

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33838 of 2013

Arising Out of PS.Case No. -1092 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Birbhadra Prasad Baranwal S/O Late Shri M.L. Baranwal Resident Of Mohalla-
Rajbanshi Nagar, Road No. 1, Extension, P.S- Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Om Prakash Lal S/O Late Ram Avatar Lal Resident Of Lig- 11/378; Hanuman
Nagar, P.S- Patrakarnagar, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tuhin Shankar

For the Opposite Party/s : Mr. Gopal Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-01-2017

The present application is directed against the order dated 28.05.2012 passed by Smt. Rashmi Prasad, J.M. 1st class, Patna in complaint case no. 1092 (c) of 2012 by which she found a prima facie case under Sections 341, 323/34 of Indian Penal Code against the petitioner and others.

The prosecution story in brief is that complainant Om Prakash Lal is the tenant of the petitioner in L.I.G.-11/378 Hanuman Nagar, PS-Patrakarnagar, Patna since 1998 at a monthly rental of Rs. 1200/- which increased to Rs. 1500/- per month since Nov. 2011. Complainant paid the rent up to March, 2012 but in April, 2012, he came to know that petitioner is not the real owner and one Savitri



Devi is the real owner who was dead. When the complainant enquired from the petitioner, he asked complainant to vacate the house but he did not vacate the house and on this, petitioner along with others came to the house of complainant and assaulted the petitioner and his son. Petitioner took away Rs. 5,000/- and other articles and also threatened to kill the complainant, on the basis of which, complaint case no. 1092 (c) of 2012 was instituted and the learned Magistrate after enquiry, found a prima face under Sections 341, 323/34 of Indian Penal Code against the petitioner and others and ordered for issuance of process against them.

The above order, issuing process is under challenge in the present application

It has been submitted on behalf of petitioner that on bare perusal of the complaint petition as well as materials collected during the course of investigation, it appears that the present case, as a matter of fact, is a dispute between the landlord and tenant where the complainant is the tenant of petitioner for long 14 years but now he refused to make payment to the petitioner on the ground that petitioner is not the owner and earlier to filing of complaint petition, a proceeding under Section 107 of Code of Criminal Procedure was initiated between the parties and the present case is nothing but a counterblast of that case. Even the court below has found the case of



the petitioner correct only under Sections 341, 323/34 of Indian Penal Code and not under Sections 406, 420, 467, 379 of Indian Penal Code. The present dispute is purely a civil dispute but inspite of the fact, the learned court below has taken cognizance against the petitioner under Sections 341, 323/34 of Indian Penal Code which is apparent error on the fact of the record, as such, the same is not sustainable in the eye of law.

Heard learned APP also. He has submitted that the learned Magistrate, after perusal of the materials available on the record, had passed the impugned order, as such, there is nothing wrong in the impugned order and hence, there is no merit in this application.

In this case, notice was also issued to O.P. no. 2 and on perusal of the record, it appears that notice had validly been served and to that effect, the report of process server supported by Nazir is on the record. However, no one appears on behalf of O.P. no.2.

This application is pending since 2013 and proceeding of present complaint petition in the court below is stayed vide order dated 16.01.2014 of this Court. As such, I think it proper to dispose of the application at this stage.

From perusal of complaint petition, it appears that it is the case of complainant itself that earlier he was paying rent to the



petitioner but now he has come to know that petitioner is not the actual owner rather one Savitri Devi is the actual owner and petitioner realized the rent from the complainant fraudulently. It is further case of complainant that when he protested the petitioner along with others came to his house and after abusing the complainant, assaulted him with fists and slaps and when his son protested, the petitioner has taken Rs. 5,000/- kept beneath the bed and accused Satyam Burnwal snatched the golden chain. It is also the case of the complainant that they had also taken signature of complainant on 2-3 blank stamp paper. It further appears from perusal of the examination of complainant on S.A. that there is dispute between the complainant and petitioner with respect to vacation of the house and he does not want to vacate the house. Witness no. 1 on behalf of complainant has also stated to court question that the complainant is paying Rs. 1500/- per month at present. From the aforesaid evidence, it clearly appears that there is a dispute with regard to vacation of the house and as such, there is a relationship of landlord and tenant between parties. The lower court below has also found it a case of civil dispute and also disbelieve the case under Sections 406, 420, 467, 379 of Indian Penal Code but inspite of that the lower court below has taken cognizance under Section 341, 323/34 of Indian Penal Code which does not appear to be proper as even according to the court below, there is



existence of civil dispute between the parties with regard to vacation of the house and he has found maximum part of the occurrence not true in the aforesaid form, false implication of the petitioner due to previous enmity cannot be ruled out.

As such, it appears that this is a case of malicious and malafide proceeding with a view to settle the issue. Hon'ble Apex Court in a decision reported in **1992 Supp (1) SCC 335 State of Haryana and others v. Bhajan Lal and others** also held interalia that “ *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 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 malafide 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.”*

From the discussions made above, the proceeding initiated by complainant hereby appears to be malicious proceeding with a view to harm the petitioner and wreck vengeance, as he is not



ready to pay the rent. However, the learned court below without appreciating the same, issued process against the petitioner, though found major part of prosecution story false.

Accordingly, I find that impugned order is not sustainable in the eye of law. Accordingly, this application is allowed, impugned order dated 28.05.2012 passed by Smt. Rashmi Verma, N.M. 1st class in Complaint case no. 1092(c) of 2012 is quashed.

(Vinod Kumar Sinha, J.)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.01.2017
Transmission Date	

