

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16719 of 2019**

Arising Out of PS. Case No.-1740 Year-2017 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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1. Hari Narayan Mahto @ Hari Narayan Mahato, Son of Kanil Mahto @ Kanil Mahato Resident of Village- Khakra, Ward No.1, P.S.- Sitamarhi, District- Sitamarhi.
 2. Malti Devi, Wife of Hari Narayan Mahto @ Hari Narayan Mahato, Resident of Village- Khakra, Ward No.1, P.S.- Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nirbhay Kumar Singh, Son of Ram Singhashan Singh, Resident of Mohalla- Nagar Parishad, Ward No.19, P.S. and District- Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shankar Kumar

For the Opposite Party/s : Mr.Vinod Shanker Modi

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

7 18-09-2019 Heard learned counsels for the petitioners and the State.

The petitioners are apprehending arrest in a complaint case wherein process has been directed to be issued after cognizance being taken for the offences punishable under Sections 406, 420 and 120B of the IPC.

It appears that initially notices were issued to the complainant/opposite party no.2, vide order dated 25.03.2019. Office note dated 03.05.2019 reflects that the notices were



received by the house owner of the complainant, namely, Arun Kumar. Consequently, fresh notices were issued to the complainant, vide order dated 03.07.2019. The office note dated 13.08.2019 reflects that ordinary process of notice has been received by the complainant, but he refused to acknowledge the same. Hence, vide order dated 14.08.2019, notices, issued to the complainant, was directed to be treated as deemed valid service. Today also, none is appearing on behalf of the complainant/opposite party no.2.

The prosecution case, as per the complaint petition is to the effect that petitioner no.1, Hari Narayan Mahto agreed to sale his land, appertaining to Khata No. 681, Plot No. 1561, measuring an area of 15 decimals to the complainant and the complainant paid Rs. 1 lac as advance, for which, the petitioner issued a receipt dated 12.08.2016, but subsequently, the sale deed was not executed. After several reminders, petitioner no.1, Hari Narayan Mahto entered into an agreement dated 14.11.2016 for return of the consideration amount along with interest to the tune of Rs. 1 lac, but the same was also not paid to the complainant.

Learned counsel for the petitioners submits that the accusation against petitioner no.2, Malti Devi is not specific, but



she has been made accused since she is the wife of petitioner no.1. It is further submitted that there is no proof with regard to payment of Rs. 1 lac made to petitioner no.1 and the land in question is not recorded in the revenue record in the name of either of the petitioners. The alleged agreement with regard to return of consideration amount with interest amount has also not been brought on record. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent.

Learned APP submits that the accusation is specific against petitioner no.1 and finding prima facie case, the learned Magistrate took cognizance against the petitioners.

Considering the fact that in spite of the notices being received, the complainant failed to appear and controvert the contentions made on behalf of the petitioners and the nature of accusation being contractual relationship between the parties, coupled with the statement made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent, let the above named petitioners be released on anticipatory bail in the event of arrest/surrender before the learned Court below within a period of twelve weeks from today, on furnishing bail bonds of Rs. 10,000/- (ten thousand)



each with two sureties of like amount each to the satisfaction of
learned Additional Chief Judicial Magistrate-IV, Sitamarhi in
connection with C-1/1740 of 2017, subject to the condition as
laid down under Section 438(2) of the Cr. P.C.

(Dinesh Kumar Singh, J)

Amrendra/-

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