IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.720 of 2023

Arising Out of PS. Case No.-132 Year-2020 Thana- RANIYATALAB District- Patna

==

1. Anish Kumar Son Of Rama Kant Singh Resident Of Village - Kab, P.S. - Rani Talab, Distt. - Patna, Pin Code - 801104
2. Pranay Kumar Son Of Anish Kumar Resident Of Village - Kab, P.S. - Rani Talab, Distt. - Patna, Pin Code - 801104

... ... Petitioner/s

Versus

1. The State Of Bihar Through Its Home Secretary, Secretariat, Patna Bihar
2. S.H.O. Ranitalab Police Station, Rani Talab, Patna Bihar
3. The Chief Manager, Dakshin Bihar Gramin Bank, Sri Vishnu Commercial Complex, Ashok Chak, Patna Bihar
4. Regional Manager, Dakshin Bihar Gramin Bank, Regional Office, Kankarbagh, Patna Bihar
5. Branch Manager, Dakshin Bihar Gramin Bank, Kab, P.S. - Rani Talab, Distt. - Patna Bihar

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj
For the Bank	:	Mr. Mahesh Narayan Parbat, Sr. Advocate

==

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

2 17-06-2025 Heard the learned counsel for the petitioners and the learned counsel for the State and the learned Senior Counsel for the Bank.

2. This writ petition has been filed for quashing of the order of cognizance dated 06.07.2021 passed in Rani Talab P.S. Case No. 132 of 2020 by the learned A.C.J.M.-II, Danapur instituted under Sections 409, 420 read with Section 34 of the

I.P.C.

3. The brief facts relevant for the present petition are that the informant one *Jafar Hussain*, the then Branch Manager of *Dakshin Bihar Gramin Bank*, *Kab*, in his written report dated 10.06.2020, addressed to the SHO, P.S. *Ranitalab*, wherein the informant states that the petitioner no. I was granted a loan of Rs. 50 lakh on 22.07.2018. It is submitted that the petitioner no. 1 had purchased machines, rice and grains from the aforesaid sanctioned loan. Thereafter, the regular banking transactions were continuing. It is submitted by the informant that during the inspection of the property, it was found that the accused petitioner no.01 has without authorization sold the stock which were part of the mortgaged security. An amount of Rs. 55,31,255/- was still due and payable to the bank as on 31.03.2020.

4. Based on the aforesaid written report dated 10.06.2020, Ranitalab P.S. Case 132 of 2020 was registered on 10.06.2020 under sections 409, 420 read with section 34 of the IPC. Charge sheet bearing number 13 of 2021 was submitted against the two present petitioners on 30.01.2021 under sections 409, 420 read with section 34 of the IPC. Thereafter, *vide* impugned order dated 06.07.2021, the leaned A.C.J.M-II, Danapur took cognizance and issued summons against the two accused persons.

5. The learned counsel for the petitioners submits that the petitioner no. 1 is the proprietor of M/S R.K. Enterprises Rice Mill, and in order to expand his business and meet the working capital requirement of the firm, the petitioner no.01 had applied for enhancement of CC Limit Cash Credit (Hypo of Stock Limit) from the *Madhya Bihar Gramin Bank* (now "*Dakshin Bihar Gramin Bank*"), which was sanctioned. The credit limit was enhanced from Rs. 10.43 lakh to 50.00 lakh. The petitioner no. 2 was the guarantor for the security mortgaged.

6. The learned counsel appearing for the petitioners submits that as per the loan sanction order, whereby the enhancement of credit limit from Rs. 10.43 lakh to 50.00 lakh in favour of M/S R.K. Enterprises was done, the para-22 of the term sheet provides that in case of failure of repayment of loan, the same shall be adjusted by the bank by realizing the value of the IP belonging to the petitioner.

7. The learned counsel for the petitioner further submitted that due to the COVID-19 global pandemic, the rice and bran were damaged and the information regarding the same was duly conveyed to the respondent no. 5 by the petitioner no. 1. It is emphasized by the learned counsel appearing for the petitioners that upon intimation the respondent no. 5 had visited and directed the petitioner no.1 to either sell off the stock or destroy the same. It was only after receiving the directions from the branch manager that the petitioner no.1 had destroyed the rotten rice and bran.

8. The learned counsel appearing for the petitioner submits that the petitioner no. 1 has deposited the E.M.I. from time to time. It is further submitted that on the last occasion, an amount of Rs. 5 lakh was deposited by way of bank draft in the month of December 2020. Thereafter, with the onset of COVID-19, the petitioner no.1 sent a legal notice to the respondent bank officials to liquidate the mortgage money. The learned counsel has emphasized that subsequently the fixed deposit lien amount of Rs. 2.00 lakh was encashed by the bank.

9. It is also submitted by the learned counsel appearing on behalf of the petitioners that petitioner no.1 had consented to the realization of the entire loan amount after auctioning the mortgaged land and machines available in the factory and the rest of the amount be credited to the account of petitioner no. 1.

10. The learned counsel for the petitioners contended that the petitioner no.1 was trying to the best of his abilities to arrange the entire loan amount, which was due to the bank, but with the subsequent onset of COVID-19 pandemic, the business collapsed.

11. It is further submitted by the learned counsel for the petitioners that the bank after conducting evaluation has found the mortgaged property to be valued at 1,11,00,000/- (One Crore and Eleven Lakh) as mentioned in the valuation report, and the bank has also taken the possession of the said property along with the mortgaged loan amount on 21.02.2022 and had issued sale notice on 06.08.2022 under the SARFAESI Act of 2002.

12. The learned counsel for the petitioners has drawn strength from the decision rendered by the Hon'ble Supreme Court in the case of ***Punjab National Bank and Others v. Surendra Prasad Sinha*** reported as ***1993 SCC (Cri) 149***, to contend that lodging an F.I.R. for non-payment of loan, where there is security provided to the bank through mortgaged land and machines by the guarantor, does not amount to criminal breach of trust.

13. The learned counsel for the respondent Bank and the State have opposed the prayer of the petitioners and have submitted that the cognizance has rightly been taken by the Court below against the petitioners.

14. I have heard the parties and perused the materials available on record.

15. From the allegations levelled in the FIR, it appears that the petitioner no. 1 has sold the mortgaged assets which were mortgaged with the Bank without any permission from the Bank. The mere writing of a letter to the Bank will not result in granting permission for sale of the mortgaged properties and assets. The petitioners could not have sold the mortgaged assets without liquidating the debt with the Bank.

16. In these circumstances, from the allegations and the materials available on record, finding prima facie case cognizance has been taken by the Magistrate for the offences committed by the petitioners. In the present case, cognizance of the offence under Sections 409, 420, 34 of the IPC has been taken and the contentions of the petitioners are nothing but the defence and the defence of the petitioners cannot be considered at the stage of cognizance or at the stage of framing of charge.

17. In view of the above discussions, I am of the view that the present writ petition is fit to be dismissed and therefore the same is hereby dismissed.

(Sandeep Kumar, J)

Shishir/-

U		T	