

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5932 of 2023

Arising Out of PS. Case No.-260 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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Sushma Sinha Wife Of Anil Kumar Sinha R/O Bank Mens Colony,
Chitragupta Nagar, P.S.- Kankarbagh, Distt.- Patna

... .. Petitioner

Versus

1. The State Of Bihar
 2. Shital Prasad Choudhary Son Of Late Kanhai Choudhary Village-
Shanichara More, Po- Mahendru, Ps- Sultanganj, Dist- Patna
- Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Awadhesh Prasad Sinha, Advocate
For the Opposite Party	:	Mr.Ramchandra Sahni, A.P.P.
		Mr. Bindeshwar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 06-08-2024 Heard learned counsel for the petitioner, the State and
the informant.

2. Petitioner apprehends arrest in a case registered for
the offence punishable under sections 406 and 420 of the Indian
Penal Code and section 138 of the NI Act.

3. As per the prosecution case, opposite party no.2
entered into an agreement for purchase of 1200 square land for
consideration of Rs 48,50,000/- and he paid Rs 25,51,000/- to
the petitioner but due to some difference, opposite party no.2
asked the petitioner to return the advance amount upon which
petitioner issued 5 cheques in favor of opposite party no.2 but
out of 5 cheques, two of them got bounced due to insufficiency
of fund in the account.



4. By filing supplementary affidavit, learned counsel appearing for the petitioner submits that from very perusal of the complaint, it seems that the case relates to agreement for sale of certain land in which complainant/ opposite party no.2 is vendee and the accused petitioner is vender. However, after agreement, opposite party no.2 refused to purchase the land in question and consequently claimed return of advance money and also filed complaint in stead of filing money suit. Learned counsel submits that the instant case is out and out a civil litigation and it is well settled law that in such matters, no complaint shall be entertained and if entertained, it shall be abuse of the process of Law. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in case of **Ram Biraji Devi and another Vs. Umesh Kumar Singh and another**, reported in **(2006) Supreme court cases pages 669**.

4. Learned counsel for the State and opposite party no.2 oppose the prayer for bail. Learned counsel for opposite party no.2 submits that the petitioner in paragraph 6 of the bail petition has himself averred that *“the petitioner is simple middle man and the real owner of the said land have assured him to return the advance money after selling the said land to other person, but the petitioner, being executants, is ready to repay*



the balance amount of Rs.22,51,000/- in installment. However, by filing supplementary affidavit, petitioner is taking contradictory defence. Besides this, petitioner is signatory of the cheques which have bounced due to paucity of fund in the bank account.

5. Considering the nature of accusation and the averment of the petitioner made in paragraph 6 of the bail petition, wherein he has admitted to return the balance amount to opposite party no.2 and in supplementary affidavit his subsequent denial to repay the balance amount to opposite party no.2, prayer for bail of the petitioner is rejected.

(Prabhat Kumar Singh, J)

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