

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 30678 of 2020

Arising Out of PS Case No.-32 Year-2020 Thana- DIDARGANJ District- Patna

Kanhaiya Kumar (M) age 41 years, Son of Ganesh Singh, Resident of Village-Semra, P.S.-Begusarai Nagar, District-Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Baxi S R P Sinha, Sr. Advocate with Mr. Randhir Kumar No.1, Advocate
For the State	:	Mr. Madan Kumar, APP
For the Informant	:	Mr. Dharendra Kumar Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 29-01-2021

Heard Mr. Baxi S R P Sinha, learned senior counsel along with Mr. Randhir Kumar No. 1, learned counsel for the petitioner; Mr. Madan Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Dharendra Kumar Sinha, learned counsel for the informant.

2. The petitioner apprehends arrest in connection with Didarganj PS Case No. 32 of 2020 dated 08.02.2020, instituted under Sections 406/408/420/379/506 of the Indian Penal Code.

3. The allegation against the petitioner is that he had engaged the informant as a sub-contractor for various supplies and initially payment was made but later on when certain machines were provided on rent, the payment was not made and further it is



alleged that the petitioner had given a letter which shows that huge amount was payable by the petitioner to the informant and also that two cheques were fraudulently sent to the Bank for encashment by the petitioner after stealing them from the bag of the informant while he used to visit the office of the petitioner.

4. Learned counsel for the petitioner submitted that a plain reading of the FIR clearly shows that the dispute is with regard to money, which is civil in nature and the very institution of the criminal case is an abuse of the process of the Court. It was further submitted that the informant was a musclemans and because the petitioner was doing business, to make matters easy, some work was given to him, but later he started demanding money due to which the petitioner has also lodged a *sanha* with the police. Learned counsel submitted that the informant has legal remedy of moving the Civil Court for recovery of any money which he claims is due from the petitioner but the criminal case is vexatious and totally illegal. It was further submitted that the petitioner has no other criminal antecedent.

5. Learned APP submitted that the allegation against the petitioner is of not returning the money and also of misusing two cheques.



6. Learned counsel for the informant submitted that there is admission on behalf of the petitioner that he owns a huge amount to the informant and further that the petitioner not returning the money clearly amounts to an offence under Section 420 of the Indian Penal Code. It was submitted that the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar and Anr. in Cr. Appeal No. 1277 of 2014 [(Special Leave Petition (CRL) No. 9127 of 2013)]** has held that in cases where the punishment is up to seven years, the matter should be verified by the police before any coercive action is taken and thus, the present application is not maintainable.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM-IV, Patna City in Didarganj PS Case No. 32 of 2020 subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative of the petitioner, and (ii) that the petitioner



shall cooperate in the case. Failure to cooperate shall lead to cancellation of his bail bonds.

8. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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