

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34219 of 2013

Arising Out of PS.Case No. -196 Year- 2012 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Baleshwar Prasad, Son of Sukhari Mahto,
 2. Kanti Devi, Wife of Baleshwar Prasad
 3. Shoe Prasad, Son of Late Bandhu Prasad
 4. Ramlakhan Prasad, Son of Late Narayan Mahto, all are R/o Shikshak Colony, Ramchandrapur, Biharsharif, P.S.-Laheer, Distt-Nalanda
 5. Janardan Prasad, Son of Late Ram Pyare Mahto, R/o Verthu, P.S.-Karaiparsarai, District-Nalanda Petitioners

Versus

1. The State of Bihar
 2. Yadunandan Prasad, Son of Late Tekan Prasad, R/o Brahmasthan, P.S.-Chandi, Distt-Nalanda Opposite Parties
- =====

Appearance :

For the Petitioners : Mr. Birendra Kumar, Advocate
For the Opposite Parties : Mr. Md. Najir Ansari (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 17-04-2017 The instant Criminal Miscellaneous has been filed against the order dated 28.01.2013 passed by Shri Raghvendra Vikram Singh Parmar, the then Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No. 196C of 2012 whereby and whereunder after finding prima facie case to be made out against the petitioners under Sections 323, 379/34 directed to summon the petitioners.

Heard the learned counsel for the petitioners and the learned A.P.P. for the State.

From perusal of complaint petition, it reveals that there is dispute between landlord and tenant, the petitioners are landlord whereas the complainant opposite party no.2 is tenant. In this Criminal Miscellaneous, in spite of steps taken by the



petitioners for service of summons the opposite party no.2 has not appeared. From bare perusal of the complaint petition it reveals that civil dispute has been given colour to a criminal case. The opposite party no.2 has given a cheque to the petitioners which was bounced and for that complaint case was filed by the petitioners and in that complaint case cognizance has been taken under Section 138 of Negotiable Instruments Act and thereafter this case has been filed. The story as sated in the complaint petition appears not probable and reliable. It is stated that the opposite party no.2 is not paying any rent and only with a view to put pressure has lodged complaint case with false allegation wherein cognizance has been taken.

The complainant has filed this complaint case in retaliation and the allegations appear not probable and reliable. The learned Magistrate without considering the merit of the case has passed mechanical order taking cognizance against the petitioners.

In the result, the order dated 28.01.2013 is hereby quashed. Accordingly, this Criminal Miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J.)

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