

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40375 of 2011

Arising Out of PS.Case No. -3602 Year- 2005 Thana -null District- PATNA

1. Sudarshan Ojha Son Of Late Kedar Nath Ojha Resident Of D-22, Brindaban Apartment, Malahi Pakri Road, Kankarbagh, P.S.- Kankarbagh, District- Patna Presently Residing At A/P A-4, Suryavansh Apartment, Opposite Ishwar Bhawan, Nawrangpura, Ahmedabad- 380009

.... Petitioner/s

Versus

1. The State Of Bihar
2. Niranjan Singh S/o late Babulal Singh, r/o village Salempur Dumra (Raja Bazar), P.S. Shastrinagar, P.O. B.V. College, District Patna

.... Opposite Party/s

With

Criminal Miscellaneous No. 12372 of 2013

Arising Out of PS.Case No. -2245 Year- 2010 Thana -PATNA COMPLAINT CASE District- -

1. Sudarshan Ojha S/O Late Kedar Nath Ojha Resident Of D-22, Brindavan Apartment, Malahi Pakri Road, P.S. Kankarbagh, District Patna, Presently Residing At A/P A-4, Suryavansh Apartment Opposite Ishwar Bhawan, Navrangpura, Ahmedabad-380009.

2. Lallan Sharma S/O Late Kameshwar Singh Resident Of 404, Saraswati Niwas Apartment, Road No. 12, Rajendra Nagar, P.S. Kadamkuan, Patna-800016.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Niranjan Singh S/O Late Babulal Singh Resident Of Village Salempur Dumra (Raza Bazar), P.S. Shastri Nagar, P.O. B.V. College, District Patna.

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 40375 of 2011)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate

For the Opposite Party/s : Mrs. Veena Kumari Jaiswal, APP

(In Cr.Misc. No. 12372 of 2013)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 19-02-2015

Supplementary Affidavit has been filed on behalf of the

Petitioners stating therein that charges have not been framed as yet.

The Petitioners seek quashing of the order of cognizance

dated 8.11.2007 passed by the Judicial Magistrate, 1st class, Patna in Complaint case No.3602 of 2005 and the order of cognizance dated 13.4.2012 passed by the Judicial Magistrate, 1st class, Patna in Complaint case No.2245C of 2010.

In short, the case of the Complainant is that he was the land owner, upon which a certain constructions company had constructed flats. His grievance was with regard to irregularities having been committed by the construction company and also with regard to non-completion of the project within the stipulated time.

It has been submitted on behalf of the Petitioners that initially the Complainant had filed Complaint case No.2251C of 2003 for the same cause of action which had been sent for investigation under Section 156(3) Cr.P.C. Upon which Gardanibagh (Shastrinagar) P.S. case No.698 of 2003 was instituted and final report was submitted. In the meanwhile he filed the Complaint case No.3602 of 2005 suppressing the fact that he had earlier filed a Complaint in which the final report was submitted upon which cognizance has been taken on 8.11.2007. Even while cognizance was taken in the present Complaint, the Complainant pursued Complaint case No.2251 of 2003 in which final report had been submitted and on the protest petition Complaint case No.2245C of 2010 was instituted in which the cognizance was taken on 13.4.2012 which is the order impugned in Cr.Misc.No.12372 of 2013.

It has been submitted that evidently in the facts of the case no criminal offence is made out. The Complainant has himself mentioned in the Complaint Petition that he has filed a Title Suit in regard to the same grievance. The matter had traveled in a Miscellaneous Appeal before the High Court wherein it had been held that it was the land owner who was at fault.

Notices had been issued to the Opposite Party No.2 but none appears on his behalf despite service of notice.

Without going into the rival claims of the parties, in my opinion, in the facts of both the Complaints no criminal offence is made out made.

Hence, the application is allowed and the proceedings including the order of cognizance dated 8.11.2007 passed by the Judicial Magistrate, 1st class, Patna in Complaint case No.3602 of 2005 and the order of cognizance dated 13.4.2012 passed by the Judicial Magistrate, 1st class, Patna in Complaint case No.2245C of 2010 are hereby set aside.

(Anjana Prakash, J)

Narendra/-

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