IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54471 of 2023

Arising Out of PS. Case No.-174 Year-2023 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Y VISHWANATH GOWD @ VISWANATHA GOWD YERUR @ VISWANATHA YERUR S/O Y BASAVANA GOWD MANAGING DIRECTOR AND C.E.O. OF L.I.C. HOUSING FINANCE LTD. HAVING ITS ADDRESS AT BOMBAY LIFE BUILDING VEER NARIMAN ROAD, MUMBAI, MAHARASHTRA-400001 PRESENTLY RESIDING AT FLAT NO. 7, JEEVAN ANAND, BHULABHAI DESAI ROAD, OPPOSITE BREACH CANDY HOSPITAL, MUMBAI, MUMBAI CITY, MAHARASHTRA-400026.

... ... Petitioner/s

Versus

1. The State of Bihar BIHAR
2. MUNNI DEVI W/O SACHINDRA RAI R/O KHORA, P.S.- CHIRAIYA, DISTRICT- EAST CHAMPARAN, BIHAR- 845315

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Puneet Siddharth, Advocate
		Mr.Chandra Mohan, Advocate
		Mr.Aryan Sinha, Advocate
For the State	:	Mr.Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ANSUL

CAV JUDGMENT

Date : 21-07-2026

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The Petitioner seeks quashing of the order of cognizance dated 27.02.2023 passed in connection with Complaint Case No. 174 of 2023 by which the learned Ritu Kumari, Judicial Magistrate, 1st Class has taken cognizance of the offences under Sections 406 and 34 of the I.P.C whereas the Complaint Case was filed for the offences under Sections 406, 420, 409 and 120B of the Indian Penal Code.

3. The prosecution case is that one Munni Devi wife of Sachindra Ram lodged case addressed to the CEO of LIC Branch Manager where the allegation that her husband was a B.M.P, Constable and the accused nos. 2 to 6 were agents of Life Insurance Corporation Housing Finance Ltd. (in short 'LIC HFL'). Learned Magistrate examined the complainant and S.A. and recorded the statement filed enquiry of witnesses, namely, Preeti Rani (EW-1), Surendra Singh (EW-2), Virendar Ram (EW-3), Puran Devi (EW-4) and Sacchindra Ram (EW-5).

4. The allegation is that the accused nos. 2 to 6, representing themselves as agents of LIC HFL approached the complainant and induced her to avail a housing loan. Thereafter, they told her that she must deposit cheques from her husband bank account as mortgage security for the loan. She provided 14 signed cheques of her husband's bank account to the accused. She alleged that instead of opening a fresh loan account, the accused deposited the loan amount of Rs. 14 lakhs in the existing account of Sacchindra Ram, State Bank of India, Branch – Laheriasari Tower, Darbhanga. She states that on 08.03.2017 and 09.03.2017 Rs. 7,50,000/- was diverted to another account. When she approached the accused, they harassed and abused her and they wanted the payment of Rs. 18,17,540.25/-.

5. Heard the respective parties.

6. Learned counsel for the petitioner stated that the petitioner is MD&CEO LIC HFL and its office at Mumbai. A housing loan of Rs. 15 lakhs was duly sanctioned by LIC HFL on 05.12.2016 under the scheme 'Grih Prakash' for a term of 240 months @ 9.15% per *annum* (floating) with EMI of Rs. 13,641/- and thereafter a formal loan agreement was executed and Rs. 14 lakhs was disbursed.

7. Learned counsel for the petitioner further submits that from the very inception of the loan the borrowers went into regular default and till 18.05.2023 only 35 EMIs were paid and outstanding principal stood at Rs. 12,86,528.94/-. A legal notice and Demand Notice under the SARFAESI Act was issued and the complaint was filed after receipt of SARFAESI Demand notice.

8. Learned counsel for the petitioner states that the petitioner was inducted as Director of LIC HFL only from 01.02.2021 and the alleged misappropriation occurred in March, 2017.

9. Perused the records. The complaint states that the loan amount was deposited in SBI Account on 08.03.2017. Annexure-3 would show the last disbursal date 15.12.2016. The complainant claims that 14 cheques given as mortgage were misused. The LIC

HFL statement of account shows that the cheques with matching numbers were post-dated cheques deposited for the EMI re-payment and not mortgage cheque. Some bounced, some were deposited.

10. Learned counsel for the petitioner further submits that in any view of the matter the events are 2016 and 2017 and the petitioner joined LIC HFL as Director only on 01.02.2021. The loan was sanctioned and disbursed from LIC HFL, Bihar Branch Office. The petitioner is the MD & CEO at the Head Office, Mumbai.

