

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55440 of 2023

Arising Out of PS. Case No.-1747 Year-2021 Thana- COMPLAINT CASE District- Araria

Sanoj Kumar Das S/O Late Jyotish Chandra Das Resident Of Village-
Bengali, Tola, Ward No. 24, Farbesganj, Ps- Farbesganj, Dist- Araria

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Gautam Son Of Sunil Kumar Singh Resident Of Brajesh Kumar Mehta,
Power House Road, Sangram Tola, Ps- Farbesganj, Dist- Araria, Permanent
Address C/O Sunil Kumar Singh Hanuman Nagar, Back Of S.P. Kothi, Ps-
K. Hat, Dist- Purnea

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Rajeev, Advocate
For the State	:	Mr. Anil Kumar, APP
For O.P. No. 2	:	Mr. R.P. N. Tiwari, Advocate

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 14-07-2026

Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 and learned APP for the
State.

2. Present application has been filed for quashing the
order 05.01.2023 passed by the Judicial Magistrate, 1st Class,
Araria in Complaint Case No. 1747 of 2021 whereby
cognizance has been taken under Sections 120B, 406, 420 of the
Indian Penal Code.

3. Learned counsel for the petitioner submits that the
petitioner was the successful bidder of the auction conducted by
the Bank of Baroda of the mortgaged property which was a



residential house and he had paid the entire auction amount of Rs. 67,49,000/- to the Bank after confirmation of sale, pursuant to which the Bank issued sale certificate in favour of the petitioner. It has further been submitted that the said auction was done on the basis of valuation report of the valuer which was never challenged by the complainant/opposite party no. 2. It is further submitted that the petitioner had purchased the said property by quoting the highest bid amount and the allegation that he was the single bidder appears to be baseless as the mandatory notice with respect to such auction was in the public domain.

4. It has also been pointed out by the learned counsel for the petitioner that as a matter of fact, the complainant i.e. opposite party no. 2 had taken loan from the Bank and upon failure to repay, he had filed a writ petition before this Court undertaking to make payment according to stipulated schedule which he failed to pay, as such, the writ as well as Letters Patent Appeal preferred by him were both dismissed. It has been brought to light that all the issues regarding under valuation of the mortgaged property before the Debt Recovery Tribunal was also raised in the writ proceedings before this Court.

5. It is thus submitted that since opposite party no. 2



was a defaulter in payment of loan, the property was auction sold following the prescribed norms and procedure.

6.Learned counsel for the petitioner further points out that the similarly situated co-accused persons being the Bank Officials and more especially, the Valuer of the property, had also approached this Court vide Cr. Misc. No. 42616 of 2023 and Cr. Misc. No. 57351 of 2023 and after detailed consideration of all the facts and circumstances, the order taking cognizance dated 05.01.2023 as against them was quashed by a coordinate Bench of this Court, finding that no *prima facie* case was made out under Sections 406 and 409 of the IPC and alternative civil remedies were available to the opposite party no. 2.

7. Learned counsel for the opposite party no. 2, however, vehemently opposes the present application by supporting the allegations made in the complaint and also by virtue of the fact that the petitioner acted in conspiracy with the other Bank Officials and the Valuer in becoming the successful bidder of the said property on an under valued amount, as the valuer described the property as residential instead of commercial. It has further been pointed out that the opposite party no. 2 has moved the Debt Recovery Tribunal in the said



matter and has put the valuation report under question.

8. Upon hearing the rival contentions of the parties, it would appear that the petitioner being successful bidder of the e-auction, purchased the property in question after payment of the entire auction amount of Rs. 67,49,000/-. So far as allegations of under valuation is concerned, it totally falls within the domain of the valuer and the petitioner has absolutely no role to play in the said process. Moreover, the opposite party no. 2 has already taken recourse to alternative remedies which are available to him before the Debt Recovery Tribunal. It is also well settled that criminal prosecution cannot substitute such alternative civil remedies as has been held by the Hon'ble Apex Court in the case of **Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh & Ors.** reported in **2025 INSC 869**. The Hon'ble Apex Court in the case of **Urmila Devi & Ors. Vs. Balram & Anr.** reported in **2025 INSC 915**, in paragraph no. 8.6 has also held as under:

“8.6. It is writ large on the face of the record that the complaint case has been employed as a circuitous tool to abuse the process of law, especially after the complainant-respondent failed to pursue the remedies available to it.”

9. It also needs to be taken into consideration that the complaint, taken at its face value, fails to disclose any criminal



offence as against the petitioner, much less the offence as alleged. As such, the case of the petitioner also gets squarely covered by the first category of the categories of the cases enumerated in the case of State of *State of Haryana v. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*, illustrating the cases where power under Section 482 of Cr.P.C. could be exercised to prevent abuse of the process of the Court or to secure the ends of justice. Category I reads as under:

“102.....

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

.....”

10. It is further noticed that the order impugned qua the other co-accused, including the valuer, has already been quashed vide order dated 01.05.2026 passed in Cr. Misc. No. 42616 of 2023 and Cr. Misc. No. 57351 of 2023, and the case of the petitioner stands on a much better footing. On the basis of foregoing reasons, this Court is of the considered view that the order taking cognizance and issuance of summons dated 05.01.2023 cannot be legally sustained against this petitioner.

11. Accordingly, the impugned order dated 05.01.2023 passed by the Judicial Magistrate, 1st Class, Araria in



Complaint Case No. 1747 of 2021 is hereby quashed and the application stands allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.07.2026
Transmission Date	17.07.2026

