

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28532 of 2018

Arising Out of PS. Case No.-355 Year-2015 Thana- SHASTRINAGAR District- Patna

Om Prakash S/o Late Ram Dhyan Sharma, R/o A-131, A.G. Colony Main
Road, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Smt. Rekha Devi W/o Shri Pradeep Kumar Gupta, R/o Chunauti Kuan, P.S.-
Phulwarisharif, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar Singh, Advocate
For the Opposite Party/s : Mr.Sri Akshay Lal Pandit, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 04-05-2023 Heard learned counsel for the petitioner and learned
APP for the State.

This application has been filed for quashing of the
order dated 17.03.2018 passed by learned Judicial magistrate-
1st Class, Patna in connection with Shastri Nagar P.S. Case No.
355 of 2014 by which learned Magistrate has rejected the
discharge petition filed by the petitioner.

On 11.10.2018, the following order was passed by this
Court are as follows:-

*(1)Petitioner in the present case is
seeking quashing of the order dated 17.03.2018
passed by learned Judicial Magistrate, 1st Class,
Patna in connection with Shastri Nagar P.S. Case
No. 355/2015. By the impugned order the
discharge petition preferred by the petitioner has
been rejected and the court has directed to frame*



charge for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

(2) Learned counsel for the petitioner submits that it is a case in which as per allegations the informant claims that she had negotiated for taking a shop on rent from this petitioner in his house. It is claimed that the parties had agreed to for the said shop on an advance payment of Rs. 1,50,000/-, and rent amount of Rs. 12,000/- per month was fixed, but when the shop got ready, the informant paid a sum of Rs. 24,000/- to the petitioner. It is alleged that thereafter the petitioner did not provide the shop to the informant and is compelling her to enter into agreement and to sign the agreement which the informant was not ready to sign. It is in this background the case has been lodged.

(3) Learned counsel submits that in the given facts no case under Section 420 & 406 of the I.P.C. has been made out against the petitioner, however the court below has rejected the application of petitioner for discharge referring Store 193 paragraph of the case diary. to certain paragraph of the case diary.

(4) Let a notice be issued to the Opposite Party No. 2 by both the modes, ordinary process as well as registered post with A/D, for which requisites etc. must be filed within one week after Puja Holidays, failing which this application shall stand rejected without further reference to a Bench.

(5) Call for carbon/Xerox copy of the case diary from the court of learned Judicial Magistrate, 1st Class, Patna in connection with Shastri Nagar P.S. Case No. 355 of 2015.

(6) Let the matter be listed on receipt of the service report and the case diary.

(7) In the meantime, till further order proceeding in the court below shall remain stayed.

I have heard learned counsel for the petitioner,



learned APP for the State and learned counsel for opposite party
no. 2.

The opinion of this Court is that the present dispute
should have been resolved in civil proceeding and filing a
criminal case is an abuse of process of the Court. The dispute
appears to be civil in nature and the same cannot be decided by
filing an F.I.R. In these circumstances, this application is
allowed. The order dated 17.03.2018 passed by learned Judicial
magistrate-1st Class, Patna in connection with Shastri Nagar
P.S. Case No. 355 of 2014 is hereby quashed.

(Sandeep Kumar, J)

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