

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1375 of 2021

Arising Out of PS. Case No.-549 Year-2021 Thana- GANDHIMAIDAN District- Patna

H.D.F.C. Bank, through its authorized signatory Abha Sinha, Branch Manager, HDFC Bank Ltd. Exhibition Road Branch, P.S.- Gandhi Maidan Patna , through its authorized signatory Abha Sinha, Branch Manager, HDFC Bank Ltd, Bimala Sadan, Exhibition Road Branch , Patna, age - 41 year, Gender - Female, W/o Vishal Harshvardhan, Resident of NC 153, Priya Vardhan House, Gayatri Mandir Road, P.S.- Kankarbagh, Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna. Bihar
2. The Director General of police, Patna, Bihar Bihar
3. The Senior Superintendent of Police, Patna, Bihar. Bihar
4. The Officer in Charge, Gandhi Maidan Police Station , Patna. Bihar
5. Smt. Priyanka Sharma , Deputy Director of Income Tax (INV), Unit 2(2), 4th Floor , Aayakar Bhawan, Christian Basti, G.S. Road, Guwahati , PIN-781005

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s P. K. Shahi, Sr. Advocate Girijish Kumar, Advocate
For the State	:	M/s Md. Nadeem Seraj, GP 5 Iqbal Asif Niazi, AC to GP 5
For the Income Tax	:	M/s Archana Sinha, Sr. Standing Counsel Sanjeev Kumar, Jr. Standing Counsel

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 8.6.2022

Heard learned counsel for the parties.

The petitioner has filed the instant application for quashing of the First Information Report of Gandhi Maidan P.S. Case no. 549 of 2021 registered under sections 420, 409, 406, 462, 206, 217, 201, 34, 120B and 37 of the Indian Penal Code.

As per the prosecution case based on the written



statement dated 20.11.2021 of Smt. Priyanka Sharma (respondent no. 5), Deputy Director of Income Tax (Inv), Unit-2(2), Guwahati addressed to the SHO, Gandhi Maidan Thana, Patna alleges inter alia that in course of search and seizure conducted on 5.10.2021 at 3rd floor, Khataruka Niwas, South Gandhi Maidan, Patna in the case of Smt. Sunil Khemka, Smt. Sunita Khemka and Smt. Shivani Khemka, order under section 132(3) of the Income Tax Act, 1961 was served by the Authorised Officer to the HDFC Bank, Exhibition Road Branch, Patna to put a stop operation on the Bank accounts, fixed deposits and Bank lockers of the assessee. It was stated that it was found that the assessee Smt. Sunita Khemka holds a Bank locker in the HDFC Bank, Exhibition Road Branch, Patna and hence a prohibitory order under section 132(3) of the Income Tax Act was imposed in the Bank locker no. 462 held in her name. It is further stated that it came to light that the restraint order imposed has been breached and violated and that Smt. Sunita Khemka operated the Bank locker no. 462 on 9.11.2021 at 11.53 a.m.. The said fact was validated by the CCTV footage and in the said operation of the locker Smt. Sunita Khemka was aided by the HDFC Bank, Exhibition Road Branch, Patna. Smt. Sunita Khemka in her statement on oath agreed that she had



operated her Bank locker no. 462 on 9.11.2021 and that she was assisted by the Bank officials. The statements of Smt. Abha Sinha, Bank Manager, Abhishek Kumar, Branch Operational Manager, Deepak Kumar, Teller Banker Authoriser, all of HDFC Bank, Exhibition Road Branch, Patna was recorded on oath and they agreed that the Bank locker no. 462 was operated on 9.11.2021. Contravention of the order under section 132(3) is punishable under section 275A of the Income Tax Act, 1961 and also punishable under sections 34, 120B, 201, 204, 206, 117, 406, 409, 420, 426 and 462 of the Indian Penal Code. Thus, it was stated that Smt. Sunita Khemka in connivance with the HDFC Bank operated the Bank locker without government authorization / permission and thus it was requested that an FIR be filed and suitable action be initiated.

On the written complaint of the respondent no. 5 the FIR was registered, as stated above.

