 passed by Learned Additional Chief Judicial Magistrate XIIIth, Patna is bad in the eyes of law as no prima facie case is made out against the petitioner and necessary ingredients for fastening offences under Section 420 of Indian Penal Code is lacking and the issuance of said Loan Account have been given shape of criminal offence with malafide intention, when it can at best be described as civil dispute. He also submits that the HDFC Bank has not been made accused and therefore, the official of Bank cannot be held vicariously liable.

9. Learned counsel for the petitioner further submits that the said borrowers have duly signed on each and every page of the said Loan Agreement under the presence of the witnesses named Suraj Kumar and Md. Perwaz Alam and by the same it is clear that the borrowers have full knowledge about the loan in question and they have never approached the HDFC Bank or the petitioner with any grievance as is now being alleged by the Opposite Party No. 2 in the complaint case. He also submits that monthly statement pertaining to said loan account was also sent to the registered email address of the said borrowers on a regular basis as per the terms and conditions of the loan agreement and the said complaint case has been filed only to pressurize the petitioner including senior management of HDFC Bank to succumb to the illegal demands of the complainant.

10. It has also been submitted by the learned counsel for the petitioner that the impugned order suffers from glaring illegality and has been passed in mechanical manner as there is no allegation in the entire complaint against the petitioner and even if entire allegation made in the complaint is said to be true, no criminal offence is made out against the petitioner.

11. Learned counsel for the petitioner further submits that it is settled law that 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 and the criminal proceedings instituted on the basis of such first informant report or the complaint should be quashed.

12. Learned counsel for the petitioner further submits that in the instant case, no offence of cheating can be fastened against the petitioner as the petitioner is merely the Branch Manager and is only engaged in discharging the managerial functions of the Bank and there is no specific allegation levied against the petitioner, still cognizance has been taken against him which is unsustainable in the eyes of law and therefore, the impugned order dated 16.02.2023 along with the criminal proceedings against the petitioner is fit to be quashed.

13. In support of his submissions, learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court passed in the cases of ***Deepak Gaba and Ors.***

Vs. State of Uttar Pradesh and Anr. reported in ***(2023) 3 SCC 423*** and ***Gagan Banga Vs. Samit Mandal and Anr.*** reported in ***(2024) 5 SCC 432***.

14. I have considered the submissions of the parties.

15. It is not in dispute that the petitioner is the Branch Manager of HDFC Bank. It is also not in dispute that the HDFC Bank has not been made accused in the present case.

16. The present quashing application arises out of complaint case filed by one of the borrowers making allegations that he had not taken loan and the documents which have been used for taking loan are forged. The bank has produced documents of impeccable nature to show that the HDFC Bank has advanced loan to the complainant and his brother. They had put their signature on every page of the agreement for obtaining the loan. They were also informed every month by the Bank about the position of the loan and the loan account was declared NPA, notice was taken out by the Bank about the same and that the present complaint has been filed only to pressurize Bank.

17. In the case of ***Gagan Banga Vs. Samit Mandal and Anr. (Supra)***, the Hon'ble Supreme Court has held in Paragraph 2, 3, 4, 5, 6, 7, 8 and 9 follows:-

2. The petitioners' case is that there is *trend of initiating mala fide criminal proceedings against financial institutions/lenders and their officers, representatives and managers, to somehow restrain them from pursuing recovery proceedings of their enforceable debts, and/or to compel them to make settlement of their dues. FIRs are registered to circumvent legally owed debts by scuttling the statutory regime of SARFAESI, and also by projecting a purely civil financial dispute as a criminal matter with a view to intimidate and in abuse of the criminal process.*

3. In Priyanka Srivastava Vs. State of U.P., (2015) 6 SCC 287, this Court had noticed that taking recourse to criminal law by bypassing statutory remedies to bring the financial institutions on their knees, has the inherent potentiality to affect the marrows of economic health of the nation. Further, in Vijay Kumar Ghai & Anr. Vs. State of W.B., this Court quashed the criminal proceedings being abuse of law in a purely civil financial dispute and being a case of forum shopping. Despite these judgments, continuation of such trend appears extremely disturbing.

