

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38818 of 2012

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1. Binod Kumar S/O Late Tulsi Prasad Singh R/O A-47, Ashray Pawan Apartment, Sheikhpura, Raja Bazar, P.O. B.V. College, P.S. Shastri Nagar, Patna-14.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Durga Nath Mishra, S/o Late K.K. Mishra, R/o Arya Panna Apartment, Road No. 2, Patel Nagar, Police Station- Shastri Nagar Town and District- Patna
3. Usha Sharm, W/o Late Anil Sharma, Managing Director of Vaishnavi Architecct And Engineering Private Limited, C/50, S.K. Puri, Patna at present Anand Vaishnavi, Dak Bunglow Chowk, Frazer Road, Patna presently address- South Tola, Bakhtiyarpur, P.O. & P.S.- Bakhtiyarpur, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagnnath Singh, Advocate

For the Opposite Party/s : Mr. M.K.Gautam (APP)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

8 05-02-2015 Heard learned counsel for the petitioner and the State.

The petitioner is apprehending his arrest in a complaint case in which processes have been directed to be issued after cognizance being taken for the offences punishable under Sections 406, 506 and 120B of the Indian Penal Code.

It is alleged by the complainant that the complainant booked a flat with M/s Magadh Colonizers Private



Limited (a development and construction company) and paid Rs. 4,75,000/-, but the complainant was subsequently transferred to Delhi hence, flat in question was not transferred in favour of the complainant. The petitioner being one of the Directors of M/s Magadh Colonizers received all the payments and assured that the money will be returned but till date the money has not been returned. The Managing Director of the Magadh Colonizers Private Limited, namely Prakash Chandra Das subsequently died

It is submitted by the learned counsel for the petitioner that Prakash Chandra Das was the Managing Director of M/s Magadh Colonizers Private Limited and after his death his wife namely Ranjana Das transferred the project to co-accused Usha Sharma, Managing Director of M/s Vaishnavi Architect and Engineers Private Limited and to such transfer the complainant was also a party which has been admitted by the complainant in para-9 of the Complaint Petition which reads as follows:-

“That accused Smt. Ranjana Das Director of the M/s Magadh Colonisers Private limited transferred this Bimla Tower Project to accused Smt. Usha Sharma M.D. of M/s Vaishnavi Architect & Engineering Private Limited. On 7 March 2002 in which land lady accused persons namely Smt. Bimla Rukhaiyar, Director of Smt. Ranjana Das of M/s Magadh Colonisers and Smt. Usha Sharma M.D. of Vaishnavi Architect

& Engineering Private Limited signed the tripartite agreement in presence of 10 purchasers including the complainant of the flats as witnesses which is annexed to this petition.”

Pursuant to the said transfer Smt. Usha Sharma , M.D. undertook the responsibility of the then developer Prakash Chandra Das. The same has also been admitted by the complainant in para-10 of the complaint petition which reads as follows”-

“That as per tripartite agreement dated 7 March 2002 it was agreed by accused Smt. Usha Sharma, M.D. of M/s Vaishnavi Architect and Engineers Private Limited that it would be the sole responsibility of the present developer to complete the construction work of Bimla Tower block A and B as per the sanctioned map dated 10.2.1999 on his own cost and through his own efforts.

That it is relevant to state here that accused Smt. Usha Sharma, M.D. of M/s Vaishnavi Architect & Engineering Pvt. Ltd. agreed and assured that all the flat booked and money taken by previous builder for Block A and B and agreement entered into in this regard with the purchaser will be deemed to be made by present builder and money advanced by purchaser either directly or through financial institution detailed in Schedule-‘A’ will be deemed to be received by present builder and all responsibility in this regard will be of present builder which evident from the para- ‘g’ of the tripartite agreement

dated 7 March 2002.

Considering the admission made by the complainant in paragraphs- 9 and 10 of the complaint petition, let the above named petitioner be released on anticipatory bail in the event of his arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bonds of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, Ist Class, Patna in connection with Complaint Case No. 495(C) of 2010, subject to conditions as laid down under Section 438(2) of the Indian Penal Code.

(Dinesh Kumar Singh, J)

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