

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50385 of 2024
In
CRIMINAL MISCELLANEOUS No.8562 of 2023

Arising Out of PS. Case No.-931 Year-2021 Thana- DANAPUR District- Patna

Rakesh Kumar Shrivastava Son Of Late Bali Ram Prasad Shrivastava @ Late Sachidanand Prasad @ Late Udhaw Lal Resident of Village - Tikaita, P.S. - Turkauliya, District - East Champaran, At Present Resident of 152 F Kali Charan Ghosh Road Sindhi Kolkata, West Bengal

... .. Petitioner/s

Versus

1. The State of Bihar
2. Amrendra Tiwary son of Raj Kumar Tiwary, resident of village Majhiaw, P.S. Charpokhari, District Bhojpur, Ara at preset resident of Adampur P.O. Khagaul, P.S. Danapur, District, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Vijay Shankar Shrivastava, Advocate
For the informant	:	Mr.Dhananjay Kumar Tiwary, Advocate
For the Opposite Party/s	:	Mr.Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 26-10-2024 Heard Mr. Vijay Shankar Shrivastava, learned counsel appearing on behalf of the petitioner, Mr. Dhananjay Kumar Tiwary, learned counsel for the informant and Mr. Ajit Kumar, learned APP for the State.

2. The petitioner has filed the present modification application for extension of time in the light of one of the conditions imposed, vide order dated 09.08.2023 passed in Cr. Misc. No.8562 of 2023 to the extent that the petitioner was directed to make payment of Rs.15 lac in three monthly equal installments commencing from September, 2023 in the bank account of the informant, failing which the learned court below is at liberty to cancel the bail bond of the petitioner. The said



condition could not be satisfied and the petitioner, who is in custody, seeks further extension of time to comply with order dated 09.08.2023.

3. It is submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is willing to deposit the money but being in custody, he is not able to arrange the money and, as such, no purpose will be served, if he remains behind the custody.

4. Learned counsel further submitted that it is the settled law by the Apex Court in the case of **Bimla Tiwari vs. State of Bihar & Ors.** passed in SLP (Crl.) Nos. 834-835 of 2023 that the Court should not act as Recovery Officer and on this ground, the petitioner seeks modification of the order.

5. Mr. Dhananjay Kumar Tiwary, learned counsel appearing on behalf of the informant submits that the petitioner had agreed in the open Court to make payment of Rs.15 lac, as such, he has not only breached the contract entered into between the petitioner and the informant but also he has intentionally disobeyed the order of this Court. Apart from not only the present is the one case, in which the petitioner is facing criminal prosecution for alleged offence under Section 406, 420 and 120(B)/34 of the IPC read with Section 138 of N.I. Act but more



than half a dozen cases are pending against him, in which also, he is facing criminal prosecution, as such, the very conduct of the petitioner is not sound and if the order is modified by further granting him more time, the same will be against the interest of the society. On these grounds, learned counsel opposed the prayer of the petitioner for seeking extension of time.

6. Considering the reliefs as sought for in the present modification application, I find that the petitioner himself has admitted to make payment of Rs.15 lac in the open Court in three monthly equal installments commencing from September, 2023 and even considering the law laid down by the Apex Court, the conditions imposed can not be said to be against the statutory provision of Section 439 of the Cr.P.C., however, today also the learned counsel appearing on behalf of the petitioner has informed this Court that he has taken instruction from his client in presence of Mr. Dhananjay Kumar Tiwary, learned counsel for the informant that the petitioner and his family members are agreed to get rid of criminal prosecution by making payment of the entire amount but some period should be given to the petitioner who is behind custody. I made a query from Mr. Vijay Shankar Shrivastava, learned counsel for the petitioner, who submitted that at least one month time be



extended so that the petitioner may arrange money, however, he has also informed to this Court that one case is pending against the petitioner in which he has not been released on bail and that is also of similar nature. This Court will not go as to in how many cases, the petitioner is in custody and facing criminal prosecution.

7. So far as merit of the present modification application is concerned, considering the fact that if one month is extended, the petitioner will abide by the condition imposed vide order dated 09.08.2023 passed in Cr. Misc. No.8562 of 2023, I am of the opinion that in the above circumstances, I extend further period to comply the order dated 09.08.2023 for 30 days more from today (i.e. 26.10.2024) for returning back the amount in the light of order dated 09.08.2023 passed in Cr. Misc. No.8562 of 2023, subject to payment of cost of Rs.25,000/- in the bank account of the Advocates' Association, Patna High Court.

8. With the above observation/direction, the present modification application stands disposed of.

(Purnendu Singh, J)

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