

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5034 of 2018

Arising Out of PS. Case No.-25388 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. ICICI Bank
Office at 9th Floor South Towers, ICICI Towers, Bandra Kurla Complex, Bandra East, Mumbai. Through authorized person namely Mr. Purusottam Kumar, Legal Manager, ICICI Bank at present posted At Zonal office, Flat No. 68, P.S. S.K.Puri, Sahdeo Mahto Marg, Boring Road, ICICI Bank, Patna.
 2. Amitabh Singh @ Amitabh S/o Bimal Prasad Singh, aged about 42 Years, Zonal Head Retail, Bhopal Earlier Posted as Value Banker, ICICI Bank Ltd. having its office at Sushila Complex Kutchary Road, P.S.- Nagar Thana, Begusarai-851101, Bihar.
 3. Vishal Sinha @ Vishal Nandan Singh S/o Girish Nandan Prasad Singh, aged about 42 Years, Regional Head, Gold Loan ICICI Bank, P.S.- S.K. Puri, Patna-800001.
 4. Sakshee Bakshi @ Sakshi Sinha, D/o Bakshi S R Sinha aged about 32 Years, Branch Manager, ICICI Bank Ltd, P.S.- Kotwali, Fraser Road, Patna-800001.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Geeta Sinha W/o Atul Kishore, R/o 45, Ajay Nilyan Apartment, Parmanand Path, Nageshwar Colony, P.S. Budha Colony, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Rana Vikram Singh, Advocate Mr. Dayanand Singh, Advocate
For the State	:	Mr. Aditya Narayan Singh 1, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
CAV JUDGMENT

Date : 19-05-2022

The present application has been filed for setting aside / quashing the order dated 25.06.2016 passed by learned Judicial Magistrate, Patna (hereinafter referred to as "Magistrate") in Complaint Case No. 25388 (C) of 2014 whereby the learned



Magistrate has taken cognizance under Sections 409, 420 and 120B of the Indian Penal Code against the petitioners as well as order dated 15.11.2017 passed by learned Additional Sessions Judge - X, Patna (hereinafter referred to as "Addl. Sessions Judge") in Criminal Revision No. 542 of 2016 whereby the learned Addl. Sessions Judge has approved the order of learned Magistrate by holding that there is no illegality in the order of cognizance.

2. It is submitted on behalf of petitioners that petitioner no. 1 in the present case is the ICICI Bank, petitioner no. 2 is Zonal Head Retail of ICICI Bank, Bhopal, petitioner no. 3 is Regional Head of ICICI Bank, Patna, whereas petitioner no. 4 is the Branch Manager of ICICI Bank, Frazer Road, Patna and all have been made accused only when steps were taken for recovery of the loan amount and properties, kept as security, were auction sold.

3. The brief fact, giving rise to the case, is that the complainant by pledging jewellery had taken gold loan of Rs. 90,600/-. The total value of the jewellery, pledged by the complainant, was done by the bank, which was worth Rs. 90,683/-. The loan was sanctioned and money was transferred in the account of complainant on 30th November, 2012 and the maturity date for returning back the loan amount was May 30, 2013. On expiry of period of maturity, despite several notices sent to the complainant



intimating all the terms for depositing the loan amount and for redeeming the pledged jewellery, no reply was received from the complainant to this effect and finally, in July 2013, the loan account of the complainant became NPA. Thereafter, the complainant on August 4, 2013, filed an application seeking time till September, 2013 to repay the loan. In spite of that, the complainant did not pay the same. Thereafter, on August 13, 2013, paper publication was done by the bank in two local daily newspaper. On August 24, 2013, auction was conducted by the bank and on August 30, 2013, the pledged gold ornaments were auctioned for Rs. 1,00,632/- to one Mr. Ashok Kumar and said auction amount was adjusted against loan amount and thereafter, On September 30, 2013, after deducting the interest calculated for the period from 31.11.2012 to 30.09.2013, the balance amount of Rs. 545/- was sent to the complainant in form of demand draft, which was returned by her and she filed a complaint on February 26, 2014 before the Chief Judicial Magistrate, Patna.

