

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72011 of 2022

Arising Out of PS. Case No.-538 Year-2018 Thana- BUXAR District- Buxar

SUSHIL KUMAR Son of Late Gopal Narayan Srivastwa R/o- Flat No.- 205,
Hope Chandra Apartment, Mohalla- Nehru Nagar, Near Forest Department,
P.O. and P.S.- Patliputra, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Manoj Kumar S/O Gridhari Singh R/O- P.B.Road,Jahaj Ghat,P.S.- Buxar
Town, District- Buxar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Madhu Prasun, Advocate
For the Opposite Party/s : Mr.Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL ORDER

6 23-07-2026 Heard learned counsel for the petitioner and learned APP
for the State.

2. Interlocutory Application No. 1 of 2023 seeks amendment of the prayer. The main application, as filed in October 2022, sought quashing of the first information report alone. The petitioner has since obtained certified copies of the chargesheet and of the order of cognizance, and prays that the prayer be enlarged to cover them. Learned APP does not oppose. The amendment is formal, it introduces no new cause, and the material sought to be brought on record is a matter of the trial court's own file. Interlocutory Application No. 1 of 2023 is allowed. The prayer stands amended accordingly.



3. The petitioner retired as Branch Manager, Punjab National Bank, Pandeypatti Branch, Buxar. He has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. He seeks quashing of Buxar Town P.S. Case No. 538 of 2018 dated 01.10.2018, corresponding to G.R. No. 3175 of 2018, of Chargesheet No. 365 of 2022 dated 30.05.2022, of the order dated 04.08.2022 of the learned Chief Judicial Magistrate, Buxar, taking cognizance, and of all proceedings pending in consequence before the learned Judicial Magistrate 1st Class, Buxar, so far as they concern him.

4. Manoj Kumar S/o Sri Girdhari Singh is the informant. He states that while trying to obtain a vehicle loan he found a housing loan of Rs. 12,00,000 reflected against his own PAN and CIBIL, a loan he never took. The complaint went for registration under Section 156(3) CrPC. Three persons were named. Manoj Kumar S/o Late Chandrakesh Kumar and his mother Sharda Devi are accused nos. 1 and 2, the actual borrowers. Accused no. 3 is not named. He is described as the vartaman shakha prabandhak, the Branch Manager then serving at the Pandeypatti branch. The allegations against him are that he acted in collusion with accused nos. 1 and 2, that forged documents were prepared and a loan raised in the informant's



name on them, that the informant's photograph, signature and voter identity card were absent from those documents, and that when the informant approached him he was abused and turned away.

5. The petitioner is not the officer so described. He held charge as Branch Manager from 2013 to 2016. The informant's written complaint to the branch is dated 27.11.2017 and his complaint petition before the learned Chief Judicial Magistrate is dated 10.05.2018. The conduct alleged against accused no. 3, the refusal to act on the informant's applications and the abuse said to have been administered, belongs to whoever held that office in 2017 and 2018. It cannot belong to the petitioner, who had left the branch by then. He has been drawn into this case for one reason only, that he sanctioned the housing loan in March 2014. That is not what accused no. 3 is accused of.

6. The housing loan was sanctioned on 14.03.2014. The petitioner held charge as Branch Manager then. Three years of income tax returns accompanied the loan application, along with photograph, identity and address proof, none of which the FIR disputes were furnished. Those returns had, for years, carried the informant's PAN, ANYPK0470B, though they belonged to a different Manoj Kumar altogether. The loan was secured by



mortgage of the borrowers' house and accused no. 2 was a pensioner in her own right. Learned APP could point to no act, no omission, nothing beyond the petitioner's designation, when asked what the petitioner is supposed to have done wrong. He fell back on the submission that a cognizable offence stood disclosed and that the matter must go to trial, which is true as a general proposition but says nothing about this petitioner in particular.

7. The mistake, once found, was corrected. The bank wrote to the informant on 05.10.2018, Annexure 3, removing the wrong PAN from his CIBIL record. The loan account has run without default from 2014 onward, Annexure 4. During the petitioner's anticipatory bail proceeding the learned Additional Sessions Judge called for a report from the bank. That report, dated 11.04.2022, Annexure 7, records that the petitioner joined service in 1990, has an unblemished record, was never departmentally proceeded against, and had no hand in the PAN error, which belonged to accused no. 1, whose correct PAN turned out to be AILPK3264F. The bank verified the returns against the Form 16 issued by the school where accused no. 1 was employed and found them to tally. The bank recommended closure of the case against the petitioner. Nobody has challenged



this report.

