

IN THE COURT OF SATYA BHUSHAN ARYA, SESSIONS JUDGE, BANKA

Md. Shamshir -Versus- State of Bihar & Anr.

Criminal Revision No. 6 of 2025

Date of filing : 17.02.2025

Date of order : 18.06.2026

In the matter of :

Md. Shamshir, aged about 60 years, son of late Md. Riyasat, resident of Kamalchak, p.s. Jagdishpur, district Bhagalpur

..... Petitioner/Revisionist

-Versus-

1. State of Bihar

2. Md. Shamshul Ansari son of late Md. Salim Ansari, resident of village

Dumrama, p.s. Amarpur, district Banka

..... Opposite Party

Present : - Sri Santosh Kumar Choudhary, Advocate for the Petitioner

Sri Randhir Prasad Singh, A.P.P. for the State

Sri Pankaj Kumar Choudhary, Advocate for O.P. No. 2

ORDER

1. Disgruntled with the order of cognizance dated 12.05.2023, passed in Amarpur Police Station Case No. 636 of 2022 (G.R. N. 3652 of 2022) by which the Chief Judicial Magistrate, Banka has taken cognizance against the accused/petitioner under Sections 406, 420, 467, 468, 323, 504, 506 of IPC; this revision application has been filed by the accused/petitioner with submissions that the facts of the case are that the accused/petitioner in the year 2011 had proposed to sell his land situated at Dumrama under Amarpur police station to the informant/O.P. No. 2, Md. Samsul, who paid consideration money for Rs. 72,000/- and then, the agreement to sell was

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executed on 16.01.2011. Then, the accused/petitioner has fraudulently sold the same very land on 04.08.2022 to another person named Feroz Ansari. Later on, the complaint of the complainant/informant was sent to the police by the learned trial court u/s 156(3) CrPC. Accordingly, the FIR was lodged.

- 2. The opposite party no. 2 as well as trial court record was summoned.*
- 3. Learned counsel for the revisionist in his oral arguments reiterated the contents of the revision application and submitted that the impugned order of cognizance is against law. It is submitted that the alleged unregistered kachcha kebala was executed on 16.01.2022 but the informant has nowhere given explanation as to what was he doing in next 11 years. It is argued that it is a clear cut case of civil nature and the informant has not availed that remedy. It is argued that as per allegations, there is no misappropriation, no criminal breach of trust, such money was never entrusted, rather it was a sale consideration and it is the informant who backed.*
- 4. In counter, learned counsel for complainant/opposite party no. 2 stoutly opposed the arguments of the revisionist and submitted that he had given legal notice on 06.12.2021 but the accused/petitioner did not reply. Later on, he came to know that the sale deed was executed in favor of another person.*
- 5. Heard rival submissions and perused the record. It is admitted fact that*

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the agreement to sell of property was entered into inter se parties on 16.01.2011. Then, on 04.08.2022, the land has fraudulently sold by the accused/petitioner by cheating with the informant. In the opinion of this court, these kind of cases are purely of a civil nature. In case an agreement is executed, then section 20 of the Specific Relief Act would come into play for its performance. If the property is sold to someone else after waiting for about 11 years, the vendor is not criminally liable.

In the case of Chandeshwar Singh @ Chandeshwar Singh @ Jasso Singh Versus State of Bihar, reported in 2010(3) PLJR 18, it has been held that “the criminal proceedings are warranted in view of the fact that there is an Act which provide remedy in such cases. The Specific Performance of Contract Act is an act which provides that if a person fails to fulfill and execute the conditions of the agreement between the parties, he would be entitled to file a suit under the Specific Performance of Contract Act. In a case where the question relates to execution of a sale deed, the other side i.e. the vendor could take certain defense and give good reasons for not executing the sale deed and demonstrate in the Court below that the agreement entered between the parties was not honored and on which ground, the Court may consider to dismissing the suit for specific performance”. Keeping in view the above, this court is well disposed with the submissions of learned counsel for the revisionist; resultantly,

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the present revision application is allowed and the impugned order taking cognizance dated 12.05.2023 is set aside.

5. *File be consigned to the record room and that of trial court be sent back with a copy of this order.*

Announced on 18.06.2026

*This order contains 4 pages,
each signed by me.*

Dictated

Sd/-

*(Satya Bhushan Arya)
Sessions Judge, Banka*

Memo No..... Banka, Dated, the _____, 2026.

Copy forwarded to learned CJM, Banka for information and needful.

Office Clerk

Sessions Court, Banka