

(2022) 08 PAT CK 0090

Patna High Court

Case No: Criminal Miscellaneous No. 69484, 69402, 70334, 72375, 72379, 72549, 73265, 74706, 76445 Of 2018

H.D.F.C. Bank Ltd.

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Aug. 29, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 120B, 197, 198, 199, 200, 201, 406, 409, 4799, 500, 504
- Code Of Criminal Procedure, 1973 - Section 156(3)

Hon'ble Judges: Anjani Kumar Sharan, J

Bench: Single Bench

Advocate: P.K. Shahi, Girijish Kumar, Sri Dashrath Mehta, Sri Chaubey Jawahar, Amit Kumar Rakesh

Final Decision: Allowed

Judgement

1. Heard Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Girijish Kumar for the petitioners and learned APP for the State. The opposite party

no.2 appears on 31.10.2018 in one of the batch cases, i.e., Cr. Misc. No.38208 of 2019 by filing Vakalatnama, but till date even after expiry of more

than two years, opposite party no.2 has not filed any reply in the quashing application filed by the petitioner. Opposite Party No.2 has only filed I.A.

No.01/2019 for vacating the stay granted by this Court, but I.A. No.01/2019 has not been pressed by opposite party no.2 till date. Today also, nobody

appears on behalf of opposite party no.2.

2. In view of the facts aforesaid, these quashing applications are being disposed of by this common judgment on the basis of materials available on

record.

3. The petitioners, in all the above petitions, have sought quashing of the FIR pertaining to Kotwali P.S. Case No.651 of 2018 dated 23.09.2018 which

has been instituted for under Sections 197, 198, 201, 409, 406, 499, 500, 504 and 120B of the Indian Penal Code.

4. In Cr. Misc. No.69484 of 2018, petitioner no.1 is the bank of which petitioner no.2 is the Managing Director, HDFC Bank Ltd., Senapati Bapat

Marg, Lower Patel (West), P.S.- N.M. Joshi Marg, Mumbai. In Cr. Misc. No.69402 of 2018, the sole petitioner is the Head Audit and Compliance,

HDFC Bank, Mumbai. In Cr. Misc. No.70334 of 2018, the petitioner is State Head " WBO, HDFC Bank Ltd., Bihar. In Cr. Misc. No.72375 of

2018, petitioner no.1 is the Regional Head Audit - East, HDFC Bank, Kolkata and petitioner no.2 is the Vice President-Audit, HDFC Bank, Kolkata.

In Cr. Misc. No.72379 of 2018, the petitioner is the Head Operation, HDFC Bank Ltd., Mumbai. In Cr. Misc. No.72549 of 2018, petitioner no.1 is the

Chief Compliance Officer, HDFC Bank, Mumbai and petitioner no.2 is the Vice President Compliance, HDFC Bank, Mumbai. In Cr. Misc. No.73265

of 2018, the petitioner is the Head RBCU East, HDFC Bank Ltd., Kolkata. In Cr. Misc. No.74706 of 2018, the petitioner is the Regional Head

Operation, HDFC Bank Ltd., Kolkata and in Cr. Misc. No.76445 of 2018, the petitioner is the State Head -WBO, HDFC Bank Ltd., Bihar.

5. The prosecution case is that the opposite party no.2 filed Complaint Case No.3805(c)/2018 before the learned Chief Judicial Magistrate, Patna

wherein he alleged that he was appointed to the part of Executive Transactional Banking Group (Operation) vide letter dated 24.07.2002 issued under

the signature of the Head H.R. Operation, HDFC Bank Ltd., Mumbai and the complainant joined at Patna in August, 2002. O.P. No.2 further stated

that after working for almost 14 years with the company and while he was working as Deputy Vice President at Patna, he was put under suspension

vide letter dated 25.02.2016 issued by Gourab Roy, RH-WBO-East (accused) on certain lapses on his part while, thereafter, all of sudden vide letter

dated 28.06.2016 issued under the signature of Anuj V. Mathur (accused), the opposite party no.2 was terminated from the service without any show

cause/Memo/Charge or any communication in this regard. O.P. No.2 further alleged that said illegal termination was challenged in Civil Suit