8. That report is dated 11.04.2022. The chargesheet was submitted on 30.05.2022. The investigating officer therefore had before him, seven weeks before he filed his final form, a report from the complainant institution itself absolving the petitioner and tracing the error to accused no. 1. He filed against all three regardless. The final form carries no discussion of the petitioner's role, and column 16, meant for the brief facts of the case, is blank. The learned Chief Judicial Magistrate then took cognizance on 04.08.2022 against all three in a single sentence, recording only that a prima facie case is made out, without a word to distinguish the position of a bank officer who sanctioned a loan in 2014 from that of the borrowers who obtained it. Cognizance is a judicial act. It requires the Magistrate to apply his mind to the material and to satisfy himself that it discloses an offence against each person proceeded against. That exercise is not reflected in the order under challenge.

9. The sections were also enlarged along the way. The first information report was registered under Sections 406, 409, 420 and 120B IPC. The chargesheet dropped Section 406 and added Sections 419, 423 and 468 IPC. None of the three



additions survives even a first look so far as this petitioner is concerned. Section 419 punishes cheating by personation. The petitioner personated nobody and it is not suggested that he did. Section 468 requires the making of a false document with intent to use it for cheating. The case as investigated is that a wrong permanent account number was carried forward, over several years and by mistake, in returns filed by accused no. 1. Nobody has said that the petitioner made a document or altered one. Section 423 requires the execution of a deed of transfer containing a false statement as to the consideration. There is no such deed and no such statement anywhere on this record. These sections appear to have been added to give the final form weight rather than because the material disclosed them.

10. Sections 406 and 409 IPC require entrustment. The informant entrusted nothing to the petitioner, because the informant took no loan. There was nothing to entrust and nothing to breach.

11. Section 420 IPC requires dishonest or fraudulent intention at the inception of the transaction, not afterward. *Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.*, (2000) 4 SCC 168, a case out of Siwan, says as much, that intention is the gist of the offence and a transaction gone wrong



cannot be read backward into dishonesty at its start. As already noted above, the petitioner sanctioned this loan on documents that carried nothing to alert him in 2014. Section 120B needs a meeting of minds. There is none shown here, not even an allegation of one against this petitioner.

12. *HDFC Bank Ltd. v. State of Bihar & Ors., Cr. Appeal No. 4324 of 2024 arising out of SLP(Cr.) No. 8906 of 2022*, arose from an income tax search and a restraint order under Section 132(3) of the Income Tax Act served on a Patna branch, followed by an FIR against the branch officials under Sections 406, 409, 420 and 120B among others. The Supreme Court quashed it, holding that the ingredients were absent and that mens rea could not in any event be attributed to the bank as a juristic person. The facts here are not identical, they rarely are, but the reasoning travels. A bank official who processes a loan on documents regular on their face, where the defect is later traced to the borrower and not to him, has not committed criminal breach of trust or cheating.

13. *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, remains the starting point for this jurisdiction. The first and third categories apply here. The allegations, taken at their highest, do not make out an offence against this petitioner. The



material gathered in investigation does not support the charge either, and indeed contradicts it, the bank's report being the clearest instance. The informant lost nothing. The borrowers have kept paying. The bank itself has said the petitioner did nothing wrong. To require a retired officer to stand trial on this material, eight years after the transaction and on a chargesheet that ignored the exoneration already before the investigating officer, would be an abuse of the process of the Court.

14. This application is allowed. Buxar Town P.S. Case No. 538 of 2018 dated 01.10.2018, corresponding to G.R. No. 3175 of 2018, Chargesheet No. 365 of 2022 dated 30.05.2022, the order dated 04.08.2022 of the learned Chief Judicial Magistrate, Buxar, taking cognizance, and all proceedings arising therefrom now pending before the learned Judicial Magistrate 1st Class, Buxar, are quashed so far as the petitioner Sushil Kumar is concerned. The case shall proceed against the remaining accused in accordance with law. Nothing said in this order shall be taken as an expression of opinion on their case.

15. Interlocutory application, if any, stands disposed of.

(Ansul, J)

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