

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.94 of 2021**

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Md. Mohiuddin Ansari, Son of Maqbool Hussain, resident of Abir Mishra lane, Islampur Champanagar, P.O.-Champanagar, P.S.-Nathnagar, District-Bhagalpur.

... .. Petitioner/s

Versus

Fahima Khatoon, Wife of Md. Mohiuddin Ansari, resident of Mohalla-Islampur Champanagar, P.O.-Champanagar, P.S.-Nathnagar, District-Bhagalpur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Manoj Kumar Jha  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY**

CAV ORDER

5      14.12.2021                      I have already heard the learned counsel for the petitioner.

The present civil miscellaneous application has been preferred by the petitioner being dissatisfied with the order dated 07.06.2016, passed in Title Suit No.37/2001 by Munsif 2<sup>nd</sup>, Bhagalpur, whereby the Munsif 2<sup>nd</sup> allowed the petition dated 13.12.2012 under Section 340 of the Cr. P.C.

The respondent/defendant under Order 9, Rule 13 of the Code of Civil Procedure, 1908 challenged the compromise decree dated 05.02.2002 mentioning that her forged signature was created and *ex parte* decree was obtained. That *ex parte decree* was set aside under Order 9, Rule 13, vide order dated 01.05.2009. Thereafter on 13.12.2012, the respondent-defendant



filed a petition for taking action against the petitioner under Section 340 of the Cr.P.C., which was allowed by the impugned order.

Learned counsel for the petitioner has submitted that the compromise petition was not signed in the court when it was filed on the record. As such, it cannot be said to be *custodia legis* when the signature of the defendant was made. He has further submitted that even if it is assumed to be true that signature of the defendant is forged, which is denied by the petitioner, no action can be taken under Section 340 of the Cr. P.C.

In my view, the present civil miscellaneous application is not maintainable as the impugned order is appealable order. Any order passed under Section 340 of the Cr. P.C. is appealable under Section 341 of the Cr P.C. which read as follows:-

**“341. Appeal-** (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub- section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and



the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.”

In view of aforesaid, the Civil Miscellaneous petition is dismissed as not maintainable.

**(Nawneet Kumar Pandey, J)**

HR/-

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