

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13805 of 2015

Arising Out of PS.Case No. -285 Year- 2014 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Ambarish Banerjee S/o Ashish Banerjee resident of Prafulla Niketan, Bidyapith Road, Deshbandhupara (S), P.O. - Siliguri Town, P.S. – Siliguri, District - Darjeeling, West Bengal.
 2. Anindita @ Anindtta Goswami W/o Kandarpa Goswami
 3. Kandarpa @ Kandarpa Goswami S/o Sri Krishnapada Goswami both residents of Gokhel Road By Lane, Near Ambition Computer Centre, Aurobinda Pally, P.O. - Rabindra Sarani, P.S. - Siliguri, District – Darjeeling, West Bengal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dilip Kumar Diwakar S/o Late Anuplal Anup resident of Mohalla - Vijay Nagar, P.O. & P.S. & District - Katihar having his office at Satyam Complex, 1st Floor, Dr. Rajendra Prasad Road)Infront of LIC Office), Katihar, P.O. & P.S. - Katihar, District - Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Karn, Advocate Mr. N. K. Agrawal, Sr. Advocate
For the Opposite Party No. 1	:	Mr. Umeshlal Verma (App)
For the Opposite Party No. 2	:	Mr. Najeeb Ahmad, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 08-09-2015 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for the complainant/opposite party no. 2.

Petitioners are apprehending their arrest in connection with C. A. Case no. 285 of 2014 registered under Sections 420 and 120B of the Indian Penal Code.

Learned counsel for the petitioners submits that admittedly an agreement was entered into between the parties whereby the opposite party had agreed to take the entire assets of



the petitioners for a sum of Rs. 2 crores 10 lacs. It is submitted that after execution of the agreement the petitioners handed over the water plant for the benefit of the opposite party but thereafter he did not give the amount which was agreed upon in the agreement and having not paid the amount to each one, the petitioners suffered seriously and only to recover the amount which had been deposited by the second party, the present case has been lodged. It is submitted that after long period Rs.33,900/- has been paid on different dates and the rest amount still remains due though the opposite party/complainant had enjoyed the machinery for over a year.

Learned counsel for the complainant seriously objected the submissions advanced by the learned counsel for the petitioners and submits that though the petitioners were well aware that the property in question was to be auctioned sold by the bank, they did not disclose the same to the complainant as a result of which they were mislead into entering into the agreement and no sooner they realized that such an act has been perpetuated, the complainant stopped making payment. He also contends that the plant was never handed over possession to the complainant and the bank has since proposed to auction sale the same.

Having heard learned counsel for the petitioners and learned counsel appearing on behalf of the complainant, I find that in the agreement itself there was stipulation that the petitioners had taken loan/financial assistance from the Punjab National Bank. It is impossible that the property although valued would not be hypothecated and/or mortgaged with the bank for the purpose of availing any such loan as is the normal practice being entered into by the financier. Therefore, the contention of the complainant

that they were not aware of the property being subject matter of a mortgage does not seem to be acceptable.

So far as the question of petitioners handing over possession of the property is concerned, that is a matter which can be decided only after leading evidence.

Further more, after taking into consideration all the facts and circumstances of the case and in view of the fact that the property in question has not been auctioned sale by the bank till date, it shall be open even to the complainant to approach the bank for having his grievance redressed by permitting him to participate in the same auction.

Taking into consideration all the facts and circumstances of the case, let petitioners above named, in the event of arrest or surrender within a period of three weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand only) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Katihar, in connection with C.A. Case no. 285 of 2014 subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Anjana Mishra, J)

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