

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Miscellaneous No.27078 of 2013

Arising Out of Complaint Case No. -21 Year- 2012 Thana -Chapra Town District- SARAN

- =====
1. Prem Prakash Gupta S/o Bishwanath Prasad, R/o Mohalla- Sarkari Bazar Azad Road, Police Station- Chapra Town, District- Saran at Chapra.
  2. Krishna Kumar S/o Krishna Kumar Gupta R/o Mohalla- Sarkari Bazar Azad Road, Police Station- Chapra Town, District- Saran at Chapra.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Allauddin Khan S/o Late Kamruddin Khan, R/o Mohalla- Dahiawan, Near Chhoti Masjid, P.S. Chapra Town, District-Saran at Chapra.

.... .... Opposite Party/s

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### Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh, Advocate  
For the O.P. No. 2, : Mr. Sarvadeo Singh, Advocate  
For the State : Mr. T.N. Thakur, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 11-09-2017**

1. Heard the parties and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 13<sup>th</sup> February 2013 passed by the learned Judicial Magistrate 1st Class, Saran at Chapra in Complaint Case No. 21 of 2012 whereby and whereunder the learned Magistrate finding *prima facie* case against the petitioners, took cognizance for the offences under sections 323, 379/34 of the Indian Penal Code.

3. The opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate alleging *inter alia* that on 15<sup>th</sup>



December 2011, these petitioners and their fathers called the complainant at their place and threatened him to vacate the shop premises. They disclosed that they have purchased the shop premises which is occupied by him. The complainant protested whereupon they assaulted and also obtained his signature on some papers. In course of enquiry, the complainant and his witnesses supported the allegation as pleaded in the complaint petition and the learned Magistrate, on the basis of said material, took cognizance.

4. The learned counsel for the petitioners submits that the petitioners have purchased the shop premises from the land owner for a total consideration amount of Rs.5,00,000/-. The complainant was running a shop in the said premises. These petitioners requested the complainant to vacate the shop premises, as the same was required by them for their personal necessity. The complainant having learnt about the said purchase, has started claiming his right over the said shop on the ground that he had contracted with the land owner for purchasing the said shop for a total consideration amount of Rs.4,50,000/-. It has been further submitted that the petitioners have filed an Eviction Suit No. 10 of 2012 for evicting the complainant. The complainant has also filed a Title Suit No. 2 of 2012 claiming his right on the basis of oral contract to purchase the said shop premises. The learned counsel further submits that the complainant is a tenant



and in order to harass the petitioners from enjoying the property purchased by them, has lodged the present complaint case. The allegation of abusing, assaulting and snatching Rs.5,000/- is omnibus. There are contradictions in the statement of complainant and other witnesses on the point of occurrence of assault. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the impugned order is fit to be quashed.

5. On the other hand, the learned counsel for the complainant as well as learned Additional Public Prosecutor vehemently opposed the submission.

6. On perusal of complaint petition, I find that the complainant has asserted that firstly, he had contracted for purchasing the shop premises from the land owner, but the petitioners offered more money and got the document registered in their favour. There is no chit of paper on record to support the agreement of sale or payment of any amount to the land owner. The petitioners claim to be bona fide purchaser of the shop premises, which was in tenancy of the complainant. The petitioners have filed an Eviction Suit No. 10 of 2012, in which, the complainant has filed his written statement admitting tenancy in the said shop premises. The complainant has further asserted that he has been remitting rent of the said shop regularly and when he learnt about the transfer of shop premises in



favour of the petitioners, the complainant has filed a Title Suit No. 2 of 2012. The dispute between the parties appears to be a civil dispute. The relationship of landlord and tenant stands admitted by the complainant in the eviction suit. I further find that there are contradictions in the statement of witnesses on the point of occurrence. The criminal prosecution of these petitioners in the above background appears to be an abuse of process of Court.

**7. In State of Haryana v. Bhajan Lal**, it was, *inter alia* observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

**“102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:



(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."

**8.** The present criminal miscellaneous application is squarely covered by the guidelines given by the Hon'ble Apex Court at sub para 1, 5 and 7 of para 102 of the above case.

**9.** In view of the principles laid down by the Hon'ble Supreme Court as discussed above, the criminal prosecution of these petitioners appears to be an abuse of process of Court. As such, the order dated 13<sup>th</sup> February 2013 passed by the learned Judicial Magistrate 1st Class, Saran at Chapra in Complaint Case No. 21 of 2012 as well as the criminal prosecution of these petitioners on the basis of said order, is hereby quashed.

**10.** Accordingly, this criminal miscellaneous application is allowed.

**(Sanjay Kumar, J)**

Mahesh/-

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