

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54951 of 2018

Arising Out of PS. Case No.-780 Year-2017 Thana- KANKARBAG District- Patna

Dharmnath Prasad S/o Suresh Prasad @ Suresh Ram, R/o Vill.- defence
Colony, Flat No. 291, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Opposite Party/s : Mr. Sri Rana Randhir Singh

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL ORDER

3 13-12-2018 Heard learned counsel for the petitioner and the
learned A.P.P. for the State.

The petitioner apprehends his arrest in connection
with Kankarbagh P.S. Case no. 780 of 2017 registered under
Sections 406 and 420 of the Indian Penal Code.

Petitioner is said to have agreed to sell out his flat
in Rs.15 lacs to the informant and received Rs.5 lacs through
three different cheques on different dates towards sale
consideration and Rs.1,20,000/- towards cost of stamp and
registry fee, etc., but did not execute the sale deed in his favour
and on demand of money by the informant he furnished him
two cheques one of Rs.1 lac and another of Rs.50,000/-. Out of
which cheque of Rs.50000/- was bounced by the bank due to



insufficient fund in his account.

It is submitted by learned counsel for the petitioner that no such occurrence as alleged ever took place. As a matter of fact, despite readiness of the petitioner, informant is not interested in getting the sale deed executed rather to get his money back. The informant has given only Rs.5 lacs to the petitioner through cheque, out of which he has already paid Rs.1,00,000/- through cheque which has been withdrawn by the informant and now the petitioner is liable to pay only Rs.4 lacs to the informant and he is ready to pay the same. Informant has not given Rs.1,20,000/- to the petitioner towards purchase of stamp paper and registry fee, etc. and there is no evidence of furnishing aforesaid amount to the petitioner. There is no document regarding receiving of Rs.6,20,000/- by the petitioner as reflected in the impugned order rather regarding receiving of Rs.1,00,000/- only through cheque having signature of the petitioner and two witnesses. It is also submitted that there was no dishonest intention of the petitioner to deceive the informant at the initial stage of entering into transaction and it is purely a case of civil nature. It is also submitted that so far as allegation of Section 138 N.I. Act regarding bouncing of cheque furnished by the petitioner is



concerned, no notice etc. has been given to him by the informant within the stipulated period of limitation and without giving notice he has filed the F.I.R. instead of complaint petition which is not maintainable in the eye of law.

In the facts and circumstances of the case, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate 1st Class, Patna in connection with Kankarbagh P.S. Case No. 780 of 2017, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

U		T	
---	--	---	--

