**(2014) 06 JH CK 0035**

**In the Jharkhand High Court**

**Case No :** Criminal M.P. No. 2694 of 2012

Shashi Shekhar Kumar Sinha APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

**Date of Decision :** 26-06-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 245, 482 — Penal Code, 1860 (IPC) - Section 120-B, 34, 408, 418, 420

**Citation :** (2015) 2 CCR 140

**Hon'ble Judges :** Harish Chandra Mishra, J.

**Bench :** Single Bench

**Advocate :** Pandey A.N. Roy, Advocate, for the Appellant; Hemant Kumar Shikarwar, for the Respondent

**Final Decision :** Allowed

# Judgement

Harish Chandra Mishra, J.?Heard learned Counsel for the petitioner and learned Counsel for the State as also learned Counsel for the complainant opposite party No. 2. Petitioner is aggrieved by the order dated 30.8.2012 passed by the learned S.D.J.M., Jamshedpur in C/1 Case No. 76 of 2009, whereby the application filed by the petitioner for discharge under Section 245 of the CrPC, has been dismissed by the Court below. The petitioner also filed the revision application before the Revisional Court below against the said order, which was rejected by the learned Sessions Judge, Jamshedpur, by order dated 20.10.2012 passed in Cr. Revision No. 222 of 2012. Aggrieved thereby, the petitioner filed this application under Section 482 of the Cr.P.C., for setting aside the impugned orders passed by the Courts below. During the pendency of this application the charge has also been framed against the petitioner and the order framing charge dated 16.5.2013 passed by the learned SDJM, Jamshedpur in the said C/1 Case No. 76 of 2009 has also been challenged by the petitioner.

2. The complainant opposite party No. 2 filed a complaint case bearing Complaint Case No. 76 of 2009 before the Chief Judicial Magistrate, Jamshedpur, on

 

12.1.2009. The petitioner, who at that time was posted as the Branch Manager of Jharkhand Gramin Bank, Dimna Chowk Branch, Jamshedpur, was made accused in the said case along with the Regional Manager of the Jharkhand Gramin Bank. In the said complaint petition, it was alleged that the complainant had deposited NSC and KVP original certificates in the Jharkhand Gramin Bank, Dimna Chowk Branch, which were valued Rs. 11,25,000/- for obtaining the loan, and he was sanctioned a loan of Rs. 14.00 lakhs, which was fully paid off by the complainant. The complainant sent a legal notice for getting back the said documents, but in reply to the notice it was replied that the complainant''s wife had taken another loan of Rs. 7,00,000/- in which those documents were pledged. Denying the fact that any loan was ever taken by his wife and also stating that the Branch Manager had no authority to grant loan beyond Rupees one lakh and for sanctioning the loan beyond Rupees one lakh, the permission of the Regional Manager of the Bank was necessary and also stating that the documents relating to the alleged loan were never shown to the complainant on demand, the complaint petition was filed against the petitioner and the Regional Manager for the alleged offences under Sections 408, 420 and 120-B/34 of the IPC.

3. The statement of the complainant was recorded on solemn affirmation and some inquiry witnesses were also examined, on the basis of which the prima facie offence Section 418 of the IPC was found against the petitioner only and summon was issued to the petitioner. After the petitioner appeared in the Court below, three witnesses were examined before the charge. Subsequently, the petitioner filed the application under Section 245 of the Cr.P.C. for discharge and he also filed certain documents in the Court below to show that the loan was taken by the wife of the complainant, in which the KVP and NSC certificates were pledged. The Court below, however, relying upon the evidence taken before the charge, rejected the application filed by the petitioner and the revision filed against that order, was also dismissed by the Revisional Court below. Subsequently charge was also framed against the petitioner under Section 418 of the IPC.

4. Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. It has been submitted that the petitioner at the relevant time was not even posted in the Bank when the loan was sanctioned in favour of the wife of the complainant. It is also submitted, which has also come in the impugned orders, that there was a fire in the branch of the Bank, in which the then Branch Manager was burnt to death and the documents of the bank were also destroyed. Thereafter, the petitioner was posted in the Branch, and when the demand of the KVP and NSC certificates were made by the complainant, the petitioner learnt that loan was taken by the wife of the complainant, in which those documents were pledged and accordingly, he refused to return back those certificates, due to which the present complaint has been filed making false allegations against the petitioner. Learned Counsel submitted that the documents brought on record including the ledger of the loan account clearly showed that the loan was taken by the wife of the complainant

 

and accordingly no offence can be said to be made out against the petitioner. Submitting that the petitioner has been falsely implicated in the case in order to usurp the loan amount, the petitioner has prayed for setting aside the impugned orders passed by the Courts below.

5. Learned Counsel for the complainant opposite party No. 2 on the other hand has submitted the it the entire documents, which are being relied upon by this petitioner to show that the loan was taken by the wife of the complainant opposite party No. 2, are forged and fabricated documents and have been created only for defence. Learned Counsel has submitted that the application filed by the petitioner under Section 245 of the CrPC, was dismissed by the Court below passing a reasoned order, against which the petitioner filed the revision before the learned Sessions Judge, Jamshedpur, which was also dismissed. It has been submitted that this is a second revision of the petitioner in garb of the application under Section 482 of the Cr.P.C., and the same is not maintainable. Learned Counsel, accordingly, opposed the prayer.

6. Learned Counsel for the State has also opposed the prayer of the petitioner.

7. After having heard learned Counsel for both the sides and upon going through the record, I find that whatever allegation is there against the petitioner, is in his official capacity as a Branch Manager of the Bank. The stand of the Bank is that the loan was taken by the wife of the complainant, in which the documents claimed by the complainant had been pledged and the said loan has not been returned back. The list of the documents filed in the Court below included even the ledger of the loan account, supporting the fact that the loan was taken by the wife of the complainant. The fact is however disputed by the complainant alleging the documents to be forged.

8. Be that as it may. The fact whether the loan was taken by the wife of the complainant or not, cannot be decided in the criminal proceeding, which has been filed by the complainant in the present complaint. In that view of the matter, when there is definite stand of the accused petitioner that at the relevant time, he was not posted in the Bank, when the said loan was said to be sanctioned and the documents produced by the petitioner prima facie show that the loan was taken by the complainant''s wife though disputed by the complainant, in my considered view, no offence can be said to be made out against the petitioner for, the offence under Section 418 of the IPC, and the prosecution of the petitioner for the said offence shall be sheer misuse of the process of Court. In my considered view, this is a fit case for exercising the inherent power under Section 482 of the CrPC, for quashing the entire criminal proceeding against the petitioner.

9. Accordingly, the impugned orders dated 30.8.2012 and 16.5.2013 passed by learned SDJM, Jamshedpur, in C-1 Case No. 76 of 2009, as also the order dated 20.10.2012 passed by the learned Sessions Judge, Jamshedpur, in Cr. Revision No. 222 of 2012 and the entire criminal proceedings against the petitioner in C-1

 

Case No. 76 of 2009, are hereby, quashed.

10. It goes without saying that the parties shall be free to take appropriate action before the appropriate Forum as regards their respective claims of the loan amount/pledged documents. This application is accordingly allowed with the direction as above.

 