4. It is submitted on behalf of petitioners that none of the petitioners was involved in either sanction of gold loan or in auction of gold ornaments, but the learned Magistrate, without perusing the allegations made in the complaint petition and material available on record, has passed a mechanical and arbitrary order. Against the



order of learned Magistrate, the petitioners preferred a revision, vide Criminal Revision No. 542 of 2016, which was also heard and dismissed by learned Addl. Sessions Judge, vide order dated 15.11.2017. Thus, the present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") assailing both the afore-mentioned orders, which have come up for consideration before this Court.

5. Sri Rana Vikram Singh, learned counsel for the petitioners has assailed both the aforesaid orders mainly on four grounds.

6. Firstly, it is submitted that it is not the case of the complainant that any of the bank officials (petitioners) tried to deceive her either by making a false or misleading representation or by any other action or omission, nor it is the case that petitioners offered her any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof. None of the ingredients of cheating are made out in the case and as such, it cannot be said that there was an offence punishable under Sections 406, 420 and 120(B) of the Indian Penal Code. The allegations made in the complaint even if they are taken as their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.



7. Secondly, it is submitted that the dispute involved between the parties is purely civil in nature and allegation of extortion has been inserted in the complaint with a malicious intent to convert a purely civil dispute into a criminal offence. It is submitted that from bare perusal of the complaint petition, it is apparent that dispute between the parties relates to gold loan facility available from the bank and no *prima facie* case of cheating is made out against the petitioners and the criminal proceeding was instituted with *mala fide* intention only with a view to harass the petitioners and as a matter of fact, dispute of a civil nature has been given a colour of criminal offence. To fortify his argument, learned counsel for the petitioners has placed reliance on a decision of the Hon'ble Supreme Court, reported in **(2006) 6 Supreme Court Cases 736 (Indian Oil Corporation vs. NEPC India Ltd.)** wherein at paragraph no. 13, it has been held as under:-

"13.....Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....."

8. Similarly, in paragraph no. 8 of the judgment of **G. Sagar Suri vs. State of U.P. & Ors.**, reported in **(2000) 2 Supreme Court Cases 636**, the Hon'ble Supreme Court has held, which is as under:-



"8.....It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevention abuse of the process of any Court or otherwise to secure the ends of justice."

9. Thirdly, it is submitted on behalf of petitioners that the present criminal proceeding has been 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. It is submitted that though, loan was sanctioned to the complainant on November 30, 2012, but till the date of auction i.e. August 24, 2013, no complaint was made either with regard to valuation of jewellery or any complaint with regard to demand of bribe and only after lapse of eight months, the present complaint was lodged, which itself goes to show that only with a view to harass the petitioners and to wreak vengeance on the accused, the complaint case has been filed.

10. Fourthly, Mr. Singh, learned counsel for the petitioner has assailed the order dated 25.06.2016 taking cognizance vehemently but very articulately submitting that the learned court below has passed the order in the most mechanical manner without



proper application of judicial mind. He forcefully contended that the learned court below has totally lost sight of civil nature of dispute, which is purely related to an agreement for loan between the parties and has ultimately submitted that even if the entire allegation is taken to be true, still no offence is made out and as such, the learned Magistrate, without applying his judicial mind, has set the criminal law in motion, which is perverse and bad in law and as such, it is fit to be set aside. However, regarding revisional court order, the learned counsel for the petitioner has assailed the same on account of it being cryptic and non-speaking order.

11. Lastly, the learned counsel for the petitioners refers to the decision of Hon'ble Supreme Court in the case of **STATE OF HARYANA VS. BHAJAN LAL** reported in **1992 (Supplementary) 1 Supreme Court Cases 335**, where at paragraph no. 102, categories have been enumerated where the Court should exercise inherent powers under Section 482 of Cr.P.C. The same 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 Information Report and other materials, if any, accompanying the F.I.R. 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 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”.

12. And thus, he submits that the present case clearly falls under category 7 of the aforesaid judgment in the case of **Bhajan Lal** (*supra*).

13. Despite several adjournments, no one appeared on behalf of complainant. However, learned A.P.P. for the State has vehemently opposed the case and submitted that there is no error in the impugned orders and as such, no interference is required by this Court.

