

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.21438 of 2012**

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

- =====
1. Vishal Kumar Mishra @ Babloo Mishra @ Vikash Mishra, s/o late Awadesh Mishra, resident of Shiva Plasnstic Sabalpur, P.S- Didarganj, Distt- Patna.
  2. The Sun Rise Industries Sabbalpur Patna City, P.S- Didarganj, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Lalit Kumar, s/o Sri Janardhan Prasad Singh. resident of Bajrangpuri in front of Gangabrij, Check Post- P.S- Guiljarbagh, P.S- Alamganj, District- Patna.

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

with

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**Criminal Miscellaneous No. 10909 of 2014**

Arising Out of PS.Case No. -250 Year- 2008 Thana -PATNA COMPLAINT CASE District- PATNA

- =====
1. S. Maloo @ Surendra Maloo
  2. Dharamchand Maloo @ D.C. Maloo
- Both are sons of late Chandmal Maloo  
Both are residents of Krishna Apartment, B/21, 87/88, Kamakhya Sagra, Varanasi (U.P.)

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Lalit Kumar, son of Shri Janardhan Prasad Singh, resident of Bajrangpuri in front of Ganga Bridge, Check Post, P.O. - Guljarbag, P.S. - Alamganj, District - Patna

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

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**Appearance :**

(In Cr.Misc. No.21438 of 2012)

For the Petitioner/s : Mr. S.N.P. Sinha, Senior Advocate.  
Ms. Priyanka Singh, Advocate.  
Mr. Sanjeev Kumar Mishra, Advocate.

For the State : Mr. Suresh Prasad Singh, A.P.P.

(In Cr.Misc. No.10909 of 2014)

For the Petitioner/s : Mr. S.N.P. Sinha, Senior Advocate.  
Mrs. Mina Kumari, Advocate.

For the State : Mr. Umeshanand Pandit, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**  
**ORAL JUDGMENT**



**Date: 21-07-2017**

1. Both these Criminal Miscellaneous applications arise out of the same Complaint case and as such, they are being heard together and disposed off by a common judgment.

2. Both these applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 5.8.2008 passed by the Judicial Magistrate, 1<sup>st</sup> Class, Patna City, in Complaint Case No. 250 of 2008 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused persons for the offences under Sections 420, 341, 323, 504, 379 and 34 of the Indian Penal Code.

3. Heard learned counsel for the petitioners and State.

4. The counsel for the State has appeared. The name of the counsel for opposite party No. 2 is appearing in the daily Cause list (Cr. Misc. 21438 of 2012) but none has appeared on his behalf.

5. The counsel for the petitioners has submitted that it is a matter of purely civil dispute and, therefore, no criminal case is made out in the facts of the case.

6. The learned A.P.P. has submitted that the learned Magistrate has after holding enquiry found *prima facie* case against the petitioners for the offence under Sections 420, 341, 323, 504, 379 and 34 of the Indian Penal Code.

7. As per Complaint petition, prosecution case is that petitioners had come in the residence of the complainant in the year 1991



and requested to give ground floor of the house on lease for a period of 25 years. They disclosed that they are director of Ms. Sunrise Polycon and requested that the said house is required for running the business. The agreement was executed on 3.3.1991 between the complainant and accused Nos. 2 and 3 with assurance as per agreement to deposit the entire electricity bill, Municipal tax and commercial taxes in time before the concerned authorities. It is further alleged that in the year 2003 accused Nos. 2 and 3 (petitioners of Cr. Misc. 10909 of 2014) informed the complainant about conversion of company into Partnership firm under name and style M/s. Sunrise Polycon Industries and accused No. 5 namely, Bablu Mishra @ Vakash Kumar Mishra (petitioner No. 1 of Cr. Misc. 21438 of 2012) was added one of the partners. The accused persons assured that lease agreement dated 3.3.1991 would be followed. The electric bill, Patna Municipal Corporation tax etc. will be paid by the accused persons before the competent authority. The petitioners did not deposit the said amount. Therefore, the complainant made request for payment of electricity bill, Municipal taxes etc. with the accused persons which they refused to pay.

**8.** The accused persons without taking consent of the complainant, shifted the said company/firm along with machines and assets to Sabalpur, Patna City, in December, 2005, without making any payment of the electricity bill and other taxes. The complainant deposited electricity bill amounting to Rs.1,47,237/- and paid tax to Patna Municipal Corporation amounting to Rs.80,700/-.



**9.** A legal notice was sent to the accused persons, but they did not give any reply and also not made payment of the aforesaid amount, on account of which, the complainant suffered loss of Rs.2,27,937/-

**10.** It is further alleged that on 19.4.2008 all accused persons came to the house of the complainant, abused them, assaulted with fists and slaps and accused No. 5 (petitioner No. 1 of Cr. Misc. 21438 of 2012) snatched golden chain and accused No. 2 (petitioner No. 1 of Cr. Misc. 10909 of 2014) took Rs.2100/- from the complainant.

**11.** The complainant informed the police but police did not entertain the complainant by saying that it is a matter between house owner and tenant. The police refused to register case and advised to move before the court and, hence, this Complaint.

**12.** From the statement made in the complaint petition it appears that all these petitioners were inducted as tenant in the premises of the complainant. There is main allegation in the complaint that accused persons left the premises without making payment of electricity bill, Municipal taxes and other taxes as agreed between the complainant and petitioners by agreement dated 13.3.1991. The complainant ultimately made payment of electricity bill of Rs.1,47,237/- and also Municipal tax of Rs.80,700/- total Rs.2,27,937/-. The complainant made several requests with the petitioners to make payment of aforesaid amount, but they did not make any payment. It is further alleged that on 19.4.2008 the accused persons committed offence with the complainant.



13. In this manner, from the nature of allegation made in the complaint and taking into consideration the agreement made between the parties, as mentioned in the complaint petition, this Court is of the view that dispute is totally of civil nature and no any criminal offence is made out in the facts of the case.

14. Therefore, the impugned order dated 5.8.2008 passed by the Judicial Magistrate, 1<sup>st</sup> Class, Patna City, in Complaint Case No. 250 of 2008 along with the entire criminal proceeding against the petitioners are hereby quashed.

15. Both Criminal Miscellaneous applications are accordingly, allowed.

**(Sanjay Priya, J)**

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| CAV DATE          | N.A        |
| Uploading Date    | 02/08/2017 |
| Transmission Date | 02/08/2017 |

