

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23041 of 2011

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1. Ajit Chandra Sinha, S/O Dinesh Chandra Singh, R/O Patel Nagar, Road No. 1, P.S- Shastri Nagar, District- Patna.
 2. Santosh Kumar, s/o Ram Avtar Prasad Verma, R/O Chhoti Pahari, P.S- Alamganj, District- Patna.
 3. Subodh Kumar Verma @ Subodh Kumar, S/O Feku Ram, R/O Behind Patna Medical College Hospital, P.S- Pirbahore, District- Patna.
 4. Hitendra Prasad Gupta, S/O Nand Kumar Gupta,
 5. Smt. Ritu Gupta, W/O Hitendra Prasad Gupta,
- Petitioner Nos. 4 and 5 both are r/o Rejendra Nagar, Road No. 13A, P.S- Kadamkuan, Distric- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Keshri, s/o Manohar Keshri, r/o Dalhatta, Maroofganj, P.S- Malsalami, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Advocate.
For the State : Mr. M.N. Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 3.12.2009 passed by the Judicial Magistrate, Patna City, in Complaint Case No. 46 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 341, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and State.



3. It has been submitted on behalf of the learned counsel for the petitioners that the instant Complaint Case has been filed as counter blast of Complaint Case No. 2997(C) of 2006 filed by the petitioner No. 5 against the complainant for committing fraud by him. The learned court below after examining the witnesses in that Complaint Case, found *prima facie* case against the opposite party No. 2 and other accused persons for the offences under Sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code.

4. The photocopy of the aforesaid Complaint Case has been annexed as Annexure-3.

5. It has been alleged in the instant complaint case that reason for the incident was that the complainant had purchased Plot No. 128 from Ajay Kumar and Shila Dankar by an agreement for sale on 25.2.2007 and in terms of the agreement for sale the complainant executed an agreement for sale (*Bay Bayana*) on 15.5.2007 in favour of petitioner No. 5. When Ajay Kumar and Shila Dankar did not register the land in favour of the complainant, then a suit was filed being registry Case No. 243 of 2007. It has also been said that Ritu Gupta petitioner No. 5 had also lodged a complaint case No. 2997C of 2006 for return of the amount which was paid to the complainant, and the same was taken return by petitioner No. 5 in presence of other accused persons i.e. the amount of *Bay Bayana* and



the expenditure in constructing boundary total amounting to Rs.1,51,000/- on 22.12.2007. Then it was decided that she would return the paper of Deed of Agreement for sale (*Bay Bayana*), but even thereafter, the documents were not returned and on demand by the complainant, they again demanded Rs.2,00,000/- for which the complainant sent a legal notice on 5.1.2008 and, thereafter, the complainant was called on at the house of Santosh Kumar situated at Chhoti Pahari along with Om Prakash where the accused persons abused the complainant and also beat them.

6. The counsel for the petitioner has relied on a **decision of Hon'ble Supreme Court** reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors.)* in which the Hon'ble Supreme Court has clearly laid down in Clause-7 of paragraph-102 that "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", is liable to be quashed.

7. In the instant case on the basis of allegation in the complaint petition, this Court finds that Criminal Proceeding is maliciously instituted with an ulterior motive.

8. Therefore, this Court is of the view that



continuance of criminal proceeding against this petitioner will be abuse of the process of the court and mere harassment to the petitioners.

8. Accordingly, the impugned order dated 3.12.2009 passed by the Judicial Magistrate, Patna City, including the entire Criminal Proceeding of Complaint Case No. 46 of 2008 against the petitioners, is hereby, quashed.

9. The Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.05.2017
Transmission Date	23.05.2017

