

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.5791 of 2019**

Arising Out of PS. Case No.-227 Year-2011 Thana- KUSHESHWARASTHAN District-  
Darbhanga

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Ram Subhodh Choudhary Late Kalikant Choudhary, resident of village-  
Hirni,

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dinanath Choudhary Son of Ramanand Choudhary, resident of village-  
Hirni,

... .. Opposite Party/s

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**Appearance :**

|                      |   |                               |
|----------------------|---|-------------------------------|
| For the Petitioner/s | : | Mr.Ajay Kumar Singh, Advocate |
| For the State        | : | Mr.Jharkhandi Upadhyay, APP   |
| For the OP No.2      | : | Mr. Sabal Kumar Jha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

8      19-01-2026                      Heard learned counsel for the parties.

2.      This application has been filed for quashing of the order taking cognizance dated 16.05.2018 passed in Kusheshwar Asthan P.S. Case No.227 of 2011 whereby the learned Judicial Magistrate First Class, Biraul, Darbhanga has taken cognizance against the petitioner and another u/s 406, 420 read with section 34 of the Indian Penal Code and has issued summons against the petitioner and another.

3.      As per the prosecution, the informant namely, Dinanath Chaudhary submitted his written report before the SHO Police Station Kusheshwar Asthan on



25.10.2011 stating therein that there was an agreement in Bricks Kiln and informant had 10 *paisa* share and in total the petitioner had saved about Rs.90,871 saving capital and out of the total benefit of Rs.18,00,000/- of the partnership firm, the share of informant was 2,70,000 and promised to pay within a month but after 03 months only Rs.50,000/- was given. It is also alleged that the accused persons tortured and grabbed Rs.2,20,000/- from the informant.

4. On the basis of written application of the informant, Kusheshwar Asthan P.S. Case No.227 of 2011 was registered and cognizance has been taken against the accused persons including the present petitioner.

5. The learned counsel for the petitioner has submitted that the petitioner had entered into an agreement with the informant on 30.11.2000, which was cancelled *vide* deed No. 11632, dated 30.06.2001. He next submits that previously, the informant had filed another complaint case no.182C of 2004 against the petitioner and cognizance was taken under sections 323, 385, 504 of the Indian Penal Code *vide* order dated 23.08.2004 for the same occurrence, however, the petitioner was acquitted *vide* order dated 22.08.2018. Furthermore, the informant had also submitted a petition before the S.H.O,



K.Asthgan upon which proceedings under section 107 Cr.P.C. was initiated before the S.D.O, Biraul in which the police submitted a report regarding cancellation of the Partnership deed.

6. I have considered the submission of the parties and perused the impugned order.

7. It is trite law that the defence of the petitioner can not be considered at this stage and this Court cannot conduct a mini trial to ascertain the veracity of the defence which can be only be determined during the course of trial.

8. From perusal of the records of the case, *prima facie* offences are made out against the petitioner. Therefore, I do not find any merit to interfere with the order of the learned Magistrate by which the learned Magistrate has taken cognizance against the petitioner.

9. Accordingly, this Court is not inclined to interfere with the impugned order. This application is dismissed.

10. The Court below is directed to proceed in the case and conclude the trial at the earliest preferably within one year from the date of receipt/production of a copy of this order.

11. Let a copy of this order be communicated to



the learned Principal District and Sessions Judge, Darbhanga  
forthwith through FAX or e-mail for its compliance.

**(Sandeep Kumar, J)**

P. Kumar

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