IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8063 of 2021

Arising Out of PS. Case No.-1761 Year-2016 Thana- BHAGALPUR COMPLAINT CASE District- Bhagalpur

==

PRAMOD KUMAR SAINI Son of Ram Lakhan Prasad Saini Resident of Village/Mohalla-Tripolia Pathri Ghat, Pipaltal, Police Station-Alamganj (Gulzarbagh), District-Patna, at present resident of village-Durgapur Tola Badayi Paswan, Police Station-Khagaria, District-Khagaria.

... ... Petitioner

Versus

1. The State of Bihar.
2. Naresh Kumar Das Son of Sri Panchanand Das Resident of Village-Jamalpur, P.S.- Bihpur, District- Bhagalpur.
3. R.B.I., Through In-charge of Patna, R.B.I. Patna.
4. The Directorate of Institutional Finance, through its Secretary, Govt. of Bihar. Bihar
5. S. E. B.I., Patna. Patna

... ... Opposite Party

==

with

CRIMINAL MISCELLANEOUS No. 3536 of 2021

Arising Out of PS. Case No.-1761 Year-2016 Thana- BHAGALPUR COMPLAINT CASE District- Bhagalpur

==

Paras Nath Sharma, Son Of Mahadeo Sharma, Resident of Village-Yaduuvanshnagar Chas, P.S- Chas And Distt- Bokaro, Jharkhand

... ... Petitioner

Versus

1. The State of Bihar
2. Naresh Kumar Das Son Of Sri Panchanand Das Resident Of Village-Jamalpur, P.S- Bihpur, Distt- Bhagalpur

... ... Opposite Party

==

with

CRIMINAL MISCELLANEOUS No. 33151 of 2021

Arising Out of PS. Case No.-63 Year-2019 Thana- PATNA COMPLAINT CASE District-Patna

==

INDRANI JAISWAL W/o Dilip Kumar Diwakar Resident of Meena Niketan, Vijay Nagar, P.S.- Town, District- Katihar.

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

==

Appearance :

(In CRIMINAL MISCELLANEOUS No. 8063 of 2021)

For the Petitioner	:	Mr. Balram Kapri, Advocate
For the Union of India	:	Dr. K.N. Singh, Addl. S.G.
		Mr. Manoj Kumar Singh, C.G.C.
For Sahara	:	Sri Umesh Prasad Singh, Senior Advocate
For the State	:	Mr. Ajay, G.A.-5
		Mr. Jharkhandi Upadhyay, APP
		Mr. Prateek Kr. Sinha, A.C. to G.A.-5
		Mr. Jharkhandi Upadhyay, APP
For the Vigilance Deptt	:	Mr. Vishwnath Pd. Sinha, Sr. Advocate
		Mrs. Soni Srivastava, Advocate
For SEBI	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Pradeep Kumar, Advocate
		Mr. Rohan Verma, Advocate

(In CRIMINAL MISCELLANEOUS No. 3536 of 2021)

For the Petitioner	:	Mr. Madan Mohan, Advocate
For the Opposite Party	:	Mr. Madan Kumar, APP

(In CRIMINAL MISCELLANEOUS No. 33151 of 2021)

For the Petitioner/s	:	Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Ramchandra Singh, APP

==

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

15 27-04-2022 Heard Sri Umesh Prasad Singh, learned senior counsel for the Sahara Group and Sri Lalit Kishore, learned senior counsel assisted by Sri Pradeep Kumar, learned counsel for the SEBI.

While considering these anticipatory bail applications, this Court has come across the cases of cheating committed by Non-Banking Financial Companies (for short "NBFCs") and considering the same, various orders have been passed in these cases earlier.

The NBFCs are functioning under the license granted to them by the Reserve Bank of India but, it is a common knowledge that the affairs of the NBFCs are not being controlled by the Reserve Bank of India and this fraud has been going on in this State since more than thirty years, hence, the Reserve Bank of India and Directorate of Institutional Finance, Government of Bihar, were added as opposite parties in these cases.

This Court was informed that the Bihar Protection of Interest of Depositors (in Financial Establishments) Act, 2002 was enacted to control such activities but the public at large has been cheated by NBFCs without any control and the Government functionaries under the Bihar Protection of Interest of Depositors (in Financial Establishments) Act, 2002 have not been able to give any relief to the public at large who have been cheated by the NBFCs. A large number of complaints before the authorities under the Bihar Protection of Interest of Depositors (in Financial Establishments) Act, 2002 for non-payment of maturity amount by different entities of Sahara Group registered as NBFCs, Multi Purpose Cooperative Society etc. have been received by the authorities but the Sahara Group has some how evaded payment of maturity amount of the investors.

A common complaint by the investors is that if and when they approach the local offices of Sahara Group for payment of the maturity amount on their investments in different schemes then, they are some how or other forced to transfer their investment in a new scheme, if it may be by reinvestment or by issuance of some kind bonds etc.

This Court noticed Sahara Group and SEBI for refund of the amount invested by the general public in different Sahara Group entities.