It is submitted by Sri P.K. Shahi, learned senior counsel appearing for the petitioner that from the contents of the First Information Report, an offence only under section 275A of the Income Tax Act ('IT Act' in short) will be made out and no offence under any of the sections of the Indian Penal Code is made out against the petitioner. It is submitted that so far as the



offence under sections 406 and 409 of the Indian Penal Code are concerned, criminal breach of trust is defined under section 405 of the Indian Penal Code and the dishonest intention required therein has to be from the very inception. No such allegation having been made in the FIR, no offence under section 406 or 409 of the Indian Penal Code nor section 420 of the Indian Penal Code would be made out. Learned senior counsel referring to the letter dated 5.10.2021 of the authorised officer being an order under section 132(3) of the IT Act, 1961 submitted that the same which was address to the HDFC Bank directed the bank to stop operation immediately of the Bank lockers, Bank accounts and fixed deposits if any standing in the names of the list of persons mentioned therein, singly or jointly in terms of the provisions of section 132(3) of the IT Act. The name of Smt. Sunita Khemka appeared at sl. no. 3. However, the letter dated 1.11.2021 (Annexure-3) which was written by the respondent no. 5 to the Bank contained the subject, “revocation of order under section 132(3) of the Income Tax Act 1961 in respect of Bank Accounts, Lockers, Fixed Deposits etc. - reg-” and in its reference mentioned about the office letter dated 5.10.2021 (Annexure-2). Thus it was submitted that since the heading/title of the letter dated 1.11.2021 (Annexure-3) referred



to the earlier later dated 5.10.2021 and at the same time contained the subject as revocation of the order under section 132(3) of the IT Act 1961 in respect of Bank Accounts, Lockers, Fixed Deposits, at best it was a case of misreading of the letter by the Bank officials and no act on part of the Bank could be said to be intentional. No intention or motive could be attributed and at best it could be said to be a case of administrative lapse. There was no occasion for the respondent no. 5 to have used the the words revocation of of Lockers Fixed Deposits in the letter dated 1.12.2021. Reliance was placed on the judgment in the case of Sushil Sethi v. State of Arunachal Pradesh, (2020)3 SCC 240 and more particularly paragraph no. 6 to paragraph no. 8.2 thereof to submit that as has been held in paragraph 7.2, the same principle would apply even in cases of sections 405 and 406 of the Indian Penal Code. It was submitted that for an alleged breach of special provision ie IT Act, the penalty having been prescribed under section 275A of the Act, the same prescribes altogether different procedure and it is for this reason that the FIR has not been registered under section 275A of the IT Act. From the facts stated in the FIR there is no occasion to attribute any *mens rea* on the Bank or its official especially when Smt. Sunita Khemka states that it was she who



operated the Bank locker. Thus no offence under any of the provisions of the Indian Penal Code having been made out, it was submitted that the FIR being Gandhi Maidan P.S. Case no. 549 of 2021 be quashed.

Learned counsel appearing for the Income Tax Department submitted that search and seizure was conducted on 5.10.2021 and order under section 132(3) of the IT Act and a prohibitory / restrain order under section 132(3) of the IT Act was imposed in the Bank locker no. 462 held in the name of Smt. Sunita Khemka in the HDFC Bank, Exhibition Road Branch, Patna. The order under section 132(3) of the IT Act was duly received by Shri Deepak Kumar, Teller Banker Authoriser of the HDFC Bank whereby The Bank was directed to put stop operation on all the Bank lockers, Accounts and fixed deposits. It subsequently transpired that Smt. Sunita Khemka had operated Bank locker no. 462 on 9.11.2021 at 11.53 a.m. with the aid of HDFC Bank and the same was confirmed from the CCTV footage. Smt. Abha Sinha, Bank Manager in her statement accepted the fact of unlawful operation of Locker no. 462 and the same was also accepted by Sri Abhishek Kumar, Branch Operational Manager. Learned counsel has taken the Court through the statement of Bank



officials recorded under section 131(1)(A) of the IT Act at the HDFC Bank, which has been brought on record as annexure to the counter affidavit of respondent no. 5. With respect to the first information report it was submitted that so far as the prosecution notice under section 275A is concerned the same was served on the Bank officials and not on the Bank. Although from the contents of the written statement which is the basis of the FIR, Smt. Sunita Khemka, the HDFC Bank as also the officials of the HDFC Bank, namely, Smt. Abha Sinha, Abhishek Kumar and Dipak Kumar have been named, it is the police who has intentionally while registering the FIR in the column of the accused has only named Smt. Sunita Khemka and "HDFC Bank, Exhibition Road Branch Ka staff". It was submitted that from the FIR besides violation of section 132(3) of the IT Act which is punishable under section 275A of the IT Act, 1961, the allegations levelled also make out a case under sections 406, 409, 420, 120B, 201, 34 besides other sections of the Indian Penal Code. Learned counsel for the respondent no. 5 in support of her contention relies on the judgment dated 30.5.2019 in Cr. Misc. Writ Petition No. 7303 of 2019 (Govind Enterprises vs. State of U.P. and 4 others) and judgment dated 3.8.1990 passed in Cr. Appeal No. 195 of 1987 (State of



Maharashtra vs. Naayan Champalal Bajaj & ors). Thus it was submitted that there being no merit in the application the same be dismissed.

