

**(2005) 09 PAT CK 0078**

**Patna High Court**

**Case No:** CWJC No. 8688 of 2005

Jitendra Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Sept. 23, 2005

**Acts Referred:**

- Bihar Co-operative Societies Act, 1935 - Section 48

**Citation:** (2006) 1 PLJR 28

**Hon'ble Judges:** S.K. Katriar, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.K. Katriar, J.

Heard Mr. Udit Narain Singh for the petitioner, Mr. Lalit Kishore, learned Additional Advocate General No. 3 for respondent Nos. 1, 4 and 5, and Mr. Uday Chandra Prasad for respondent Nos. 2 and 3 (Siwan Central Co-operative Bank Limited). This writ petition has been preferred by a former employee of respondent No. 3, who is alleged to have defalcated a sum of Rs. 3,19,276/- while he was in service and is sought to be recovered under the provisions of the Bihar Public Demand Recovery Act. According to the writ petition, the petitioner was the Accountant-cum-Cashier with respondent No. 3. He is alleged to have defalcated a sum of Rs. 3,19,276/- while he was in service leading to first information report against him wherein he was taken into custody and cognizance has thereafter been taken and he faces trial in the criminal Court. Copy of the first information report is marked Annexure-1. Respondent No. 3 has also taken steps to recover the amount from the petitioner by initiating a certificate case under the Act, which is registered as Miscellaneous Case No. 23/2003-2004, pending before the learned Certificate Officer, Siwan. The petitioner challenges initiation of the proceedings under the Act on various grounds.

He submits that an amount defalcated by the employee cannot be recovered as a certificate debt. He further submits that the requisite satisfaction of the learned Certificate Officer in terms of Section 6 of the Act has not been recorded which goes to the root of the case. He relies on a Division Bench Judgment of this Court reported in 1998 (3) PLJR 498 (Jai Prakash Dwivedi vs. The State of Bihar & Ors.). He lastly submits that the petitioner is continuously under custody since 3.2.2005. He cannot remain in custody beyond the period of six months in terms of Section 40 of the Act.

2. Learned counsel for the respondents in their separate sets of submissions have opposed this writ petition. Respondent No. 3 has also placed on record its counter affidavit. Learned Additional Advocate General No. 3 in addition has submitted that it was equally open to respondent No. 3 to take action u/s 48 of the Bihar Co-operative Societies Act, 1935, and the amount determined therein is recoverable under the Act.

3. I have perused the materials on record and considered the submissions of learned counsel for the parties. Schedule to the Act provides the list of Public Demands which can be recovered under the provisions of the Act. It appears to me that respondent No. 3 has initiated the proceedings in terms of Clause 15(2) of the 1st Schedule to the Act, is set out hereinbelow for the facility of quick reference:-

"15. Any money payable to--

(i) State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955); or

(ii) A Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970); or

(iii) A company or a corporation or a statutory body, including a registered society carrying on financial transactions, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or

(iv) The Bihar State Electricity Board,

in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand.

Respondent No. 3 is undoubtedly a Banking Company, but then the dues payable to the Bank has to be in respect of a debt or dues the person liable to pay has agreed, by a written instrument, that it shall be recoverable as a public demand. The respondents have not produced any such written instrument or consent from the petitioner to respondent No. 3 to satisfy this Court that he agreed that such a due, as in question, can be recovered from him under the terms of the Act. Learned counsel for the petitioner has rightly relied on the judgment of this Court reported

in [Murlidhar Sohanlal Vs. State of Bihar and Others,](#).

4. In that view of the matter, the certificate proceedings cannot proceed against the petitioner. I, therefore, do not feel the necessity of examining the further issues raised by the parties. The certificate proceeding registered as Case No. 23/2003-2004, pending before the Certificate Officer, Siwan, is hereby quashed. It goes without saying that it would be open to the respondents to take appropriate steps for recovery of the dues. The petitioner shall be released forthwith from custody, if not required in any other case. This writ petition is accordingly allowed. Let a copy of this order be communicated to the District Magistrate, Siwan, and be faxed at the cost of the petitioner.