No.212/17 in which HDFC Bank awarded penalty of Rs.200/- for non-appearance and in which HDFC appeared after ex-parte order passed by the

court. The O.P. No.2 further stated that he was in touch with immediate supervisor Gourab Roy (accused) regarding progress of the pending

investigation but he was not informed regarding the same. O.P. No.2 sought information under Right to Information Act from Reserve Bank of India

than Reserve Bank of India provided the information vide letter dated 13.07.2017 and confirmed that HDFC Bank reported a fraud incidence of

Rs.1.86 crore at Patna and Bhagalpur Branch. The O.P. No.2 again approached the RBI, under RTI and he came to know that HDFC Bank filed a

police complaint regarding fraud to the State Police vide GD No.1143 dated 29.07.2016 to Kotwali Police at Patna.

6. It was alleged that the witness of the said complaint sought information under Right to Information Act from the Kotwali Police Station, Patna than

information was provided vide letter dated 20.02.2017 in which it has been mentioned that HDFC Bank lodged Sanha on 29.07.2016 GD No.1143

regarding disappearance of Diary of the HDFC Bank not the fraud reported by the accused person and that the matter is being investigated by the

police authorities. It was further alleged that when colleague of the complainant had earlier lodged complaint before the National Stock Exchange of

India against his illegal termination then the accused informed wrongly vide letter dated 28.04.2017 to the National Stock Exchange of India that his

colleague is an accused and ex-employee of the HDFC Bank and he is also involved in the fraud. It was further alleged that vide letter dated

22.05.2017 written by accused to the National Stock Exchange of India in which it was intentionally mentioned that the complainant therein committed

fraud of around Rs.1.86 crores and in this regard criminal complaint was lodged before Kotwali Police Station, Patna.

7. It was further alleged that in order to ascertain the truth of the said letter, the colleague of O.P. No.2 sought information from the Kotwali P.S. than

information was provided vide letter dated 03.07.2017 that HDFC Bank lodged Sanha on 29.07.2016, GD No.1143 regarding disappearance of Diary

of the HDFC Bank.

8. It was alleged that there is no allegation of wrong committed by the complainant with the HDFC Bank lodged before the Kotwali P.S., however,

accused person knowingly and intentionally furnished wrong information to the Reserve Bank of India and National Stock Exchange of India that the

complainant is an accused in criminal case for alleged fraud involving an amount of Rs.1.86 crores. It was further alleged by the said wrong

information given by the accused person purposely and intentionally, maligned the prestige and reputation of the complainant and not able to get

suitable job.

9. The aforesaid complaint was referred to the Kotwali P.S. for investigation under Section 156(3) Cr.P.C. by order dated 11.09.2018 and the police

on the basis of the said complaint instituted Kotwali P.S. Case No.651 of 2018 on 23.09.2018.

10. The complainant/informant/opposite party no.2 has alleged that for no fault of his, he was terminated from his service of HDFC Bank. Petitioner

No1 and his employers wrongly stated before the National Stock Exchange of India that the opposite party no.2 is being investigated in a police case.

11. From the averments made in the FIR, it appears that the opposite party no.2 was removed from service for some irregularities having been

committed by him.

12. Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioners submits that assuming every allegations levelled in the FIR to be

true, none of the offences under which the FIR has been lodged can at all be said to have been made out and this is an illustrative case of malicious

prosecution by way of vindictive action on the part of an ex-employee of petitioner no.1. It is further submitted that the dispute raised by the informant

in the present FIR is purely of the civil nature and opposite party no.2 has already filed Title Suit No.212 of 2017 challenging his termination order and

in view of the same, the present investigation is nothing but the gross abuse of the process of law. Learned Senior Counsel for the petitioner further

submits that out of three terminated employees, two terminated employees of HDFC Bank Ltd., i.e., Rakesh Kumar Verma (O.P. No.2) and Praveen

Kamal Kishore lodged separate FIR, i.e., Kotwali P.S. Case No.651 of 2018 and Kotwali P.S. Case No.326 of 2018 for the same incidence and

levelled same allegations and accusation which are being alleged in the present FIR, and the higher officials of the HDFC Bank Ltd. were made

accused in the said FIRs. Moreover, the third terminated employee, i.e., Priya Ranjan Srivastava chosen to file Criminal Case No.1077 (C) of 2018

before Civil Court, Patna for the same incidence and levelled same allegations which were levelled in the said two FIRs., i.e., Kotwali P.S. Case

No.651 of 2018 (present FIR) and Kotwali P.S. Case No.326 of 2018. It is submitted that the learned ACJM-III, Patna vide order dated 10.01.2019

passed in Criminal Case No.1077 (C) of 2018 took cognizance against the higher officials of the HDFC Bank Ltd. Thereafter, the said cognizance

order dated 10.01.2019 was challenged by the officials of the HDFC Bank Ltd. by filing separate quashing applications before this Court. This Court

vide order dated 29.11.2021, passed in the case of Santosh Haldankar and others bearing Cr. Misc. No.37919 of 2019 and analogous cases quashed

the cognizance order dated 10.01.2019, passed in Criminal Case No.1077 (C) of 2018 by learned ACJM-III, Patna. This Court relying on several

decisions of Patna High Court as well as the Honâ€™ble Supreme Court in order dated 29.11.2021 held in paragraphs-19 and 20 as follows:

â€œ19. Indian Penal Code, save and except some provisions specifically providing, therefore, does not contemplate any vicarious liability

on the part of a party who is not charged directly for commission of an offence. Even complaint petition and material placed on record does

not disclose commission of any offence and moreover necessary ingredients in order to constitute offence under Sections 199 and 200 of

IPC is wanting in present case.

20. For the reason as stated above, the order dated 10.01.2019 passed in Complaint Case No. 1077 (C) of 2018, passed by learned ACJM-

III, Patna, as far as same relates to petitioners is not sustainable either in fact or in law and is accordingly quashed.

The criminal miscellaneous petitions are allowed.â€

13. Mr. Shahi, the learned Senior Counsel for the petitioners further submits no allegations have been made against any of the petitioners that they had

anything to deal with personally in discharge of their official duty. It is submitted that this Court vide order dated 29.11.2021 passed in the case of

Santosh Haldankar and others bearing Cr. Misc. No.37919 of 2019 and analogous cases quashed the cognizance order dated 10.01.2019, passed in

Criminal Case No.1077 (C) of 2018, by learned ACJM-III, Patna. The said order dated 29.11.2021 was challenged by the complainant before the

Honâ€™ble Supreme Court in Special Leave to Appeal (Crl.) Nos.1438-1445/2022, and the Honâ€™ble Supreme Court vide order dated 25.02.2022

dismissed the said Special Leave petition and affirmed the order dated 29.11.2021, passed by this Court. The Honâ€™ble Supreme Court in the order

dated 25.02.2022 held as follows:

â€œWe are not inclined to interfere with the impugned orders.

The special leave petitions are dismissed.â€

14. After hearing learned counsel for the parties, from perusal of the materials available on record and the fact that similar matter has been quashed

by this Court vide order dated 29.11.2021, passed in Cr. Misc. No.37919 of 2019 and other analogous cases, which was affirmed by the Honâ€™ble

Supreme Court, the FIR pertaining to Kotwali P.S. Case No.651 of 2018 dated 23.09.2018 which has been instituted for under Sections 197, 198, 201,

409, 406, 499, 500, 504 and 120B of the Indian Penal Code is quashed.

15. These petitions are allowed.