14. Punctilious examination, analysis and conjoint reading of the agreement executed between the parties at the time of securing gold loan and the complaint petition and others related documents brought on record connected to the complaint make it abundantly clear in no uncertain terms that the pure private dispute arising out of gold loan agreement being defaulted in repayment of loan and the consequent steps of the Bank to realize its outstanding



loan amount in terms of the stipulated contained there in the agreement, has led to the institution of the present complaint case.

15. The gold ornaments were pledged to the ICICI Bank against the loan amount of Rs. 90,600/- on 30.11.2012 and in terms of the loan, it was maturing on 30.05.2013. Admittedly, records reveal that no payment was made by the complainant to the Bank. Thereafter, the Bank sent demand notice on 15.06.2013 (Annexure – 5), Loan Recall Notice on 04.07.2013 (Annexure – 6) and Notice dated 25.07.2013 for enforcement of security (Annexure – 7), but the complainant evidently did not take any steps towards clearance of outstanding dues of loan amount despite having received notice, which is manifestly evident from paragraph 9 of the complaint petition.

16. Perusal of Annexures 5, 6 and 7 leave no doubt that the petitioners / Bank had issued notice in the most clear terms for clearing the outstanding dues and has also disclosed the consequences of non-payment. Left with no option in terms of stipulation of the loan agreement, all steps were taken. A paper publication was also made on 13.08.2013 in the newspaper (Financial Express) for auction sale of pledged gold and physical auction was made on 24.08.2013 and pledged gold of the complainant was sold for Rs. 1,00,632/- to the auction purchaser.



After deducting the complainant's loan amount, excess amount of Rs. 545/- was sent to the complainant on 01.01.2014 (Annexure - 9), who returned the same on 18.02.2014.

17. Having considered the rival submissions of the parties and on perusal of materials available on record, the Court finds that it is not a case of criminal breach of trust. *Prima facie*, no ingredient of breach of trust is made out against the petitioners. It is not the case that the petitioners, being bank officials, have disposed of the pledged gold jewelries of the complainant in violation of any direction of law, rather it was disposed of as per the terms and conditions of the agreement and the money realized from the auction sale was also not dishonestly used for accused persons, so accusation do not constitute *prima facie* offence of breach of trust. In fairness, the bank also issued a demand draft of Rs.545/-, the excess amount of loan, after auction / sale of the jewellery to the complainant.

18. Perusal of the both the orders impugned give the first impression of its being an outcome of non-application of judicial mind by the learned courts below. In this connection, it is apposite to quote paragraph 27 of a decision of the Apex Court in **Pepsi Food Ltd. and others vs. Special Judicial Magistrate and others**, reported in AIR 1998 SC 128, which is as follows:



"27. 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 scrutinize 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."

19. Furthermore, the Hon'ble Supreme Court has also held in **Zandu Pharmaceutical Works Ltd. and others vs. Md. Sharaful Haque and others**, reported in **AIR 2005 Supreme Court 9**:

"If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, if it open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Cr.P.C."

20. In this connection, this Court would also like to refer **Inder Mohan Goswami vs. State of Uttaranchal** reported in



(2007) 12 Supreme Court Cases 1 wherein the Hon'ble Supreme Court has taken note of the fact that the power of the Court under Section 482 of the Cr.P.C. is for advancement of justice and preventing abuse of the process of the Court. The relevant portion of the aforesaid judgment reads as under:

"13.....This court is a number of cases had laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court,
- and
- (iii) to otherwise secure the ends of justice.

Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

21. In view of aforesaid facts and circumstances, as narrated above, and in view of law discussed above, this Court is of the view that continuation of the criminal proceeding against the petitioners would be abuse of the process of the Court and not in



the interest of justice, hence the impugned order dated 25.06.2016 thereby taking cognizance passed by learned Judicial Magistrate, Patna in Complaint Case No. 25388 (C) of 2014 and subsequent order dated 15.11.2017 passed in Criminal Revision No. 542 of 2016 by learned Additional Sessions Judge X, Patna against the petitioners stand quashed.

22. The application stands allowed.

(Prabhat Kumar Singh, J.)

Anay

AFR/NAFR	A.F.R.
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