

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19394 of 2013

Arising Out of PS.Case No. -5 Year- 2012 Thana -EAST COLONY District- MUNGER

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1. Raju Chesney S/O Joseph Chesney R/O At Munger Line Colony Road, Near Daulatpur Below Rail Bridge, P.O. & P.S.- Jamalpur, District- Munger.
 2. Biren Rajak @ Biru Rajak S/O Late Moti Rajak R/O Mohalla- Keshopur, P.O. & P.S.- Jamalpur, District- Munger.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Brajnandan Singh S/O Late Jaleshwar Prasad Singh R/O Bada Bazar, P.S.- Kotwali, P.O. & P.S.- Munger At Presently Posted As Honorary Registrar Of Architet Reserch Institute, At Station Road, P.S.- East Colony, District- Munger

.... Opposite Party/s

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with

Criminal Miscellaneous No.21612 of 2013

Arising Out of PS.Case No. -5 Year- 2012 Thana -EAST COLONY District- MUNGER

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Father Martin Anand S/O Late Remy Simon R/O St. Joseph'S Church, Jamalpur, District Munger, At Presently At Catholic Dharmalaya, P.O. And District Nawada.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Brajnandan Singh S/O Late Jaleshwar Prasad Singh R/O Bada Bazar, P.S. Kotwali, P.O. And P.S. Munger At Presently Posted As Honorary Registrar Of Architet Reserch Institute, At Station Road, P.S. East Colony, District Munger.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.19394 of 2013)

For the Petitioner/s : Mr. Dhananjay Kr. Upadhyay, Adv.

For the Opposite Party/s : Mr. J.N.Thakur (App)

(In Cr.Misc. No.21612 of 2013)

For the Petitioner/s : Mr. Dhananjay Kr. Upadhyay, Adv.

For the Opposite Party/s : Mr. Nagendra Pd.(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 21-10-2016

Heard learned counsel for the petitioners as well as

learned counsel representing opposite party no.2 along with

learned Additional Public Prosecutor.

Criminal Miscellaneous No.19394 of 2013 wherein Raj Chesney along with Biren Rajak @ Biru Rajak are the petitioners as well as Criminal Miscellaneous No.21612 of 2013 wherein Father Martin Anand happens to be the petitioner commonly originate against an order dated 10.05.2012 passed by Chief Judicial Magistrate, Munger in East Colony P.S. Case No.5/2012 whereby and whereunder the learned Chief Judicial Magistrate had taken cognizance of an offence punishable under Section 448,380,406 of the IPC and summoned all the petitioners to face trial, on account thereof have been heard together and are being decided by a common order.

It has been submitted on behalf of petitioners that there happens to be St. Joseph school located at station road, Jamalpur, Munger of which petitioners are associated with. The opposite party no.2 /complainant took on hire its certain portion and for that they both entered into an agreement on 29.04.2010 (Annexure-3). The aforesaid agreement was effective for the period of three years with a liberty to the lessor to terminate the lease on one month notice. It has also been submitted that as school came in need of aforesaid premises, on account thereof, served notices at different occasions upon the opposite party no.2 and for that relied upon Annexure-5 as well as Annexure-6. It has also been submitted that aforesaid notices caused some sort of



annoyance to the opposite party no.2 whereupon firstly they filed CWJC No.3123/2012 which was dismissed as withdrawn. It has also been submitted that subsequently thereof, the opposite party no.2 again filed CWJC No.10911/2013 which was dismissed in default vide order dated 16.02.2016. It has further been submitted that opposite party no.2/complainant got dubious character and is engaged in harassing the petitioners by filing case after cases and for that also annexed Annexure-7.

In the aforesaid background it has been submitted that only after having been served with the notice to vacate the premises, instead of vacating premises the opposite party no.2/complainant indulged in nefarious activities and in the aforesaid background filed instant complaint case only to harass the petitioner. Whatever allegations have been alleged are palpably false. Furthermore, it has been submitted that the computer which has been shown to be stolen away by the petitioners is out and out a false story and to substantiate the same, it has been submitted that aforesaid computers were brought up by the complainant from National Book Traders, a receipt thereof has been shown under Annexure-2 Series with a further assertion that aforesaid computers were returned back and for that a cash receipt has been annexed having been issued by Parcel Office, Jamalpur Railway Station (at page no.27). Photocopy of ticket Jamalpur to New Delhi has also been annexed under Annexure-F. It has also



been submitted that just prior to the alleged occurrence i.e. on 04.01.2012 an informatory petition was filed against the son and daughter of the opposite party no.2/complainant. So submitted that taking into account the cumulative effect of all the happenings, as disclosed above, it is apparent that out and out it happens to be a civil dispute more particularly dispute relating to tenancy whereupon, the instant prosecution could be considered to be a malicious prosecution and that being so, the order impugned is fit to be set aside.

The learned counsel for the opposite party no.2/complainant has submitted that at the present moment the learned court below has to perceive a prima facie case which is evident from the materials having been submitted by the police after concluding investigation, consequent thereupon the order needs no interference.

The learned Additional Public Prosecutor also endorsed the same view.

In *State of Haryana v. Bhajan Lal* reported in 1992 *Supp (1) SCC 335* the following criteries have been identified whereupon prosecution is liable to be quashed. For better appreciation the same is quoted below:

“(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

True it is that the documents whatever been furnished



at the end of the petitioner in consonance with the averments having been made in the complaint petition, the inter se relationship amongst the parties have become duly exposed. Furthermore, it is also evident that the parties are on bitter terms. That being so, at one occasion there would be a prospect of malicious prosecution simultaneously there would be a reason for commission of an occurrence. The other documents have been filed on behalf of petitioners, it is apparent that they requires in depth consideration which could be possible only during trial. Moreover, the intermediate order dated 07.03.2012 passed in CWJC No.3123/2012, is also to be taken note of wherein it has been directed that *“in the meantime, respondents 7 to 9 will not disturb the possession of the petitioner with respect to the building where the classes are being taken.”*

It is needless to say that the dispute giving fragrance of civil cause will blur prospect of criminal prosecution, rather both have to be perceived at two different methodology coupled with the fact that the allegation whatever been alleged, prima facie satisfies or not. If not than in that event would warrant interference, otherwise, prosecution will be allowed to continue.

So far present litigation is concerned, detailed discussion is forbidden as will hamper the case of the parties, however, for the present purposes, it speaks presence of prima facie case, justifying the order impugned.

That being so, both the petitions are found non-maintainable and are accordingly rejected. The stay so granted at an earlier occasion is hereby vacated.

(Aditya Kumar Trivedi, J)

Prakash Narayan

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