

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10467 of 2020

Arising Out of PS. Case No.-785 Year-2018 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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MINAKSHI KUMARI D/o Parmanand Gupta Resident of Village - Gurhatta
Chowk, Panna Mill Road, P.S.- Mouzahidpur, Dist.- Bhagalpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Onkar Prasad Son of Saryug Singh Resident of Village - Jaishiv Bigha, P.O.-
Habibpur, P.S.- Parbalpur, Dist.- Nalanda, Present address Executive
Director, Technoculture Building Centre Pvt. Ltd. (Vastu Vihar), Ganpati
Complex, Second Floor, Patel Babu Road, Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr.Jagjit Roshan, Advocate
For the Opposite Party/s :	Mr.Ram Sevak Choudhary, APP
	Mr.Ranjan Kumar Jha, Advocate
	Mr.Mirtyunjay Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER

11 29-06-2022 Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the complainant.

The petitioner apprehends her arrest in a case registered
for the offence punishable under Sections 406 & 420 of the
Indian Penal Code.

The allegation against the petitioner is of misusing the
Company's fund and of defalcating the amount of the deposited
by the customers for purchase of flats.

Learned counsel for the petitioner submits that petitioner
is falsely implicated in the present case. He further submits that

during enquiry apart from the statement of the complainant, none of the witnesses came in support of the prosecution case and hence, no witnesses were examined by the learned trial court. He further submits that complaint case has been filed under several sections 323, 341, 406, 420, 448, 467, 468, 471 of the Indian Penal Code but the learned court below in most mechanical manner taken cognizance under sections 420 and 406 of the Indian Penal Code vide order dated 27.06.2018.

The Complainant has filed complaint against altogether seven accused persons who all are family members of the petitioner and the learned Chief Judicial Magistrate, Bhagalpur appreciated this fact that the allegation leveled against the family members are super addition and hence taken cognizance only against the petitioner. Petitioner started working on the post of Marketing Executive on 22.01.2013 and the job of the petitioner was to call the customer and to give information regarding the plan of the company to the customers and also to receive the amount of installment from the customers and hand it over to the Senior Officials. In the said Company, the Reporting Head/Marketing Head of the petitioner was Abhishek Mishra, who daily in the evening used to take the report and also used to collect the entire amount and hand over

to the Cashier/Accountant namely Prince Ranjan and hence, there was also a check and balance to the work done by the petitioner. Learned counsel for the petitioner further submits that the brother of the petitioner namely Rohit Anand was medically sick and paralysed (Lakwa) on 17.08.2015 and hence, for his treatment there was need of some money and hence Hemlal Mahto arranged Rs.Three Lakhs from the said Company for the treatment of her brother who was operated at Apollo Hospital and his life was saved but there was 50 % permanent disability. After few days Hemlal Mahto and Santu Patel started creating pressure to return the said amount and pressure was also created by Reporting Boss/ Abhishek Mishra and during that period also took her signature on several blank papers and bond papers, which was misused. That due to above liability, the petitioner was forced to have illicit sexual relationship with Abhishek Mishra and in this regard FIR was instituted by the petitioner against three accused namely Hemlal Mahto, Santu Patel and Abhishek Mishra bearing Kotwali (Tilka Manjhi) P.S. Case No.199 of 2018.

The Investigating Agency was not investigating the case properly, hence, a Protest Petition dated 31.10.2018 was filed in Kotwali (Tilka Manjhi) P.S. Case No.199 of 2018 in the

Court of learned Chief Judicial Magistrate, Bhagalpur. He further submits that the whole case against the petitioner is false and fabricated as the present prosecution is nothing but a counter case by the Opposite party No.2 to save their own skin and only to cover the irregularities committed by the Company, the false prosecution case has been lodged, and hence there is absence of criminal liability in the present allegation and hence this prosecution maliciously instituted with ulterior motive.

Learned counsel for the petitioner further submits that the Opposite party No.2 has stated name of three witnesses in the complaint case out of three, not a single witness came for deposition which shows the falsity of the present case. Petitioner has no criminal antecedent mentioned in para-3 of the bail application.

Learned APP for the State as well as learned counsel for the complainant/O.P. No.2 opposed the bail application. Learned counsel for the complainant filed a counter-affidavit in the present case and stated that the petitioner was working as a Marketing Executive since 2013, and also she used to receive the installments of the flat purchaser and she was in touch with different purchaser in that course she has received totally amount of Rs.25,70,500/- (Rs. Twenty Five Lac Seventy

Thousand and Five Hundred) from different purchasers and thereafter she has not deposited the same either in the office of the company of Vastu Vihar where she was working nor in its bank account rather she has expended the money in her personal use and she herself accepted and accordingly given an undertaking to the company and on 09.03.2018, she executed a bond on a stamp paper amounting to Rs.1000/- stating therein that she has received the amount of Rs.25,70,500/- from different purchasers and made expenses in her personal use but she will return back the said amount to the company. He further stated that so far as Kotwali (Tilka Manjhi) P.S. Case No.199 of 2018 dated 28.03.2018 lodged by the petitioner is concerned, this complainant is not an accused in that case nor any allegation has been made against him by the informant/petitioner which will be evident from the FIR also.

A show-cause in this regard has also been filed on behalf of the State. In para-9 of the show-cause, it is stated that the Investigating Officer (who already retired) S.I. Prabhunath Ray told him that he had not taken CDR of both of mobile numbers since the informant (petitioner) and the accused Abhishek Mishra both were employee of the same Company. It was obvious to have mobile conversation between both of them.

The S.S.P., Bhagalpur vide its letter no.2378 dated 22.04.2022 sought clarification on certain facts from the S.H.O., Tilkamanjhi.

Pursuant to the aforesaid letter, the S.H.O. Tilkamanjhi P.S. submitted his report on 26.04.2022. It is also mentioned in the S.H.O's report that the I.O. further told that the informant/complainant herself had denied for medical examination, so the medical examination was not done.

Considering the argument of the parties and on perusal of the case record including the case diary of Tilka Manjhi P.S. Case No.199 of 2018, it is evident that the prosecution has not investigated the case properly in Tilka Manjhi P.S. case No.199 of 2018. Considering this fact, the matter is related to the commercial transaction, the complainant is at liberty to file a money suit not a criminal case. It is fact that the petitioner lodged F.I.R. bearing Tilka Manjhi P.S. Case No.199/2018 on 28.03.2018 against the same employee of the said Company. After filing of F.I.R. by the petitioner, the Complainant has filed the present complaint petition against the petitioner. In the entire complaint petition, it is not mentioned that complainant has earlier gone to file the F.I.R. but the police has not lodged the F.I.R., therefore he filed complaint petition. In the facts and

circumstances of the case, I am inclined to enlarge the petitioner on bail.

Having regard to the facts and circumstances of the case, let the above named petitioner, be released on bail, in the event of her arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/Successor Court in connection with Complaint Case No.785 of 2018, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Anjani Kumar Sharan, J)

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