

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.71787 of 2018

Arising Out of PS. Case No.-361 Year-2018 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Yadupati Singh Son of Late Harbansh Singh, Resident of Mohalla- Hari Ji Ka
Hatta, P.S.- Ara Nawada, District- Bhojpur, Bihar.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Manoj Kumar Singh, S/o Banaras Singh, R/o 202, Classic Homes Apartment,
Ara Garden Road, Bailey Road, Patna, P.S. Rupaspur, District- Patna
Currently residing at Mohalla Maulabagh, P.S. Ara Nawada, District-
Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Surendra Kumar Singh
For the Opposite Party/s : Mr.Smt. Reena Sinha

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 07-02-2019 Heard learned counsel for the petitioner and learned APP
for the State.

The petitioner is apprehending arrest in a case registered
for the offence punishable under Section 420 of the Indian Penal
Code and 138 of the N.I. Act.

The prosecution case as per the complainant is that for
running a cold storage business altogether Rs.34,25,000/- were
given to the petitioner. Consequently, on 09.03.2015 an
agreement was entered into between the petitioner and the
complainant. As per the terms of agreement, the petitioner was
supposed to return the total loan amount along with profit in
December, 2015. Subsequently, the assurance was given that



agreed amount will be returned in June/July, 2016, but it was not returned. Thereafter, the petitioner conveyed the complainant to encash the five cheques given to him earlier as security, whereupon, the complainant deposited all the five cheques in a branch of Bank of India, which got dishonoured due to insufficient balance in the account of the account holder. It is further alleged that subsequently, the petitioner issued two other cheques in favour of the complainant, which was deposited by the informant in the bank for its encashment, but that too got dishonored. Ultimately, the complainant issued legal notice to the petitioner, but in spite of that the petitioner did not return the loan amount along with agreed profit taken from the complainant.

It is submitted by learned counsel for the petitioner that the total amount which was given to the petitioner was to the tune of Rs.29,50,000/- and out of which Rs.6,76,000/- has already been transferred in the account of the complainant. Hence, the due amount remains to the tune of Rs.22,49,000/-, which the petitioner is ready to return in installments within one year. Though the complainant has filed Money Suit No.2 of 2018 which is pending before the learned Sub-Judge-I, Bhojpur at Ara.



It is submitted by learned counsel for the complainant that altogether Rs.34,00,000/- were given to the petitioner and Rs.4,75,000/- were given to the son of the petitioner. As per the agreement, the total loan amount was supposed to be returned along with profit amount, but the same has not been returned till date. It is further submitted that since the cheques total valuing Rs.40,00,000/- were issued by the petitioner against the loan amount along with profit, which got dishonoured when it was produced before the bank for its encashment, hence, the complainant filed money suit claiming Rs.34,00,000/-. Though the total calculated amount with profit as per the agreement comes to the tune of Rs.65,00,000/-.

However, it is contended by learned counsel for the petitioner that the complainant entered into some business agreement with the son of the petitioner. But. the business could not succeed, hence, the money could not be returned.

It appears that on joint prayer of the parties, this Court vide order dated 20.12.2018 referred the matter to the Mediation and Reconciliation Centre of the Patna High Court, but the report of the Mediator dated 01.02.2019, kept at 'Flag-B' reflects that the issue could not be resolved through the process of mediation.

However, it is submitted by learned counsel for the



petitioner that the issue could not be resolved through the process of mediation, since the complainant is not ready to allow one year time period to the petitioner to return the amount of Rs.22,49,000/-.

This Court without entering into the disputed claim of the parties, i.e., either quantum of amount taken as loan or the calculated profit to be given on the loan amount as per the terms of the agreement, since the petitioner is ready to return Rs. 22,49,000/-, this Court permits him to return the said amount within a period of six months in six equal installments by depositing the same through Bank Draft before the learned Court below, which will be released in favour of the complainant by the learned Court below.

On deposit of Rs.4,00,000/- through bank draft which will be treated as first installment of deposit, within a period of six weeks, let the petitioner above named petitioner be released on anticipatory bail provisionally for six months, in the event of arrest or surrender before the learned Court below within a period of 12 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 CJM, Bhojpur at Ara in connection with Complaint Case No.361 (C) of 2018, subject to



the conditions as laid down under Section 438(2) of the Cr.P.C.

The provisional bail of the petitioner will be confirmed by the learned Court below on deposit of Rs.22,49,000/-.

It is made clear that the present order in no way decides the claim and counter claim of the parties with regard to quantum of loan amount and quantum of amount which the petitioner is supposed to return to the complainant, as the same will be decided in appropriate proceeding.

(Dinesh Kumar Singh, J)

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