4. Vide order dated 28.04.2023 passed in W.P. (Crl.) No. 166/2023, criminal proceedings in three such FIRs instituted by borrowers in different States, namely, FIR No. 646/2022 dated 26.10.2022 registered at P.S. Titagarh, FIR No. 427/2023 dated 09.04.2023 registered at P.S. Indirapuram and FIR No. 25/2021 dated 27.01.2021 registered at P.S. EOW, Delhi were stayed.

5. Further FIR No. 197/2023 dated 15.04.2023 was filed by YEIDA at PS Beta-2, Greater Noida, UP, which also refers to the aforesaid FIR No. 427/2023 dated 09.04.2023 registered at P.S. Indirapuram with some overlapping facts. It is stated that on the basis of these two connected FIRs, namely, FIR No. 427/2023 and 197/2023, now ED has registered ECIR bearing No. ECIR/HIU-I/06/2023 in Delhi. The petitioners have now challenged the said FIRs and ECIR.

6. In the circumstances, as it may also involve adjudication on facts, we deem it appropriate to permit the petitioners to approach the respective *jurisdictional High Courts to challenge all four FIRs and the ECIR within two weeks from today, with a request to the respective High Courts to consider and decide the petitions expeditiously, not later than six months of their presentation.*

7. We also direct the DGPs of respective States to look into the matter, examine the contentions of the petitioners in respect of the contents of FIRs, and to take appropriate measures in accordance with law within a period of one month.

8. Till final disposal of the respective petitions, interim order dated 28.04.2023 passed in W.P.(Crl.) No. 166/2023 would continue in the three FIRs mentioned therein.

9. In so far as the further FIR No. 197/2023 dated 15.04.2023 filed by YEIDA and ECIR bearing No. ECIR/HIU-I/06/2023 are concerned, no coercive steps would be taken against the petitioner financial institution and its officers, representatives and managers till final disposal of such petitions by the High court, and it would be open for the petitioners to seek stay of proceedings which would be considered by the High Court on its own merits. It is clarified that this interim protection would only be applicable to the petitioner financial institution and its officers, representatives and managers, and not to any other person.

18. This Court, at the stage of cognizance, can look at the impeccable documents as has been held by the Hon'ble Supreme Court in the case of ***Anita Malhotra Vs. Apparel Export Promotion Council and Anr.*** reported in ***2012 (1) SCC 520,*** in the case of ***All Cargo Movers (India) Pvt. Limited and Ors. Vs. Dhanesh Badarmal Jain and Anr.*** reported in ***2007 (14) SCC 776*** and in the case of ***Harshendra Kumar D. Vs. Rebatilata Koley reported in 2011 (3) SCC 351***.

19. The Hon'ble Supreme Court in the case of ***R. Kalyani Vs. Janak C. Mehta & Ors.*** reported in ***(2009) 1 SCC 516*** has held in para 41 as follows:-

> *"If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company."*

20. The Hon'ble Supreme Court in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604*** has also held that *mala fide* prosecution cannot be allowed to continue.

21. In view of the discussions made above and considering the law laid down by the Hon'ble Supreme Court in the aforesaid judgments and also considering the fact that the informant/complainant is a borrower, his loan account has become NPA, the bank has taken appropriate steps for recovery of the loan amount, I am of the opinion that it is a *mala fide* prosecution launched by the complainant to pressurize the bank and its officials to restrain them from pursuing recovery proceedings of its enforceable debts and to compel the bank to make settlement of the dues.

22. The complainant cannot be allowed to give a criminal turn to the purely civil/financial dispute with a view to intimidate the bank and its officials and to abuse the criminal process.

23. In view of the above discussions, this application is allowed.

24. Accordingly, the impugned order dated 16.02.2023 passed by the learned Additional Chief Judicial Magistrate-XIII, Patna in connection with Complaint Case No. 1248 of 2022 and all consequential proceedings arising out of the same are hereby quashed as against the petitioner only.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	