11. The LIC HFL is an independent legal entity but has not been made a party to the complaint. The company is not the party and moreover the order dated 27.02.2023 does not indicate any reasoning for taking cognizance against accused no. 1 individually given that the complaint itself makes no specific allegation against him by name or overt act.

12. Learned counsel for the complainant states that the Courts power under 482 Cr.P.C must be exercised sparingly and circumspection. He states that *prima facie* case and disputed facts cannot be resolved at quashing state. He also submits that the senior officials and financial institutions are vicariously liable and both criminal and civil proceedings can run concurrently.

13. Learned counsel for the informant and learned Additional Public Prosecutor for the State has vehemently opposed quashing of the order of cognizance dated 27.02.2023.

14. Perused the records, Section 406 requires entrustment of property and dominion of property and dishonest misappropriation. The facts would show that the petitioner was never entrusted with any property and no cheque was ever deposited with him.

15. The undisputed facts are that a loan was secured by complainant and her husband and they defaulted in payment and the complaint was filed only after SARFAESI Notice of Demand in December, 2022. The remedy of the complainant is to contest the matter before the Debt Recovery Tribunal and other appropriate forums. This is a classical case of conversion of civil dispute into criminal cases which has been deprecated by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation vs. NEPC India Ltd.*** reported in ***(2006) 6 SCC 736***.

16. Another part of the argument has to be something hitting at the basis of entire prosecution. The alleged offence is of March, 2017. The complaint was filed after more five years and nine months. Section 406 carries maximum punishment of three years which means the limitation period under Section 468 Cr.PC is three years. In ***Sarah Mathew vs. Institute of Cardio Vascular Diseases*** reported in ***(2014) 2 SCC 62*** constitution bench decision, it has been held that in Para 51, it is held as under:-

> *"In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.".*

Here, allegation is of misappropriation in 2017 and case has been filed in the year 2021. The complaint is thus *prima facie* time barred.

17. Apart from the same, the cognizance order is completely non-speaking order. It does not disclose any application of mind to the question whether the petitioner individually can be held responsible for the alleged acts. In ***Pepsi Foods Ltd. vs. Judicial Magistrate*** reported in ***(1998) 5 SCC 749*** it has been held:-

> *" Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable*

thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused".

Thus, the order fails on this count also.

18. Another aspect is that the complainant is ordinarily a resident of Mumbai. The Hon'ble Supreme Court in the case of ***Vijay Dhanuka And Others vs. Najima Mamtaj And Others*** reported in ***(2014) 14 SCC 638*** stated in Paras 10 to 12, which is re-produced as under:-

"10. However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is

apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:

"202. Postponement of issue of process. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is *triable exclusively by the Court of Session, he shall call upon the com-plainant to produce all his witnesses and examine them on oath.*

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

(Emphasis Supplied)

11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his ju-risdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against *persons residing at far off places in order to harass them. The note for the amendment reads as follows:*

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but some-times, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been

> *brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."*

19. No such inquiry seems to have been held.

20. Another issues is covered by ***R. Kalyani vs. Janak C. Mehta*** reported in ***(2009) 1 SCC 516*** where it states that in cases of criminal breach of trust by company specific role of the corporate officers must be pleaded and that by vicarious liability does not automatically fall from designation. Further, LIC HFL, the corporate entity in whose name the loan was sanctioned has not been named as accused. It has been held in number of cases that if the company is not being made an accused, the case cannot proceed against its office bearers. The relevant paragraphs of ***R. Kalyani (supra)*** is re-produced as under:-

> *"**41.** 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."*

21. That five other accused persons are there, but in view of the issue relating to limitation, absence of company as an accused, non-speaking order violating the judgment of ***Pepsi***

Foods Ltd. vs. Judicial Magistrate reported in ***(1998) 5 SCC 749***, this application is allowed. Section 468(1) reads that no court shall take cognizance of an offence after expiry of limitation. The embargo attaches to the act of taking cognizance of the offence, not to the individual accused. If the Magistrate had no competence to take cognizance of this complaint at all, that incompetence does not become partial merely because five of the six did not move this Court. The order of cognizance is one order, on one complaint, of one offence. It is either within jurisdiction or it is not.

22. In such view of the matter, the order of cognizance dated 27.02.2023 passed in connection with East Champaran Complaint Case No. 174 of 2023 by the Ritu Kumari, Judicial Magistrate, 1st Class is quashed against all the accused persons. They are free from the burden of Complaint Case No. 174 of 2023and they will not be prosecuted in connection with this case ever.

23. Accordingly, the present petition stands allowed.

(Ansul, J)

abhishekkr/-

AFR/NAFR	AFR
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