

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44721 of 2015

Arising Out of PS.Case No. -38 Year- 2014 Thana -BAHADURPUR District- DARBHANGA

Prakash Chandra Mishra, son of Kripa Nath Mishra, Resident of Village-
Thalwara, Police Station- Ashok Paper Mill, District Darbhanga.

.... Petitioner

Versus

1. The State of Bihar
2. Prem Shankar Choudhary S/o Late Yogeshwar Choudhary, R/o village
Darhar, P.S. Bahadurpur, District-Darbhang.

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Baidya Nath Thakur, Advocate.
For the Opposite Party : Mr. Shakir Ahmad(APP)

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

5 19-04-2016 Heard learned counsel for the petitioner, learned
counsel for the complainant and learned counsel appearing on
behalf of the State.

The petitioner is apprehending his arrest in
connection with Bahadurpur P.S. Case No. 38/2014 registered for
the offences punishable under Sections 406 and 420 of the Indian
Penal Code.

Learned counsel for the petitioner submits that the
petitioner is the son-in-law of one Krishna Kumari Devi, who is
said to have entered into an agreement for sale of land with the
informant. The petitioner is not in a position to execute the sale
deed as the land belongs to the said Krishna Kumari Devi. The
consideration amount of Rs. 13, 49, 000/- has already exchanged
hands between the parties. The recipient of the consideration

amount was none other than this petitioner, who had been entrusted by his mother-in-law to receive the amount from the informant.

The learned counsel for the petitioner further submits that whatever the amount received by him, has been handed over to the mother-in-law and therefore there is no element of criminality or fraud involved in the transaction. If the informant was aggrieved by the failure on the part of the lady who was to have executed sale deed, he should have gone to the Court of competent jurisdiction in a suit for Specific Performance of the Contract.

Learned counsel appearing on behalf of the informant submits that whatever may be the nature of the transaction, it was this petitioner alone, who received all the consideration amount to the tune of Rs. 13,49,000/- and now in view of the fact that the said Krishna Kumari Devi was not willing to execute the sale deed, it was the petitioner alone, who had received the money but neither was the sale deed executed nor in alternative, was the money accepted by him by means of various receipts, which have been marked as Annexure-2 of his counter affidavit, returned to the informant.

Having heard learned counsels for the parties, this Court feels that the petitioner cannot be given any reprieve save and except on his undertaking to this Court that he shall return the

amount so accepted by him, accordingly let the petitioner return the total amount. Firstly a sum of Rs. 5 lacs by way of first installment by means of Demand Draft issued in favour of the informant on or before the 10th of May, 2016 should be returned and the rest amount of Rs. 8, 49,000/- which remains due shall be paid by the petitioner to the informant in three equal installments within a period of six months thereafter.

In case, the petitioner deposits the first installment of Rs. 5 lacs by the 10th of May, 2016, in that event let the petitioner above named, in the event of his arrest or surrender before the Court below within a period of two weeks from the date of receipt/production of a copy of this order, be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate Darbhanga in connection with Bahadurpur P.S. Case No. 38/2014 subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

It is made clear that in case rest amount is not paid to the informant within the stipulated period of six months thereafter it shall be open to the informant to move the Court below for cancellation of the order or also move this Court for modification of the order passed.

(Anjana Mishra, J.)

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