

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36747 of 2012

Arising Out of PS.Case No. -315 Year- 2010 Thana -null District- PATNA

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Dina Nath Prasad @ Dina Yadav son of Late Shivrath Prasad, Resident of Village-
Tartar, P.O.- Samiyagarh, P.S.- Ghoshwari, District - Patna, at present Mohalla-
Bangali Tola, Ramnagar, P.S.- Jakkanpur, District- Patna.

.... Petitioner/s

Versus

1. State of Bihar.
2. Raj Kumar Prasad son of Mahabir Prasad, Resident of Village- Chandanpura,
P.O. -Pachlowa, P.S.- Islampur, District -Nalanda, at present Advocate, Civil
Court, Patna, Table No. 8, Basudeo Kaksha D.B.A., P.S.- Pirbahore, P.O.-
Bankipur, District -Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Apurva Kumar, Advocate
	:	Mr. Utsav Kumar, Advocate
	:	Mr. Kumar Vikram, Advocate
For the Opposite Party No.2	:	Mr. Sanjiv Sharan, Advocate
For the State	:	Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 02-08-2016

Heard learned counsel for the petitioner, learned counsel for
the State and learned counsel for opposite party no.2.

2. By way of the present application filed under Section 482
of the Code of Criminal Procedure (for short CrPC'), the sole
petitioner has challenged the order dated 5/9.4.2012 passed by the
learned Sessions Judge, Patna in Cr.Revision No. 183 of 2012,
whereby he has rejected the revision petition against the order dated

24.1.2012 passed by the learned Judicial Magistrate, Ist Class, Patna in Complaint Case No. 315 (C) of 2010, by which he has rejected the application preferred under Section 245 of the CrPC for discharge.

3. Complaint Case No. 315 (C) of 2010 was filed against the petitioner by opposite party no.2 alleging therein that he had entered into an agreement for the purchase of a double storied building situated at Mauza Purandarpur, P.S.Jakkanpur, District Patna on 15th July, 2009 for consideration of Rs.6 lacs and at the time of execution of the unregistered deed of agreement for sale, he had paid Rs.3 lacs. Subsequently, he paid Rs.40,000/- in different instalments to the petitioner. Thus, a total amount of Rs.3,40,000/- out of Rs. 6 lacs was already paid to the petitioner and the sale deed was to be executed within six months. However, despite several requests made by the complainant to the petitioner, the petitioner failed to execute the sale deed.

4. On the basis of the aforesaid allegation, which was supported by the complainant and some witnesses, who were examined during enquiry conducted under Section 202 of the CrPC, the learned Magistrate summoned petitioner to face trial for the offences punishable under Sections 406 and 420 of the IPC vide impugned order dated 5/9.4. 2012.

5. It is submitted by the learned counsel for the petitioner

that the allegations made in the complaint, at best, would attract a case of simple breach of agreement and the cognizance taken for the offences punishable under Sections 406 and 420 of the IPC is bad in law. The revisional court, without appreciating the issues involved in this case, dismissed the revision application mechanically preferred against the order of the Magistrate.

6. On the other hand, learned counsel for opposite party no.2 has submitted that the allegations made in the complaint would attract both civil and criminal liabilities. He has submitted that the petitioner while being on bail has misused the privilege of bail, as a result of which his bail bond was cancelled by the court of Magistrate long back and till date he has not appeared before the court despite bailable and non-bailable warrant of arrest having been issued against him.

7. In reply, learned counsel for the petitioner has submitted that he has no instruction in this regard, as he is not in touch with his client since long.

8. Be that as it may, regard being had to the facts brought before this Court as also the allegations made in the complaint, I see no illegality in the order passed by the revisional court. Furthermore, the instant application filed under Section 482 of the CrPC is in the nature of second revision, which is barred under Section 397(3) of the

CrPC.

9. In that view of the matter, I find no merit in the present application. It is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	