(2006) 07 PAT CK 0097

In the Patna High Court

Case No : Criminal Miscellaneous No. 5325 of 2005

Tulsi Das Tiwary APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468

Citation : (2007) 1 PLJR 402

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Amrendra Kumar, for the Appellant; Ramakant Sharma for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner as well as the State. No one appears on behalf of opposite party No. 2 even though properly served and she has entered appearance through her counsel.

2. Petitioner was holding the post of Cashier in State Bank of India, Danapur Branch, at the relevant time when the alleged occurrence has taken place. Complaint Case No. 522(c) of 2002 was filed by opposite party No. 2 for offences under Sections 406, 420, 467 and 468 of the Indian Penal Code alleging that her father-in-law (now deceased) was holding saving bank account No. 01190015488 in the State Bank of India, Danapur Branch. Her father-in-law, Ram Dewan Singh, died on 21.10.2000 and at that time Rs. 92,543/-was lying in his bank account. After the death of the account holder, elder brother of informant''s husband withdrew Rs. 90,000/- from the bank in between 18th to 25th November, 2005. This withdrawal was done in conspiracy with the bank officials. The complainant came to know about this, when the amount was not mentioned in the petition filed for issuance of the succession certificate. On 4.12.2001, she gave legal notice to the bank regarding the death of her father-in-law and also

came to know that the money in the saving bank account has already been withdrawn by her brother-in-law. This complaint was sent by the Additional Chief Judicial Magistrate, Danapur, for institution of police case u/s 156(3) of the Criminal Procedure Code and Danapur P.S. Case No. 98 of 2003 was instituted. After investigation charge-sheet was submitted and cognizance has been taken against the petitioner and other accused persons.

3. This application has been filed for quashing the order, dated 14.2.2004, whereby cognizance has been taken for commission of offence under Sections 406, 420, 467 and 468 of the Indian Penal Code against the petitioner and other accused persons warrant of arrest has also been issued.

4. Counsel for the petitioner submits that even if the allegations made in the first information report is taken to be true. no prima facie case is made out against the petitioner under the alleged sections. That Cashier has nothing to do with the identification of the signature of the account holder and its comparison with his specimen signature. The Cashier has to play a very limited role. He has to make payment of the amount specified in the cheque or in the withdrawal form, which is duly approved and authorised in favour of a person. If a person presents a token, issued in his favour, the Cashier has to make payment. It has also been submitted by the petitioner''s counsel that for similar allegation the Branch Manager, State Bank of India, Danapur, who is also accused in a case, filed Cr. Misc. No. 683 of 2005 for quashing of order taking cognizance which has been allowed by order, dated 20.12.2005, and the order taking cognizance has been quashed.

5. Considering the aforementioned facts and the submissions made by the counsel, I find that this is a fit case in which cognizance should not have been taken against the petitioner for offence under Sections 406, 420, 467 and 468 of the Indian Penal Code. The order, dated 14.2.2004, passed in Danapur P.S. Case No. 98 of 2003 (Complaint Case No. 522(c) of 2002 G.R. No. 327 of 2003) is quashed. Accordingly, this application is allowed.