

Tapas Kumar Sinha Vs. State of Orissa

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Court : Orissa

Decided On : Nov-23-2005

Reported in : 2006(1)OLR38

Judge : R.N. Biswal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 162 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 166, 418 and 420

Appeal No. : Criminal Misc. Case No. 345 of 2005

Appellant : Tapas Kumar Sinha

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Bijaya Nanda Dash,; B.C. Pradhan and; H.K. Hati, Adv

Disposition : Application dismissed

Judgement :

R.N. Biswal, J.

This CRLMC arises out of a petition filed under Section 482 of Cr.P.C. seeking quashing of the order dated 11.2.2004 passed by learned S.D.J.M. (S) Cuttack, in G.R. case No. 190 of 2002, arising out of Madhupatna P.S. case No. 30 of 2002,

wherein he took cognizance of the offence under Sections 420/418/166/120-B of I.P.C.

1. One Prafulla Kumar Lenka lodged a written report on 10.2.2002 before the I.I.C. of Madhupatna Police Station alleging that he applied for a loan of Rs. 8,00,000/- to the Branch Manager, Urban Cooperative Bank, Dolamundai Branch, Cuttack. After sanction of the loan, the Branch Manager Guruprasad Kanungo and the petitioner induced him to sign on some blank forms. When he asked for the cash, the Branch Manager told him to avail overdrawing loan facility to meet his requirements. The informant then acted accordingly and availed overdrawing loan facility of Rs. 1,10,723/-. Subsequently, he learnt from some staff of the said bank that the entire loan amount of Rs. 8,00,000 has been shown to have been disbursed in his favour; out of which a sum of Rs. 4,83,700/- has been adjusted in the account of the petitioner and a sum of Rs. 2,00,000/- has been kept as fixed deposit. He verified the records and found the same to be correct. On the basis of this report, a case under Sections 420/418/166/120-B of I.P.C. was registered against the petitioner and co-accused, Guru Prasad Kanungo. After completion of investigation charge sheet was submitted against them for the said offences. The S.D.J.M. (Sadar), Cuttack took cognizance of the offence under Sections 420/418/166/120-B of I.P.C. against the petitioner and Guruprasad Kanungo.

2. Being aggrieved with the order of taking cognizance, the petitioner has filed the petition under Section 482 of Cr.P.C. to quash the proceeding as mentioned earlier.

3. Learned counsel for the petitioner submitted that, as depicted from the F.I.R., On 26.5.2000 the informant had lodged a report in connection with the same allegation before the I.I.C. of Madhupatna P.S. So, the subsequent F.I.R. lodged on 10.2.2002 would be hit under Section 162 of Cr.P.C. and as such would not be admissible. The informant has filed dispute case No. 52 of 2000 before Registrar, Cooperative Societies, Orissa, against Mr. Guru Prasad Kanungo, the petitioner and three others in connection with the subject matter covered under the F.I.R. He further submitted that the fact of availing loan of rupees eight lacks from the Co-operative Bank, Cuttack by the informant is evident from the withdrawal slip dated

13.3.00 and copy of the savings bank ledger of the same date corresponding to A/c No.3853 standing in the name of the informant. So the order of cognizance should be quashed.

4. If there are sufficient grounds to proceed against an accused cognizance can be taken and summons can be issued against him. The Court is not required to embark upon a roving enquiry about the ultimate success of the prosecution at that stage. That is the function of the trial Court. As found from the allegation made against the petitioner and co-accused, they conspired to cheat the informant and cause loss to him. The co-accused being a public servant, instead of protecting the interest of the informant, who is not other than, a customer of the bank cheated him and managed to obtain his signatures in some blank forms in conspiracy with the petitioner. As per the allegation out of the loan sanctioned in favour of informant a sum of Rs, 4,83,700/-was adjusted to the account of petitioner clandestinely. Pendency of the dispute before the Registrar, Co-operative Society cannot be a ground to thwart the prosecution at the threshold.

5. In my view, there are sufficient grounds to proceed against the petitioner, for the offence under Sections 420/418/166/120-B of I.P.C. and as such the Court below has rightly taken cognizance of the same.

Under such circumstances, the CRLMC stands dismissed.

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