On being noticed, Sahara Group has come with a plea that about Rupees Twenty Five Thousand Crores belonging to the Sahara Credit Cooperative Society Limited has been lying with SEBI and they are ready to pay the investors' investment if SEBI returns the amount to them as per the order of the Supreme Court dated 31.08.2012.

Sri Lalit Kishore, learned counsel for the SEBI, has submitted that they have moved the Supreme Court for necessary directions with regard to the amount lying with SEBI pursuant to the orders of the Supreme Court and this Court should not interfere or should not direct for return of the amount by SEBI to Sahara Credit Cooperative Society Limited for payment to investors. He has further submitted that pursuant to the orders dated 31.08.2012 and 17.07.2013 of the Supreme

Court, this Court should not pass any order with regard to the amount lying with SEBI.

On 17.07.2013, the Supreme Court had passed following order in Contempt Petition (C) Nos. 412 and 413 of 2012:-

> *"…We make it clear that no High Court, Securities Appellate Tribunal and any other Forum shall pass any orders against the orders passed by Securities and Exchange Board of India (SEBI) in implementation of this Court's judgment dated 31.08.2012."*

Considered the submissions of Sri Umesh Prasad Singh, learned senior counsel for the Sahara Group and Sri Lalit Kishore, learned senior counsel for the SEBI.

Once the Supreme Court has directed the amount to be deposited with SEBI and when SEBI moved the Supreme Court for appropriate direction with regard to the amount lying with them, in the opinion of this Court, this Court should not direct the SEBI for returning the amount to Sahara Group. The amount belonging to two companies namely, Sahara Credit Cooperative Society Limited and Multi Purpose Cooperative Society is lying with the SEBI since 2012-13. The Sahara Group through different entities have been collecting the investments from public at large till one month back and therefore, the contention of Sahara Group that they do not have any money in their coffers because the entire amount is lying with SEBI, is wrong.

The Sahara Group has continued to collect investment and has done the same till about one month back, and therefore, they are duty bound to return the maturity amount to the investors. Poor persons having investment of Rs.10,000/-, 20,000/- etc. are the sufferers, who are not being paid the maturity amount.

Recently, the Delhi High Court in W.P. (C) No. 669 of 2021 (Sahara Credit Cooperative Society Limited Credit Cooperative Society vs. Union of India) along with analogous cases has observed as under:-

> *"14. In the light of the aforesaid, we in the interim restore impugned orders/notices insofar as they direct the petitioners not to collect any further deposits. To test the bona fide of the petitioners, we direct the Central Registrar to look into the claims which have either been received by it or have been filed before us by way of the intervention applications and after examining the same, pass orders directing the petitioners to refund the amounts to such members/investors/depositors whose amount are found to have become due and payable. Mr. Upadhyay, learned senior counsel*

appearing for the petitioners has assured us that such members/investors/depositors shall be duly paid the amount found due and payable to them. Accordingly, we direct that the petitioners shall pay the amounts due to the members within two weeks of such determination being made. Proof of such payment shall be filed by the petitioners with Central Registrar."

On 20.04.2022, the Sahara Credit Cooperative Society Limited and other companies, who had been taken deposits regularly were directed to come up with a plan for return of the investment of the investors particularly those persons who have filed their Interlocutory Applications in this Court.

Today, Sri Umesh Prasad Singh, learned senior counsel for the Sahara Credit Cooperative Society Limited has filed an affidavit and submitted that some Interlocutory Applications have been filed by investors, who have already moved the Consumer Forum and few investors have moved this High Court also, and therefore, their cases should not be considered.

The aforesaid issue can be decided later when the majority of the applicants before this Court are returned their investments. Till today, about twenty two hundred Interlocutory

Applications have been filed and there are many applicants in one Interlocutory Application.

Sri Singh, learned senior counsel for the Sahara Credit Cooperative Society Limited has further submitted that they do not have funds to refund the investment of the investors and they will be able to refund the investment of the investors if SEBI releases the amount lying with them. He has also submitted that they want to refund the investment of the small investors who have invested Rs.10,000/- or Rs.20,000/-, that too, the principal amount and not the maturity amount.

The stand of Sahara Group is surprising. If they have been accepting the deposits by promising good returns to the investors after 2013 then they are duty bound to honour their commitment. They cannot say that they do not have funds. If they say that they do not have funds then they will have to explain as to what happened to the money collected by them since 2013 till one month back.

In the opinion of this Court, the stand of the Sahara Group, as mentioned above, is most unreasonable and therefore, their proposal is hereby rejected.

Considering the aforesaid, by way of last chance, the Sahara Group and other companies, who have been taking deposits till about one month back, are directed to come with a plan for return of the investment of the investors, and for that, Sri Subrata Roy, is directed to appear personally in this Court on 11.05.2022.

List this case on ***11.05.2022 at 10:30 A.M. as first case for further hearing***.

(Sandeep Kumar, J)

pawan/-

U			