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**(2010) 11 PAT CK 0080**

**In the Patna High Court**

**Case No : Criminal Miscellaneous No. 46390 of 2007**

Ramendra Narayan Roy and Others

APPELLANT

Vs

The State of Bihar and Rajeev Bhargava

RESPONDENT

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**Date of Decision : 24-11-2010**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120(B), 342, 380, 448, 504

**Citation :** (2011) 59 BLJR 2121 : (2011) 1 PLJR 634

**Hon'ble Judges :** Rakesh Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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**Judgement**

Rakesh Kumar, J.—who was Assistant General Manager ( NPA Management), State Bank of India, Local Head Office, Patna and Petitioner No. 2 who was Recovery Agent of the Bank, have approached this Court with a prayer to quash an order dated 30.4.2007 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 378( C) of 2007 . By the said order, the learned Magistrate has taken cognizance of offences under Sections 342, 380, 448, 504, 506 and 120(B) of the Indian Penal Code.

2. It appears from the record that Opp. Party No. 2 had filed a complaint in the court of learned Chief Judicial Magistrate against both the Petitioners and one Sri Rajeev Roy, Assistant General Manager, State Bank of India, Rehabilitation & Recovery Branch , West Gandhi Maidan , Patna . In the complaint petition, the complainant has indicated that he had obtained cash credit facility to the tune of Rs. 1 Crore and he became defaulter. It was alleged that the Bank with the aid of recovery agent, i.e. Petitioner No. 2 had pressurized the complainant for clearing the dues and also abused the complainant and other allegation are mentioned in the complaint petition.

3. None has appeared on behalf of Opp. Party No. 2. It appears from the ordersheet that on earlier occasion even prior to the admission of the case none

had appeared despite the fact that Vakalatnama was already filed on behalf of Opp. Party No. 2.

4. At the very outset, Dr. Binay Kumar Singh, learned Counsel appearing on behalf of the Petitioners submits that during the pendency of this petition, a compromise in between the parties has already arrived and it appears that due to compromise, Opp. Party No. 2 is not taking any interest in the present proceeding. In paragraph 2 of the complaint petition itself, the complainant had stated that he was/is ready to pay the legal and rightful dues of the Bank and offered on several dates for healthy compromise for one time settlement. On the basis of contents of the complaint petition, the Court is of the opinion that the present case was filed only with a view to pressurize the Bank for coming to a compromise. The complainant has also admitted that huge amount was outstanding, which was required to be refunded by the complainant to the Bank. On perusal of the materials available on record, the Court is of the opinion that the present complaint was not filed honestly and fairly, rather it was filed with oblique motive, which has already been indicated in the complaint petition.

5. Accordingly, I am of the view that allowing the prosecution of the Petitioners on such allegation will amount to allowing the abuse of the process of the court and with a view to prevent the abuse of the process of the court, the Court is of the opinion that the order of cognizance as well as entire prosecution is liable to be set aside.

6. Accordingly, the order dated 30.4.2007 passed by learned Judicial Magistrate, 1st Class, Patna in complaint Case No. 378 (C) of 2007 as well as entire proceedings in Complaint Case No. 378 of 2007 is hereby set aside and the petition stands allowed.