

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18077 of 2013

Arising Out of PS.Case No. -1821 Year- 2008 Thana -COMPLAINT CASE District- ARRARIA

=====

RAJENDRA PANDIT S/O LATE MAHDEO PANDIT RESIDENT OF
VILLAGE- RAJNI CHOWK, PURNEA, P.S.- K. HAT, DISTRICT-
PURNEA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR
2. GAJADHAR CHAUDHARY S/O PANCHANAND CHAUDHARY
RESIDENT OF VILLAGE- RAHIKPUR, P.S.- JAUKIHAT,
DISTRICT- ARARIA.

.... OPPOSITE PARTY/S

=====

Appearance:

For the Petitioner/s : Mr. Neerad Parashar, Adv.

For the Opposite Party/s : Mr. Dr. Indihar Kumari (App)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 13-07-2015 In spite of personal service, opposite party no.2/
complainant has not turned up.

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner has challenge order dated 25.12.2008
whereby and whereunder he along with other has been
summoned to face trial for trial for an offence punishable under
Sections 406, 408, 420 of the IPC on an allegation that with the
active connivance of other co-accused, misappropriate a sum of
Rs.96,000, the loan amount which has been shown to be
sanctioned in favour of complaint along with witnesses.

At the present moment petitioner has put much
stress over Annexure-3 transfer letter, whereunder petitioner,
who was posted at Siswana Branch as Manager, was
transferred to Bidupur Branch on 13.04.2006. It is also

apparent therefrom that he was directed to join positively by 17-04-2006. Certainly, by Annexure-3 petitioner has advanced his plea of alibi and that happens to be matter of trial because of the fact that detailed informant would come during trial on the score whether loan amount was sanction in his tenure as well as misappropriated during his tenure. Apart from this, at the stage of taking of cognizance defence of accused cannot be looked as has been held by the Hon'ble Apex Court in a case reported in (2015) 3 SCC 424.

Accordingly, prayer of the petitioner is found non-maintainable in the eye of law and consequent thereupon instant petition is rejected.

At the present moment it has also been submitted on behalf of petitioner that, in spite of granting so many adjournments, none of the prosecution witness including complainant himself is turning up for evidence before charge. That being so, the learned lower court will consider the same and in case, there happens to be negligence at the part of the complainant, then in that event the learned lower court will pass appropriate order under section 245(2) of the Cr.P.C. without being prejudiced by the instant order.

(Aditya Kumar Trivedi, J.)

PN/-

U		T	
---	--	---	--