

(2010) 10 PAT CK 0088

In the Patna High Court

Case No : Criminal Miscellaneous No. 35164 of 2002

Kamlesh Dutt Mishra and Ravindra Kumar Verma	APPELLANT
Vs	
The State of Bihar and Bijay Kumar Singh	RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406

Citation : (2010) 10 PAT CK 0088

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two Petitioners, who were at the relevant time Branch Manager, State Bank of India, Sitalpur, Manapur Dighwara, Saran and Area Development Officer, State Bank of India respectively have approached this Court by filing the present petition u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 21.4.2001 passed by Shri R.K. Singh, Judicial Magistrate, Ist Class, Chapra in Complaint Case No. 2204 of 2000, Tr. No. 786 of 2002. By the said order, learned Magistrate has taken cognizance of offence under Sections 406 and 120B of the Indian Penal code in Complaint Case No. 2204 of 2000, T.R. No. 786 of 2002.

2. Short fact of the case is that the opposite party No. 2 had approached the Bank for sanctioning loan for purchase of a Tractor. It was alleged that all formalities were already completed by the Bank official and thereafter, the Bank official demanded ten thousand rupees as illegal gratification. Since the demand was not fulfilled at subsequent stage, the entire documents were returned to the complainant and no loan was sanctioned in his favour. On aforesaid allegation, complaint was filed and after conducting enquiry, the learned Magistrate has taken cognizance of offence under Sections 406 and 120B of the Indian Penal Code.

3. Aggrieved with the order of cognizance, both the Petitioners approached this Court by filing the present petition. On 16.12.2002, while issuing notice to opposite party No. 2, this Court directed that in the meantime, further proceeding pending in the court of Judicial Magistrate, Ist Class, Saran at Chapra in T.R. No. 786 of 2002 shall remain stayed. Thereafter, on 18.3.2004, the case was admitted for hearing. At the time of admission, the opposite party No. 2 had appeared through his advocate. While admitting, this Court directed that pending disposal of this application, the interim order dated 16.12.2002 shall remain continue. The order of stay is still continuing. When the case was taken up for hearing, none appeared on behalf of opposite party No. 2.

4. Shri S.R.C. Pandey, learned Counsel appearing on behalf of the Petitioners, while challenging the order of cognizance, submits that on perusal of the entire complaint petition, it is difficult to infer as to whether offence u/s 406 of the Indian Penal Code is made out. It has been submitted that it is true that the opposite party No. 2 had approached the Bank for sanction of loan and proposal for loan was processed by the Bank, but at the subsequent stage, it was noticed that the complainant had suppressed the fact that he was son of Bank employee and as such under the instruction of the Bank, sanction of loan was not permissible. Accordingly, the proposal for sanctioning the loan was terminated and the original documents, which were earlier produced by the complainant, were returned by the Bank. Learned Counsel for the Petitioners, while referring contents of the complaint petition, submits that even complainant has admitted this fact in the complaint petition. Accordingly, it has been prayed to set aside the order of cognizance.

5. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appears on behalf of the State.

6. Besides hearing learned Counsel for the Petitioners and the State, I have also perused the materials available on record particularly the complaint petition as well as the impugned order. After going through the contents of the complaint petition, the court is satisfied that it was not a case for commission of criminal breach of trust. There is no allegation that any amount of complainant was either illegally withheld or mis-appropriated by the official of the Bank. The Petitioner No. 1 was Branch Manager and Petitioner No. 2 was Area Development Officer of the Bank. After going through the record, the court is satisfied that without any materials, the learned Magistrate has passed the impugned order in a mechanical manner.

7. Accordingly, with a view to prevent the abuse of the process of the court, it is necessary to interfere with the impugned order. The order of cognizance dated 21.4.2001 passed by Shri R.K. Singh, Judicial Magistrate, Ist Class, Chapra in Tr. No. 786 of 2002 arising out of Complaint Case No. 2204 of 2000 is hereby set aside and petition stands allowed.