

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52965 of 2018**

Arising Out of PS. Case No.-2289 Year-2017 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

Shankar Sah @ Shankar Prasad S/o Late Hanuman Sah, R/o Vill.- Purani
Gudari, Ward No. 10, P.S.- Bettiah Town, District- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ram Prasad Vishwakarma S/o Late Jagarnath Mistri, R/o Vill.- Gulab Bagh,
Near Power House, P.S.- Bettiah Town, District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Alok

For the Opposite Party/s : Mr.Sri Humayou Ahmad Khan

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

3 09-04-2019 Heard learned counsels for the parties.

The petitioner is 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 and Section 138 of the N.I. Act.

The matter was referred to mediation vide order dated 20.9.2018 but the Mediator's Report reflects that the issue could not be resolved through the process of mediation.

The prosecution case as per the complaint is to the effect that the complainant gave Rupees Eight Lacs to co-accused Vidyalal Mukhiya as well as to the petitioner for fisheries business on terms of returning the same between year 2016 to



2017. It is alleged that on demand being made after February, 2017, a cheque was issued by co-accused Vidyalal Mukhiya which got dishonoured on 14.11.2017. Thereafter, the complainant sent a legal notice to co-accused Vidyalal Mukhiya on 1.12.2017 but he failed to reply the notice. Hence, the present complaint.

It is submitted by learned counsel for the petitioner that there is no proof with regard to the payment made to the petitioner. It is further submitted that the legal notice was served upon co-accused Vidyalal Mukhiya and the cheque was also issued by co-accused Vidyalal Mukhiya, hence no offence under Sections 406,420 and 120B of the IPC or under Section 138 of the N.I. Act is made out against the petitioner. The petitioner is accused in one other case in which he is on bail.

Learned counsel for the complainant submits that after finding prima facie case, the process was directed to be issued after cognizance being taken. It is further submitted that the money was given to the petitioner as well as co-accused Vidyalal Mukhiya since both were running business jointly, though the cheque was issued by co-accused Vidyalal Mukhiya and legal notice was only given to him.

Considering the fact that the materials on record do



not suggest that there is any documentary proof with regard to the payment to the petitioner and the cheque which got dishonoured, was admittedly issued by co-accused Vidyatal Mukhiya, let the petitioner above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned CJM, Bettiah, West Champaran in connection with Complaint Case No. 2289C of 2017 subject to the conditions laid down in Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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