

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44119 of 2013

Arising Out of PS.Case No. -728 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Kundan Kumar Son Of Mr. Prit Narayan Resident Of Kankarbagh Main Road
Kailash Appartment Gali Near Bahadurpur Gumti P.S. Agamkuan Distt Patna
2. Subhadra Devi @ Subhadra Lall Wife Of Mr. Prit Narayan Resident Of
Kankarbagh Main Road Kailash Appartment Gali Near Bahadurpur Gumti P.S.
Agamkuan Distt Patna
3. Rajiv Ranjan@ Raju Barnwal Son Of Jagat Narayan Lal Resident Of
Kankarbagh Main Road Kailash Appartment Gali Near Bahadurpur Gumti P.S.
Agamkuan Distt Patna

.... Petitioner/s

Versus

1. State Of Bihar
2. Rajiv Kumar Rauniyar Son Of Surendra Prasad Gupta

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-04-2017

The present petition has been filed for quashing the order dated 01-06-2013 passed by the learned Judicial Magistrate-Ist Class, Patna in Protest-cum-Complaint Petition No. 728 of 2013, by which and whereunder, the learned Magistrate issued summons against the petitioners.

Heard learned counsel for the petitioners and the learned counsel appearing for opposite party No. 2.

Admittedly, the informant is a tenant of the premises of the petitioners. The informant filed police case which was investigated by the police. The police after investigation found the case false and submitted final form and recommended to initiate a proceeding u/Ss 182/211 of the IPC against the informant (opposite party No. 2)



Thereafter, the learned Magistrate proceeded in the case on the basis of protest petition treating the same as complaint petition and after holding inquiry u/S 202 of the Cr.P.C. on the basis of S.A. of the complainant and statement of four other witnesses, found prima facie case under Sections-323, 379, 504/448 of the Indian Penal Code against the petitioners.

Counsel for petitioners submits that false case has been filed due to tenancy dispute. He has further submitted that he has filed Eviction Suit No. 89 of 2013 and order of eviction has been passed against the informant by learned Sub Judge-IV, by order dated 25-08-2016.

Counsel for opposite party No. 2 (informant) has submitted that the case was filed by the informant on 19-08-2012 prior to filing of the Eviction Suit. The criminal offence committed by the petitioner cannot be quashed merely on the ground that there is dispute of tenancy between the parties.

The counsel for opposite party No. 2 further submitted that on the basis of statement of the witnesses during inquiry, prima facie case is made out against the petitioners. The police in collusion with the petitioners filed final form without recording statement of the informant U/s 161 of the Cr.P.C. during investigation. During hearing of this quashing petition, zerox copy of S.A. of complainant and statement of four witnesses recorded during inquiry have been filed



by counsel of opposite party No. 2, which shows that they have supported the case of the complainant during inquiry.

The learned Magistrate is merely required to see prima facie case at the time of inquiry on the basis of allegation made in the complaint petition and statement of other witnesses recorded during inquiry.

Therefore, this court does not find any illegality in the impugned order dated 01-06-2013 passed by the learned Judicial Magistrate-Ist Class, Patna on the basis of Protest-cum-Complaint Petition No. 728 of 2013.

Accordingly, this quashing petition is dismissed.

Learned trial court is directed to proceed in the case in accordance with law.

The petitioners are given liberty to raise all pleas as taken in this Cr. Misc. Application in the court below at the time of framing of charge, which shall be disposed off by the court below in accordance with law.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	25-04-2017
Transmission Date	25-04-2017

