

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34531 of 2016

Arising Out of PS. Case No.-28624 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Naresh Mahto @ Shri Naresh Mahto, Son of Shri Rajendra Mahto, Resident of West Laxmi nagar, Khemnichak, P.S.-Ram Krishna nagar, District-Patna. At present Room No. 209 Second Floor, Lav Kush Tower Exhibition Road, P.S.- Gandhi Maidan, District-Patna.

... .. Petitioner/s

Versus

1. State Of Bihar.
2. Sudha Jha, Wife of Shri Prabhat Kumar Jha, Resident of Sudha Shri Enclave, Ara Garden (Tapeswar Colony), P.S.-Rupaspur, District-Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Singh, Advocate
For the O.P. No. 2	:	Mr. Gopal Govind Mishra, Advocate
For the State	:	Mr. Upendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

14 24-01-2025 The present petition, under Section 482 Cr.PC., has been preferred by the petitioner against the impugned order dated 10.08.2015, passed by Ms. Kshiprachala Anjali, learned Execution Munsif-cum-Judicial Magistrate, 1st Class, Patna in Complaint Case No. 28624 (C) of 2024, whereby learned Magistrate has taken cognizance against the petitioner for offence punishable under Section 420 of the Indian Penal Code.

2. As per the complaint, the complainant has given Rs. 8 lac to the accused-petitioner through cheque on 06.03.2013 and Rs. 7 lac in cash as a friendly loan, as per promise of the accused-petitioner to repay the whole amount after one year and



during this one year, to make monthly payment of Rs. 18,000/-. However, not a single paisa has been paid by the accused-petitioner till date. This loan agreement was written on a judicial stamp.

3. After the complaint, the complainant and two other witnesses were examined under Section 200 Cr.PC and thereafter, the impugned order has been passed.

4. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the complainant/O.P. No. 2.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that no offence is made out as per the alleged facts and circumstances. At most, it may be civil dispute and the complainant has already filed a civil suit for recovery of money.

6. He further submits that the petitioner had taken the loan for running a partnership firm in which the complainant is also a partner and he is not ready for rendition of account of the partnership.

7. However, learned APP for the State and learned counsel for the O.P. No. 2/complainant defend the impugned



order submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed.

8. I considered the submissions advanced by the parties and perused the materials on record.

9. I find that taking of loan by the petitioner is not disputed. However, learned counsel for the petitioner submits that he has some dues against the complainant which he is not paying and also not ready to settle the account of the partnership. However, this is not a claim of the petitioner that he has paid a single paisa in pursuance of the loan he has taken from the complainant (O.P. No. 2 herein).

10. As per the uncontroverted allegation made in the complaint, it transpires that the loan has been given by the complainant to the petitioner as per the loan agreement on stamp paper and as per the agreement, the petitioner was required to pay Rs. 18,000/- per month and to repay the whole loan amount after one year. But till date, not a single paisa has been paid by the petitioner to the complainant. It shows *mens rea* on the part of the petitioner to cheat the complainant.

11. As far as defence of his counter claim against the complainant is concerned, this can be looked into during trial, and not at this stage.



12. It is also settled principle of law that on the same facts and circumstances, civil and criminal proceedings may go simultaneously, if the ingredients of the offence are *prima facie* fulfilled. From the uncontroverted allegation made in the complaint, there is a clear case of misinterpretation to get the loan amount and not to pay the same.

13. Hence, there is no illegality or infirmity in the impugned order. Accordingly, the present petition is dismissed.

(Jitendra Kumar, J)

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