Learned GP 4 appearing for the respondent nos. 1 to 4 submitted that the case was in early stage of investigation. On reading of the contents of the FIR, besides their being breach of the provisions of the IT Act, 1961, the contents of the written complaint filed by the respondent no. 5 clearly makes out a case under sections 406, 409, 201, 120B and 34 of the Indian Penal Code. It was submitted that the moment prima facie case is made out on reading of the FIR, the Court should restrain its hands and permit the investigation to proceed. In support of his contention learned counsel relies on the judgment dated 13.4.2021 of the Hon'ble Supreme Court in Cr. Appeal No. 330 of 2021 (M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others) as also on the judgment in the case of Dineshbhai Chandubhai Patel vs State of Gujarat & Ors. [(2018) 3 SCC 104)]. It was submitted that there being no merit in the application the same be dismissed.

Heard learned senior counsel for the petitioner, learned counsel for the State and learned senior Standing Counsel for the Income Tax Department.



Having gone through the materials on record, it transpires from the contents of the FIR that pursuant to search and seizure conducted on 5.2.2021, an order under section 132(3) of the I.T. Act was served by the Authorised Officer to the HDFC Bank, Exhibition Road Branch, Patna to put a stop operation on the Bank accounts, fixed deposits and bank locker of the assessee. In spite of the prohibitory order having been communicated to the Bank, the FIR discloses that the same was breached and Smt.Sunita Khemka operated the Bank locker no. 462 on 9.11.2021 at 11.53 a.m.. The said fact is validated from the statements of Bank officials, Smt Sunita Khemka herself as also from the CCTV footage.

On quashing of the FIR, the Hon'ble Supreme Court has settled the legal proposition in large number of judgments in one after the other. In the case of **Pratibha Rani v. Suraj Kumar [(1985)2 SCC 370]** it held that while exercising its power to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.

In the case of **State of Haryana v. Bhajan Lal**



[(1992 AIR SC 604)] the Hon'ble Supreme Court in paragraph no. 102 of the judgment which is quoted herein below mention the circumstances wherein the FIR or complaint can be quashed.

“102 (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the



accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the case of **State of Kerala v O.C. Kuttan [(1999)2 SCC 251]** the Hon’ble Supreme Court held that the power of quashing the criminal proceedings was to be exercised very sparingly and the Court was not to embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

In its judgment in the case of **Superintendent of Police, CBI v. Tapan Kumar Singh [(2003) 6 SCC 175]**, the Hon’ble Supreme Court held that the first information report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. What was significant was that the information given must disclose the commission of a



cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence.

Taking note of all the above judgments as also a number of other judgments, the Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others (judgment dated 13.4.2021** in Criminal Appeal no. 330 of 2021) held that the Court cannot thwart an investigation into a cognizable offences which is the statutory right and duty of the police under the Code of Criminal Procedure. The Court also cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint and quashing of a complaint/FIR should be an exception which is exercised sparingly with circumspection.

So far as the reference to the letter dated 1.11.2021 (Annexure-3) by learned senior counsel appearing for the petitioner is concerned, the said letter was written by the Deputy Director of Income Tax (respondent no. 5) to the Branch Manager, HDFC Bank. There is no confusion or vagueness in the contents of the said letter which clearly states that restrain order under section 132(3) of the Income Tax Act were put on



the bank accounts of the persons stated therein which included Sunita Khemka. The letter proceeds to state that the restrain order put on the following bank accounts only may be revoked by the Branch Manager and they may be allowed to operate those accounts. Thereafter, the letter mention the names of the four different account holders with one account number against each of them. It included at sl. no. 3 Account no. 01861530001097 of Sunita Khemka. From reading of the contents of the letter, the Court finds that there could not have been any confusion in the mind of any of the bank officials to whom it was addressed with respect to the contents thereof.

Further from the reading of the FIR in the instant case, the contents of which has to be accepted as true at this stage and the Court cannot inquire into the reliability or genuineness or otherwise of the allegations made therein, it cannot be said that no cognizable offence is made out from the contents thereof.

Thus, in view of the law laid down by the Hon'ble Supreme Court in the judgment referred to above in the case of Pratibha Rani (supra), Bhajan Lal (supra), O.C.Kuttan (supra), Tapan Kumar Singh (supra) and M/s Neeharika Infrastructure Pvt. Ltd. (supra), together with the contents of the FIR, the



Court finds no merit in the instant application.

The application is dismissed.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	2.3.2022
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