

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28300 of 2013

Arising Out of PS.Case No. -92 Year- 2010 Thana -UDAKISHANGANJ District- MADHEPURA

- =====
1. Birendra Gara @ Birendra Saha S/o Late Baijnath Saha, resident of village- Udakishunganj, Police Station Udakishunganj, District Madhepura.
 2. Niranjana Kumar S/o Birendra Gara, resident of village- Udakishunganj, Police Station Udakishunganj, District Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dr. Birendra Prasad Saha S/o Late Surya Narayan Saha, resident of village and Police Station- Udakishunganj, District- Madhepura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the O.P. No. 2 : Mr. Arjun Kumar, Advocate
For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-09-2017

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 23rd March 2011 passed by the learned Chief Judicial Magistrate, Madhepura in G.R. No. 1408 of 2010 arising out of Udakishunganj Police Station Case No.92 of 2010 whereby and whereunder the learned Magistrate finding *prima facie* case against the petitioners, took cognizance for the offences under sections 406 and 420/34 of the Indian Penal Code.

3. The opposite party no. 2 lodged an FIR with S.H.O.



of Udakishunganj Police Station alleging *inter alia* that these petitioners took vacant land of his residential house on lease on monthly rent of Rs.250/-. The mother of the opposite party no. 2 had let out lower floor of her house to a Bank on lease. The petitioners installed a Generator set to supply energy to the Bank. The petitioners left paying rent to the O.P. No. 2 and a sum of Rs.2,00,000/- fell due against him. On persuasion, he agreed to make payment of Rs.1,25,000/-. He further agreed that till the payment of arrears of rent, his generator set will remain in the campus of informant, but on 08.09.2010 the petitioner, in the absence of informant, removed Generator set from the informant's campus and thereby cheated him and also committed breach of trust by retaining the arrears of rent. The matter was investigated and Police submitted charge sheet and on that basis, the learned Magistrate took cognizance against the petitioners under the aforesaid sections.

4. After hearing both sides and perusing the records, I find that in the written report it has been admitted that some portion of residential premises of the informant, was given on monthly rent to the petitioners. The petitioners, on the other hand, have denied about any lease agreement with the informant or his mother. It appears that the Bank was in possession of lower floor of the residential building of the O.P. No. 2. The petitioners had installed a Generator set for



supplying energy. The informant claims arrears of rent to the tune of Rs.2,00,000/- against the petitioners. The dispute between the parties appears to be a civil dispute, as in the FIR he has specifically claimed that an amount of Rs.2,00,000/- fell due towards arrears of rent. The allegation of cheating and committing breach of trust is vague and omnibus. In the FIR, I do not find any ingredient of cheating and committing breach of trust and so, the prosecution of the petitioners appears to be an abuse of process of Court.

5. 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."

6. The case of the petitioners is squarely covered by the guidelines of Hon'ble Supreme Court given in sub para 7 of para 102 of aforesaid case.

7. Considering the civil nature of dispute which relates to recovery of arrears of rent to the tune of Rs. 2 lacs, omnibus allegation of cheating and committing breach of trust and also the guidelines given by the Supreme Court in the aforesaid case, the order dated 23rd March 2011 passed by the learned Chief Judicial Magistrate, Madhepura in G.R. No. 1408 of 2010 arising out of Udakishunganj Police Station Case No.92 of 2010 as well as criminal prosecution of this petitioner on the basis of said order, is hereby quashed.



7. This criminal miscellaneous application is accordingly, allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
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