(2009) 07 PAT CK 0063

In the Patna High Court

Case No : Criminal Miscellaneous No. 53610 of 2006

Shambhu Paswan APPELLANT

Vs

The State of Bihar and Guddu Sharma RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Chit Funds Act, 1982 — Section 76
Criminal Procedure Code, 1973 (CrPC) — Section 164, 319
Penal Code, 1860 (IPC) — Section 323, 34, 341, 379, 387

Citation : (2009) 57 BLJR 3034

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Deoeshwar Prasad Singh, Sudarshan Chaudhary and Raman Kumar Singh, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner, who is one of the F.I.R. named accused of Naugachhia P.S. Case No. 208 of 2006, has prayed for the quashing of the entire criminal proceedings as against him including the order dated 20.11.2006, passed by the learned Additional Chief Judicial Magistrate, Naugachhia, whereby the petition for his discharge alongwith others has been rejected and they have been directed to be physically present on 21.11.2006 for framing of charge to face the trial.

2. One Guddu Sharma, the informant, impleaded herein as O.P. No. 2, gave a typed information to the Deputy Inspector General of Police, Eastern Region, Bhagalpur, inter alia, alleging that one Anil Yadav, is running a "Gunda Bank" in village-Noniapatti, which is managed by Gorelal Yadav, Prakash Yadav, Sunil Yadav, Satish Yadav and Mani Lal Yadav and Guddu Yadav and that the informant had taken a loan of Rs. 25000/- on 24.11.2005 and a further amount of Rs. 25000/- on 27.11.2005 and for this he was issued with a pass-book signed by

the Manager of the Bank, Anil Yadav. It is alleged that the informant had returned all the money(Rs. 72000/-) on different dates for which receipts have been issued under the signature of Mani Lal Yadav and notwithstanding the same the Manager of the "Gunda Bank" is demanding Rs. 80000/- for which people come from the said Bank everyday and keep abusing him and also threaten him with dire consequences. It is further alleged that Anil Yadav, Sunil Yadav, Satish Yadav, Mani Lal Yadav, Prakash Yadav and Guddu Yadav, forcibly obtained his signature on a blank stamp paper. It is stated that on 1.1.2006 the informant took a loan of Rs. 25000/- from New Sheo Gauri Samiti Gunda Bank for which he was issued with a pass-book under the signature of its Manager, Sadanand Yadav. It is alleged that the principal amount of Rs. 20000/- was returned on 1.2.2006 and a sum of Rs. 5000/- was paid by way of interest upto May, 2006 and notwithstanding the same they were demanding a sum of Rs. 40000/-on the calculation of Rs. 5/- per Rs. 100/- per day and if he failed to pay he would be killed. It is stated that the said Bank is a "Gunda Bank" and is run by Sadanand Yadav, T.P. Yadav, Shambhu Paswan, Arun Yadav and Vikash Yadav.

3. On the basis of the said typed report, the aforesaid police case came to be registered under Sections 420, 467, 468, 471, 472, 474, 323, 506, 387 and 347 I.P.C. and Section 76 of the Chit Funds Act, 1982. It appears that after due investigation the police submitted a charge sheet under the aforesaid sections against the F.I.R. named accused, Mani Lal Yadav, Satish Yadav, Guddu Yadav and Shambhu Paswan whereas the investigation was kept pending against the remaining persons.

4. It has been submitted by the learned Counsel for the petitioner that although charge sheet was submitted on 24.7.2006, there is no specific allegation against the petitioner of his having either given the money or received the same from the informant. It has also been submitted that there is no allegation of any overt act having been committed by the petitioner or of his having abused or assaulted the informant or of his even having gone to the house of the informant in demand of the money. There is also no allegation against the petitioner of his having used force to take the signature of the informant on the blank stamp paper and in the F.I.R., apart from his name being merely mentioned no iota of evidence has been collected against him. It was further submitted that in the statement of the informant recorded u/s 164 Cr.P.C. on 4.7.2006, the petitioner has not been named. On the contrary, it has been submitted that the informant had unnecessarily dragged the name of the petitioner out of enmity as the petitioner had already filed a case under Sections 341, 323, 379, 504 and 427/34 I.P.C. on 23.5.2004 with the Gopalpur P.S. being Gopalpur P.S. Case No. 88 of 2004 against the informant''s own uncle Mantoo Sharma and his other family members.

5. That apart, it has been submitted that the petitioner is a chowkidar and has no connection with the so called "Gunda Bank".

6. A perusal of the impugned order shows that the learned Magistrate having

gone through the case diary has found sufficient materials against the petitioner from paragraphs-3, 5, 9, 10, 14, 15, 26, 47 and 49 for framing charge and has, therefore, rejected the petition for his discharge.

7. In connection with the impugned order, it has been submitted by the learned Counsel for the petitioner that whereas paragraph-5 is the restatement of the informant, paragraph-15 is the statement of the informant''s father and they have not alleged any specific accusation against the petitioner and have merely stated that he is a member of the management of the said "Gunda Bank". Paragraphs-3 and 10 are the seizure lists whereas paragraph-9 is in respect of place of occurrence. Paragraph-26 is the statement of the informant u/s 164 Cr.P.C. whereas paragraph-47 is the supervision note.

8. The informant, O.P. No. 2, on being served with notice, has appeared by filing vakalatnama but curiously at the time of hearing, none was present on his behalf.

9. The impugned order, apart from mentioning the paragraphs of the case diary, docs not give any indication as to the materials which were available in those paragraphs to show the involvement of the petitioner. On the contrary, the learned Counsel for the petitioner has given details save and except paragraphs-14 and 49. Even otherwise, from the statement of the informant u/s 164 Cr.P.C. as also the written statement submitted by him, no accusation appears to have been made against the petitioner regarding his complicity in the crime.

10. For the reasons stated above, the prosecution of the petitioner would amount to an abuse of the process of the court.

11. Accordingly, the impugned order, so far as the petitioner is concerned, is hereby set aside and the application is allowed.

12. It is made clear that if in course of the trial the complicity of the petitioner in the crime comes to light, the court shall be at liberty to summon him u/s 319 Cr.P.C.