

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16638 of 2011

Arising Out of C.R.No. -1005 Year- 2002 Thana –Town District- SAMASTIPUR

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1. Gaya Prasad, Son of Late Surya Narayan Prasad Sah

2. Smt. Lalita Devi, W/o Gaya Prasad

Both are resident of Mohalla- Marwari Gali, Ward No.- 17, P.S.- Town, District-
Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar

2. Arjun Kumar S/o Late Kusheshwar Prasad, Resident of Village- Mathurapur,
P.S.- Warisnagar, District- Samastipur

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Advocate

Ms. Anu Priyadarshi, Advocate

For the Opposite Party-State: Mrs. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-11-2017

Heard Mr. Shri Prakash Srivastava, learned counsel
for the petitioners and Mrs. Asha Kumari, learned Additional Public
Prosecutor for the State. Despite valid service of notice upon
opposite party no.2, he has chosen not to contest the matter.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing
the order dated 25.03.2011 passed by the learned Judicial



Magistrate-1st Class, Samastipur in connection with C.R. 1005 of 2002 corresponding to T.R. No.1113 of 2010 by which the learned Judicial Magistrate has rejected the petition filed under Section 245 of the Cr.P.C. for discharge of the petitioners in connection with the aforesaid case.

3. According to the complaint, the petitioners were tenant since January, 1977 in the house purchased by the complainant's mother on 16.03.1967 and two years prior to the death of the complainant's father in 1989 they had stopped paying rent to them. The accused persons, including the petitioners prepared forged papers in the name of father and mother of the complainant for the purpose of creating evidence in pending Title Eviction Suit No.4 of 1991. As the house was required for business by younger brother of the complainant, his mother filed Eviction Suit No.4 of 1991 against the accused petitioners. The said eviction suit was dismissed for default on 07.03.1994 due to non-production of the witnesses, which was subsequently restored in the year 1999 after about five years of dismissal. It is alleged that the accused persons filed the aforesaid forged papers on 28.01.2002 in the pending Title Eviction Suit. The complainant filed a complaint case in the court of Chief Judicial Magistrate, Samastipur, which was referred to the police for investigation under Section 156(3) of the Cr.P.C.



pursuant to which, Samastipur (Town) P.S. Case No.201 of 2002 was instituted under Sections 406, 420, 467, 468, 471, 472 and 120-B of the Indian Penal Code. As the complainant was not satisfied with the progress in ongoing investigation and the police were not arresting the accused persons, a petition in the nature of protest was filed in the police case.

4. Samastipur (Town) P.S. Case No.201 of 2002 was duly investigated upon by the investigating officer of the case and on completion of investigation final report holding the criminal case to be a dispute of civil nature was filed in the court. The learned Chief Judicial Magistrate, Samastipur accepted the final report submitted by the police and directed the protest petition to be registered as complaint and handed over the same under Section 192 of the Cr.P.C. to the court of Judicial Magistrate-1st Class, Samastipur for inquiry or trial.

5. Mr. Sri Prakash Srivastava, learned counsel for the petitioners submitted that in course of inquiry three witnesses were examined and few documents were produced before the learned Magistrate and on completion of inquiry, the learned Magistrate dismissed the complaint petition in exercise of powers conferred under Section 203 of the Cr.P.C. on 20.11.2002. He submitted that even the Eviction Suit No.4 of 1991 filed by the mother of the



complainant was dismissed. The complainant filed a revision application vide Cr. Revision No.40 of 2003 in the court of learned Sessions Judge, Samastipur against the order dated 20.11.2002 passed by the learned Magistrate-1st Class, Samastipur without impleading the petitioners as opposite parties. Vide order dated 10.01.2004, the learned Sessions Judge, Samastipur allowed the revision petition and directed the Magistrate to proceed with the complaint whereafter cognizance was taken and statement of certain witnesses were recorded under Section 244 of the Cr.P.C. He submitted that at the stage of framing of charge, when the petitioners filed an application for discharge under Section 245 of the Cr.P.C., the same was dismissed vide impugned order dated 25.03.2011. He submitted that the entire criminal prosecution is manifestly attended with mala fide, as the dispute is purely of civil nature. He submitted that even otherwise, evidences led before the court were not sufficient to frame charges against the petitioners and put them on trial.

6. *Per contra*, learned counsel for the State submitted that primarily the dispute is between the petitioners and the complainant and the State is simply a formal party. She, however, submitted that defence of the petitioners at the stage of framing of charge cannot be made a ground for quashing the criminal



proceedings.

7. On hearing learned counsel for the petitioners and State as also from perusal of the record, I find that allegations made in the complaint were investigated upon by the police and the accusation was found to be not true. The investigating officer submitted final report under Section 173(2) of the Cr.P.C. holding the case to be of civil nature. The learned Judicial Magistrate before whom the police report was filed did not differ with the findings of the police and accepted the police report. The learned Magistrate, who inquired into the complaint after the acceptance of the police report also found no material to summon the accused petitioners and dismissed the complaint in exercise of powers conferred under Section 203 of the Cr.P.C. The eviction suit filed by the mother of the complainant and her family members against the petitioners in the court of Munsif-2nd, Samastipur in which the alleged forged document is said to have been filed has also been decided against the plaintiffs of the suit and the suit was dismissed on contest on 25.01.2005.

8. I further find that the revisional order in Cr. Revision No.40 of 2003 whereby the order passed by the learned Magistrate dismissing the complaint was set aside was passed by the learned Sessions Judge, Samastipur without hearing the petitioners.



9. It is well settled that while framing charge in a criminal case a magistrate is expected to apply his mind to the facts of the case keeping in view the essential ingredients of the offence for which the accused is sought be charged. In the background of the facts noted above, which has remained unrebutted, as the complainant has chosen not to contest in spite of valid service of notice, this Court is of the opinion that there is no sufficient ground to proceed against the petitioners.

10. In that view of the matter, the impugned order dated 25.03.2011, passed by the learned Judicial Magistrate-1st Class, Samastipur in connection with C.R. 1005 of 2002 corresponding to T.R. No.1113 of 2010 is set aside

11. The application stands allowed.

(Ashwani Kumar Singh, J)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.11.2017
Transmission Date	07.11.2017

