

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86442 of 2019

Arising Out of PS. Case No.-1092 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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NEYAZ ALAM Son of Late Azaz Alam Director of Green Homes Pvt. Ltd.
Resident of Flat No. 203 B, Nizam Plaza, Samanpura, Raja Bazar, P.S.-
Shhastri Nagar, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Shamsheer Alam @ Shamsheer Alam Diskush Son of Md. Taiyab Resident of
Platinum Residency First Floor, Flat No. 102 Gali No. 3, Ali Nagar,
Anishabad, P.S.- Gardanibagh, District- Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar
For the Opposite Party/s : Mr. Anant Kumar 1

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

17 03-03-2022 Heard Mr. Manoj Kumar, the learned counsel for

the petitioner and Mr. Vijay Kumar Sinha, the learned

counsel for the complainant / opposite party no. 2. The State

is represented by the learned APP for the State.

The matter was heard on 21.12.2021 when this

Court had passed the following order:-

" The petitioner seeks bail in anticipation

of his arrest in connection with Complaint Case

No. 1092(C) of 2017 in which cognizance has

been taken under Section 406 of the Indian



Penal Code and Section 138 of the N.I. Act.

The sum and substance of the accusation in the complaint petition is that despite the petitioner having received money from the complainant/opposite party no. 2, the flat in question was not handed over to him. In fact, it has been alleged that without obtaining the prior permission and approval of the land owner, such an agreement was executed with the prospective investors/buyers and therefore the petitioner was guilty of cheating since the beginning.

However, it has been stated that when confronted with all this, the petitioner issued cheques for repayment of the amount which could not be honoured.

Learned counsel for the petitioner has drawn the attention of this Court to the fact that the amount of the investors including that of the complainant/opposite party no. 2 was returned by way of RTGS transfer to the tune of Rs.



16,50,000/- and approximately Rs. 10 lacs was paid in cash for which there is an endorsement of the opposite party no. 2 in an agreement for the same.

The agreement has been made part of the records.

Learned counsel for the opposite party no. 2, however, has disputed this position. He has come up with a different story that prior to executing the agreement referred to in the subject complaint, the opposite party no. 2 had entered into an agreement with the petitioner earlier for purchase of one BHK flat in one Ayesha Apartments. Another investor in the aforesaid project was one Danish Raza. He too was not given the flat in question.

The learned counsel for the opposite party no. 2 submits that the money which was paid against the earlier agreement has been returned by the mode which has been shown by the



petitioner in the present case.

The money which was received by the petitioner in the present agreement for purchase of a flat in Fahmida Apartment has not been returned.

The learned counsel for the petitioner, however, disputes this position and submits that if the opposite party no. 2 was not handed over the flat against the earlier agreement, there was no reason for him to have executed another agreement. He further submits that there is nothing on record to indicate that such payments made by him to opposite party no. 2 was against an outstanding dues in the earlier agreement for purchase of a flat in the Ayesha Apartment.

The learned counsel for the petitioner is directed to bring on record any evidence in proof of the assertion that the amount of Rs. 16,50,000/- which has been paid to opposite party no. 2 and his associate by way of RTGS is



in connection with the present agreement for purchase of a flat in Fahmida Apartment which could not be executed because of dispute between the land owner and the petitioner.

It is made clear that if the statement made in the counter affidavit is not found to be correct, this Court would presume it to be a deliberate wrong statement before this Court for deflecting the course of justice.

Let it be noted that the matter was earlier referred to the mediation centre of Patna High Court but with all the efforts of the mediator, the controversy could not be resolved.

Hence, this case has been heard on merits.

The counter affidavit is not on record. The Court has gone through the counter affidavit after taking a copy of the same from the counsel across the board.

Let the counter affidavit filed in the



registry be placed along with the record.

A copy of the same be served upon the counsel for the petitioner during the course of the day.

List this matter on 12th of January, 2022.

Interim order, if any, shall continue in the meanwhile."

The learned counsel for the petitioner has produced for inspection of this Court the agreement for sale in which there is an endorsement of the opposite party no. 2 of having received the amount through cheque which appears to have bounced for which present prosecution has been launched and some amount in cash.

Though the aforesaid endorsement is absolutely vague and the learned counsel for the opposite party no. 2 is insistent that this endorsement is itself a forged entry in the order-sheet but considering the nature of dispute between the parties and taking into account that the matter is pending before the court for trial, the petitioner, above



named, is directed to be released on bail, in the event of his arrest or surrender before the court below within a period of six weeks from the date of receipt / production of a copy of this order, on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate -VIII, Patna, in connection with Complaint Case No. 1092(C) of 2017, subject to the condition laid down under Section 438 (2) of the Code of Criminal Procedure.

(Ashutosh Kumar, J)

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