

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.785 of 2017

Arising Out of PS. Case No.-2292 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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Sanjeev Srivastava @ Sanjeev Son of Late Madan Prasad Srivastava,
Resident of A/12, Sector-24, P.S.- Kotwali, Noida Uttar Pradesh at preent
Managing Director, M/s Assotech Limited, registered office at 148/F Pocket-
IV, Mayur Vihar, Phase-I, New Delhi- 110091 ... Petitioner

Versus

1. State Of Bihar
2. Anil Kumar Sinha, Son of Late Tarkeshwar Prasad, Resident of Mohalla-
Miscot, P.S. and P.S.- Motihari Town, District- East Champaran, Bihar, A
NRI, Permanent resident of Canada, address- 8, Dandelio Road, Brampton,
Ontario, L6RIX3, Canada ... Respondents

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with

CRIMINAL MISCELLANEOUS No. 37710 of 2017

Arising Out of PS. Case No.-2292 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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Sanjeev Srivastava @ Sanjeev Son of Late Madan Prasad Srivastava, R/o
A/12, Sector-24, P.S.- Kotwali, Noida Uttar Pradesh, at present Managing
Director, M/s Assotech Limited, registered Office at 148/F Pocket- IV, Mayur
Vihar, Phase-I, New Delhi-110091 ... Petitioner

Versus

1. State Of Bihar
2. Anil Kumar Sinha, Son of Late Tarkeshwar Prasad, R/o Mohalla- Miscot,
P.O. and P.S.- Motihari Town, District- East Champaran, Bihar, a NRI,
permanent R/o Canada, Address- 8, Dandelion Road, Drampton, Ontario,
L6RIX3, Canada ... Opposite Parties

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Appearance :

(In CRIMINAL REVISION No. 785 of 2017)

For the Petitioner : Mr.Rajesh Ranjan, Adv.

For the Respondents : None

(In CRIMINAL MISCELLANEOUS No. 37710 of 2017)

For the Petitioner : Mr.Rajesh Ranjan, Adv.

For the Opposite Parties : None

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

8 19-04-2023

Criminal Revision No. 785 of 2017

Heard the learned counsel for the petitioner.

No one appears on behalf of the State of Bihar.



Present criminal revision application has been filed for setting aside the order, dated 24.04.2017, passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 2292(C) of 2016 by which the application under Section 205 of the Criminal Procedure Code, 1973 filed on behalf of the petitioner has been rejected.

Counsel for the petitioner submits that it is a matter arising from complaint case and allegation of bouncing of cheque is there in the complaint case. Counsel submits that the complainant has handed over cheques to the accused for the purpose of earning the profits, when profit has not been paid, therefore, this case has been filed. Counsel submits that an observation has come by the coordinate Bench of this Court at the time of hearing of anticipatory bail application that it is civil dispute and, therefore, the present application is fit to be allowed.

The points which has been raised by the counsel for the petitioner is not the ground on the basis of which application under Section 205 of the Criminal Procedure Code, 1973, could be considered. It is well known that Section 205 of the Criminal Procedure Code, 1973, has especially designed for the purpose under which the Magistrate may dispense with the personal



attendance of the accused. Therefore, there is no merit in the argument of the counsel for the petitioner.

So far as the order, dated 24.04.2017, is concerned, under which it has been categorically discussed by the Court below that according to Section 205 of the Criminal Procedure Code, 1973, the stage of its applicability is at the first instance, that is, prior to issuance of warrant, but, in the present case warrant has already been issued prior to filing of application under Section 205 of the Criminal Procedure Code, 1973, and it is due to this reason this Court has not entertained the application and rejected the same.

From the bare reading of the contents of Section 205 of the Criminal Procedure Code, 1973, it is stated that whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

This Court has rightly observed that stage of summon has already been crossed and this application under Section 205 of the Criminal Procedure Code, 1973, has been filed later. Therefore, this Court finds that the order passed by trial Court, dated 24.04.2017, is completely in accordance with law and there is no need of any interference in this case, therefore, this



criminal revision is hereby **dismissed**.

Cr. Misc. No. 37710 of 2017

The present application has been filed for grant of anticipatory bail in connection with Complaint Case No. 2292(C) of 2016 in which cognizance has been taken under Sections 406/420 of the Indian Penal Code read with 138 of the Negotiable Instructions Act, 1881.

Counsel for the petitioner submits that there were two complaint cases filed by the complainant against the petitioner. The first was the Complaint Case No. 3309(C) of 2015 under Sections 406/420 of the Indian Penal Code and 138 of the Negotiable Instructions Act, 1881. In the said complaint case the petitioner has been granted anticipatory bail vide order, dated 15.06.2016, in Cr. Misc. No. 25265 of 2016 by the coordinate Bench of this Court (Annexure 3).

Counsel for the petitioner submits that from the contents of the complaint petition it transpires that two complaint petitions have been filed relating to bouncing of four cheques. The present complaint petition bearing Complaint Case No. 2292(C) of 2016 was filed for bouncing of two cheques having value of Rs.25,00,000/- and Rs.09,12,900/- through cheque no. 317020, dated 08.04.2016, and 317021,



dated 08.04.2016. Counsel for the petitioner has categorically mentioned in paragraph 15 of bail application that the complainant had assured to the petitioner that he is willing to cancel the deal with respect to two flats and he is ready to settle all the accounting, interest etc. Counsel submits that it is due to this reason the petitioner refunded Rs.36,40,279/- against the principal amount through cash and through US Dollar through the agency R.R. Sen & Brothers Pvt. Ltd., till 13.04.2015 and the rest principal amount of Rs.13,59,721/- remains due. Counsel submits that petitioner is still ready to return the said Rs.13,59,721/- to the complainant prior to surrender. He, further, submits that the coordinate Bench at the time of passing the order has categorically observed that no offence under Sections 406 and 420 of the Indian Penal Code is made out. At worst and as per the allegation of complaint a case under Section 138 of the Negotiable Instruments Act, 1881, may be made out and considering this the coordinate Bench has allowed the bail in another complaint having similar allegations with different cheques vide order, dated 15.06.2016, passed in Cr. Misc. No. 25265 of 2016.

This Court particularly in the light of the order passed by the coordinate Bench as well as in the light of offer made by



the petitioner that in paragraph 15 of the bail petition himself offered to pay Rs.13,59,721/- to the complainant inclined to consider the case of petitioner.

In the present facts and circumstances of the case, I hereby grant anticipatory bail to the petitioner on furnishing bail bond of Rs.30,000/- (rupees thirty thousand) with two sureties of the like amount each along with proof of bank instrument that Rs.13,59,721/- paid in the account of the complaint by the accused in connection with Complaint Case No. 2292(C) of 2016 to the satisfaction of the Judicial Magistrate, 1st Class, Patna, subject to the condition as laid down under Section 438 of the Criminal Procedure Code, 1973.

With this observation, the anticipatory bail application stands **allowed**.

(Dr. Anshuman, J)

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