

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22494 of 2014

Arising Out of PS.Case No. -1064 Year- 2007 Thana -PATNA COMPLAINT CASE District-
PATNA

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Sunny Sah S/o Bharat Sah Resident of Mohalla Kaushalya Niwas,
Maroofganj, Shree Bari Devi Asthan, Police Station Malsalami, District
Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Dhirendra Kumar S/o Shri Ram Singh Resident of Mohalla Bahari
Dhawalpura, P.S. Chowk, Bye-Pass, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Prasad

For the Opposite Party/s : Mr. Ashraf Ansari(App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

10 27-10-2016 Heard learned counsel for the petitioner and learned
counsel papering on behalf of the State.

The petitioner seeks to quash the order dated 24.01.2008
passed by the Additional Chief Judicial Magistrate, Patna City,
Patna whereby and whereunder the Court has taken cognizance
against the petitioner in connection with Complaint Case No.
1064(C) of 2007 as also the revisional order passed against the
same by the Court of Sessions, Patna on 12.05.2014 in Revision
Case No. 4163 of 2014.

Learned counsel for the petitioner submits that the
complainant has alleged that the brother of the present petitioner,
namely, Gautam Sah entered into an agreement dated 11.05.2007

regarding sale of *Makhana* in accordance with the agreement. The complainant was to supply the *Makhana* to accused No. 1, namely, Gautam Sah. In the said agreement, the petitioner came to be the witness to this agreement alongwith one Ashok Kumar. Therefore, it is submitted that there was a relationship of supplier and purchaser between the complainant and the brother of the present petitioner. So far as the petitioner is concerned, he is mere a signatory to the agreement and has nothing to do with transaction which were to be entered into by the parties. It is, therefore, submitted that no offence as alleged is made out against the petitioner under Section 406 of the Indian Penal Code. It is further submitted that the petitioner was taken into custody in pursuance of the complaint filed by the opposite party No. 2 and, therefore, he was constrained and compelled to make certain deposits in the Court below as a condition precedent to the grant of his order of bail. It is further submitted that if at all, there is any offence made out, it is the brother of the petitioner who can be held liable, but the petitioner could not be saddled with the allegation under Section 406 of the Indian Penal Code as he has not committed any criminal breach of trust. It is thus, submitted that the learned Magistrate has seriously erred in taking cognizance against the aforementioned section and continuance of such a proceeding

would amount to an abuse of process of Court.

Learned counsel for the petitioner submits that though notices were validly served on opposite party No. 2, he has chosen not to contest the matter and the petitioner is compelled to participate in the proceeding of the Court below for no fault of his own and even though no offence is made out against him and that such allegation could not in any event lead to his conviction.

Having heard learned counsel for the petitioner and learned counsel for the State and on perusal of the materials on record including the ordersheet annexed to the present application, I find that the order taking cognizance of the offence against the present petitioner is clearly misconceived and without any rationale. If, at all, any offence was made out regarding misappropriation then the liability of the same could alone be attached to Gautam Sah and not on the present petitioner. Furthermore, at best, the present case can be treated as a breach of agreement and thus, attract civil consequences and liability.

In the result, the present application is allowed and the order dated 24.01.2008 passed by the learned Additional Chief Judicial Magistrate-1st Class, Patna City, Patna, .in Complaint Case No. 1064 (c) of 2007 and the Revisional order dated 12.05.2014 passed by the Sessions Judge, Patna in Revision Case

No. 4163 of 2014 are hereby set aside.

However, there shall be no order as to costs.

(Anjana Mishra, J)

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