

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

ORDER

SB Cr Misc Petition No.2261/2009

Uday Kotak & ors versus State of Rajasthan & anr

31.3.2015

HON'BLE MR. JUSTICE MN BHANDARI

Mr Sandeep Pathak – for petitioners

Mr Sudesh Saini, PP – for the State

Mr Anshuman Saxena – for respondent No.2

BY THE COURT:

By this criminal misc. petition, a challenge is made to the order dated 4.7.2009, by which, cognizance of offence was taken.

Learned counsel submits that cognizance of offence under section 500 IPC has been taken on a legal notice served on the account holder of the Bank on his default. Such notices are served in routine when default of account holder is pointed out. It is served individually not to harm the reputation of the account holder but to see that default may not persist. In the instant case, non-petitioner No.2 was served with a legal notice to inform about

default. It was served through the Advocate. A reply thereto was given. In absence of intention to harm the reputation, offence under section 500 IPC was not made out. The court below failed to consider the aforesaid while taking cognizance of the offence against the petitioners, that too, against those who are not instrument in serving the notice.

The cognizance of the offence has been taken against the Executive Vice Charmain and Managing Director of Kotak Mahindra Bank Ltd and other officer bearers at whose instance notice was not given. Looking to the aforesaid, impugned order deserves to be quashed.

Learned counsel for non-petitioner No.2 submits that language of the notice was defamatory in nature. The account holder had not committed any default thus he could not have been given legal notice, that too, in defamatory language. The non-petitioner was given threatening for the legal consequences which includes civil as well as criminal cases. The mistake by the bank was accepted as, later on, they had withdrawn their notice. It is after realising that the non-petitioner has not committed any default in making payment. The prayer is made to dismiss the petition.

I have considered rival submissions of the parties and perused the record.

The cognizance of the offence has been taken under section 500 IPC in reference to legal notice given by the petitioners herein. It was after showing certain defaults thus to show cause for its recovery. The aforesaid notice was duly replied by the non-petitioner No.2 followed by a complaint. The cognizance of the offence was taken at the stage when the bank had already withdrawn its notice. A case under section 500 IPC would be made out when intention to harm the image/ reputation is shown.

The learned counsel for non-petitioner No.2 has failed to show intention of the petitioners to harm non-petitioner's reputation which is required to make out offence under section 500 IPC. A legal notice was given showing default and it was not given by the petitioners but it is at the instance of some one else who was also not intended to tarnish the image of the non-petitioner No.2. The cognizance of the offence has been taken after going through the notice and considering it to be defamatory in nature without taking into consideration whether it was with the

intention to harm the reputation of the non-petitioner No.2 or not and that it was given by the petitioners or not. In absence of it, the order of cognizance against the petitioners cannot be allowed to stand. In view of aforesaid, criminal misc. petition is allowed and the impugned order dated 4.7.2009 is quashed.

(MN BHANDARI), J.

bnsharma

All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(BN Sharma)
PS-cum-JW