

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.856 of 2017

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Rakesh Kumar Chaudhary, S/o Sri Mahendra Chaudhary,
Resident of Mohalla- Tiwari Tola, Ward No.31, Police Station
and District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Sect. Home
Dept., Bihar.
2. Deo Narayan Chaudhary, Proprietor A.K. Construction,
Village Mahishi, Post Mahishi, District- Saharsa.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Shashi Priya Pathak, Adv
For the Respondent/s : Mr. Md. N.H Khan (Sc-1)
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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 01-08-2018 The petitioner is aggrieved by the order dated
16.03.2017 passed by the learned Additional Chief Judicial
Magistrate, IIIrd, Saharsa in Cr. Misc. No. 01 of 2017, which
arises out of Complaint Case No. 818C of 2012, whereby the
prayer made on behalf of the petitioner for releasing Rs.
1,50,000/-, deposited by the O.P. No. 2 under the orders of
this Court, has been refused to be released in his favour.

The petitioner is the complainant of the aforesaid
Complaint Case No. 818C of 2012. The O.P. No. 2 had
approached this Court for grant of anticipatory bail which was
allowed by order dated 16.09.2013 by a Bench of this Court
in Cr. Misc. No. 21400 of 2013 with the pre-condition that the



O.P. No. 2 shall deposit an amount of Rs. 1,50,000/- before the Court below, which amount shall be invested in some interest bearing scheme which shall be subject to the result of the present case.

The O.P. No. 2 deposited the aforesaid amount before the Court below.

During the process of investigation and trial, a compromise was effected between the petitioner and the O.P. No. 2, pursuant to which it was agreed upon that the petitioner/complainant would not pursue the case and the O.P. No. 2 shall have no objection if the money which was deposited by him in the Court below, be released in favour of the petitioner.

After the O.P. No. 2 was acquitted because of the aforesaid settlement, the petitioner preferred an application before the learned Additional Chief Judicial Magistrate, IIIrd, Saharsa seeking a direction for release of the aforesaid amount in his favour.

By a queer logic, the Court below has rejected such a prayer on the ground that the order of this Court, at the time of grant of bail to O.P. No. 2, was very clear that it would be subject to the result of the present case. Since the O.P. No. 2 was acquitted, therefore, the learned Court below did not deem it appropriate to direct for release of the amount in



favour of the petitioner.

The learned counsel for the petitioner has submitted that the learned Court below has completely mis-directed himself and has passed an order which does not have any basis.

The acquittal of the O.P. No. 2 was recorded only on the strength of settlement/compromise. The offence under Section 138 of the Negotiable Instruments Act, 1885 is compoundable and compounding in the present case was only on the basis of the concession given by the O.P. No. 2 that he shall have no objection to the release of Rs. 1,50,000/- deposited by him before the Court, to the petitioner.

In that view of the matter, the Court below is directed to release the amount so deposited by O.P. No. 2 along with interest which has accrued on the aforesaid amount to the petitioner after being satisfied about his identity and taking an endorsement from him that the aforesaid amount has been received by him.

With the aforesaid direction, the writ petition is disposed of.

(Ashutosh Kumar, J)

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