

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13841 of 2011

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Govind Prasad Kejriwal S/O Late Balbhadra Prasad Kejriwal Resident Of Mo.:
Gopinath Main Bazar, P.O.: & P.S.:Barh, District Patna. Presently Residing At C/O
Daya Marketing, L-2/49, P.S.: Shastri Nagar, Delhi- 110052... Petitioner

Versus

1. The State Of Bihar
2. Ramesh Kumar S/O Shyam Sundar Prasad Resident Of Mo.: Chondi, Nh- 31,
Opposite Ans College Barh, P.O.: Barh, District Patna

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Gopal Prasad Gupta, Advocate Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Agrawal, Advocate
For the State	:-	Mr. Akshay Lal Pamit, APP
For O.P. No. 2.	:-	Mr. Manish Kumar No. 2, Advocate Mr. Avinash Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 10-04-2017

This Criminal Miscellaneous application has been filed
for quashing the order dated 24.02.2011 passed in Complaint Case
No. 7 (c) of 2011 by Sri S. K. Mishra, Judicial Magistrate Ist Class,
Barh, Patna by which cognizance has been taken against the
petitioner for the offence under Sections 406 and 424 of the Indian
Penal Code.

2. Heard learned counsel for the petitioner, learned
counsel representing the State and learned counsel for the opposite
party no. 2.

3. On behalf of the petitioner it is submitted that earlier



the complainant filed Title Suit No. 32 of 2009 against M/s Kejriwal Films including the petitioner as defendant no. 2 for declaration that he is the partner of M/s Kejriwal Films holding 40% share and also for decree of dissolution of Partnership, and rendition of account of the Assets and Profits since April, 1999 to 05.02.2011 and the said suit was dismissed on the score of limitation as the suit was filed after eight years of closure of Cinema Business. Against that order First Appeal No. 23 of 2010 was filed which was also dismissed as withdrawn and thereafter, the complainant filed Complaint Case wherein without applying judicial mind cognizance has been taken which is the misuse of the process of the court and also the process of the law.

4. Learned counsel for opposite party no. 2 does not dispute the filing of Title Suit and dismissal of the same and also filing of the First Appeal and dismissal of the same.

5. In that view of the matter the order taking cognizance and the criminal proceeding appears misuse of the process of the court. Reliance has been placed by the learned counsel for the petitioner on the judgment reported in **(2007) 12 Supreme Court Cases page 1** in the case of **Inder Mohan Goswami & Anr Vs. State of Uttaranchal and Ors.** and on the judgment reported in



(2007) 14 Supreme Court Cases page 776 in the case of **All Cargo Movers (India) Pvt. Ltd. Vs. Dhanesh Badarmal Jain & Anr.** wherein civil suit filed by the complainant has also been dismissed and thereafter, the complaint petition filed by the complainant appears misuse of the process of the court and on that ground alone the complaint case and order taking cognizance is hereby set aside.

6. In the result, this criminal miscellaneous application is hereby allowed.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	
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