
(2020) 08 MP CK 0159

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 30889 Of 2020

Hukum Chand Jaiswal

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 406
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2020) 08 MP CK 0159

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : V.K. Bhardwaj, Rohit Batham, Anoop Nigam, F.A. Shah

Final Decision : Dismissed

Judgement

This first application under Section 438 of Cr.P.C. has been filed for grant of anticipatory bail.

The applicant apprehends his arrest in connection with Crime No.344/2020 registered at Police Station Madhoganj, District Gwalior for offence under Section 406 of IPC.

It is submitted by the counsel for the applicant that in the FIR itself, it is mentioned that when the promissory notes were shown to the applicant then he admitted his signatures, thus, it is clear that the applicant is co-operating with the police. However, the FIR has been lodged only because the applicant could not give any satisfactory proof of refund of Rs.31,30,500/-. It is further submitted that even if the entire allegations are accepted, then it is clear that the offence is in the nature of civil case and the complainant in order to adopt a short cut method has lodged a FIR. To buttress his contentions, the counsel for the applicant has relied upon the judgments passed in the cases of Satyabrata Bhattacharya vs. Jarnail Singh reported in 1976 CRI.L.J. 446 and Vadivel vs. Packialakshmi reported in 1996 CRI.L.J. 300.

Per contra, the application is vehemently opposed by the counsel for the State as well as the complainant.

It is submitted by the counsel for the complainant that the applicant being the President of the Association was keeping the money with him which was being deposited by the Members of the Association. However, after collecting about Rs.31,30,500/- he has refused to refund the amount. Thus it is a criminal breach of trust.

The counsel for the State submitted that since the promissory notes were executed by the applicant and he has refused to return the money back to the complainant, therefore, it clearly shows that he has committed criminal breach of trust.

Heard the learned counsel for the parties.

The Supreme Court in the case of Amit Kapoor vs. Ramesh Chander reported in (2012) 9 SCC 460 has held that where the allegation give rise to a civil claim and also amounts to offence, then merely because the civil claim is maintainable, it does not mean that a criminal complaint cannot be maintained. Therefore, it is clear that if the FIR discloses the commission of criminal case, then a person cannot be granted relief only on the ground that it also involves a civil dispute. Accordingly, this Court gave an option to the applicant that, without prejudice to his defence, if he is ready to deposit an amount of Rs.32,00,000/- before the Court of C.J.M., which shall be disbursed to the complainants, with a stipulation that in case if the applicant is acquitted, then they shall immediately refund the amount, then looking to his age, this application for grant of anticipatory bail can be considered sympathetically. But the counsel for the applicant submitted that the applicant is not ready to deposit Rs.32,00,000/-and at the most he can give security. The reply given by the applicant clearly indicates that although he has admitted his signatures on the promissory notes, but he is not interested to refund the amount.

It is clear from the FIR that money was entrusted to the applicant and he has refused to refund the same and he appears to have converted to his own use or has dishonestly misappropriated, which prima facie makes out an offence for criminal breach of trust. Accordingly, this Court is of the considered opinion that it is not a fit case for grant of anticipatory bail.

The application fails and is hereby dismissed.