

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13696 of 2013

Arising Out of PS.Case No. -797 Year- 2011 Thana -KHAGARIA COMPALINT CASE District-
KHAGARIA

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Ramesh Prasad @ Ramesh Prasad Sah, S/O Late Surya Narain Prasad, Resident Of
Village Mill Road, Marshal Bhawan, P.S. Khagaria, District Khagaria.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Sonelal Chaudhary, S/O Late Ramji Chaudhary, Resident Of Village Kamalpur,
P.S. Khagaria, District Khagaria.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 1685 of 2015

Arising Out of PS.Case No. -188 Year- 2013 Thana -KHAGARIA COMPALINT CASE District-
KHAGARIA

- =====
1. Ramesh Prasad, S/o Late Surya Narain Prasad
 2. Munni Devi, W/o Ramesh Prasad,
 3. Ratnesh Kumar, S/O Ramesh Prasad
 4. Munnu Kumar, S/o Ramesh Prasad,
- All residents of Marshal Bhawan, Mill Road, P.S.- Khagaria, District- Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. Sonelal Chaudhary, S/o Late Ramji Chaudhary, resident of village- Kamalpur,
P.S. Khagaria, District- Khagaria

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.13696 of 2013)

For the Petitioner/s : Mr. Dharendra Kumar Jha-II, Adv.

For the Opposite Party no.1 : Mr. Binay Krishna, Spl. P.P.

For the Opposite Party no.2 : Mr.Rakesh Chandra, Adv.

(In Cr.Misc. No.1685 of 2015)

For the Petitioner/s : Mr. Dharendra Kumar Jha, Adv.

Mr.Krishna Chandra Jha, Adv.

For the Opposite Party no.1 : Mr. Sadanand Paswan, Spl. P.P.

For the Opposite Party no.2 : Mr. Rakesh Chandra, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 17-05-2017



Heard the parties.

2. Petitioner Ramesh Prasad @ Ramesh Prasad Sah got settlement of a stall bearing no.A/17 from Nagar Parishad, Khagaria in the year 2002 for business purpose. After sometimes, he allegedly let-out the same to the opposite party no.2, Sonelal Chaudhary. In the year, 2010 petitioner Ramesh Prasad wanted vacation of the said premise by the opposite party no.2. The dispute and allegation led to Khagaria P.S. Case No.342 of 2010 against the opposite party no.2 alleging therein that on 08.03.2010 the opposite party no.2 forcefully broke open the lock of the aforesaid stall and took possession of the same. The opposite party no.2 lodged Khagaria P.S. Case No.343 of 2010 alleging therein that the petitioner was demanding more money in the nature of ransom to allow the opposite party no.2 to do business at the said place and on refusal committed the occurrence of assault and theft etc. besides offence under Section 3(1) (x) of the SC/ST (Prevention of Atrocities) Act. Another criminal case was lodged by the opposite party no.2 vide Begusarai SC/ST P.S. Case No.40 of 2010 against the petitioner Ramesh Prasad.

3. Ultimately, the settlement of shop in favour of the petitioner Ramesh Prasad was cancelled by Nagar Parishad, Khagaria on the ground of violation of the terms of settlement i.e. subletting the same and not utilizing for own purpose. The aforesaid fact would be



evident from the counter affidavit filed by the opposite party no.2.

4. In the background of the aforesaid relationship between the parties, the opposite party no.2 initially filed Begusarai SC/ST P.S. Case No.40 of 2010 dated 08.03.2010 against the sole petitioner Ramesh Prasad @ Ramesh Prasad Sah for the offences under Sections 341, 323, 504, 385, 427, 379 and 34 of the Indian Penal Code as well as under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act with allegation that the opposite party no.2 was running a toddy shop near railway godown on the land of Nagar Parishad. On 08.03.2010, the petitioner came thereat along with an unknown person and asked to pay Rs.3,000/- per month, then the informant retorted that the land is of the municipality and he is already paying Rs.1,000/- per month to the petitioner. Hence, he will not pay more money. On that, the petitioner abused by taking caste name of the informant and damaged the toddy etc. After investigation of the case, the police submitted final form no.27/11 dated 06.02.2011 stating therein that the case is untrue. The opposite party no.2 had already filed protest petition in the case on 10.03.2011 itself which was treated as Complaint Case No.797C/11 and after enquiry under Section 202 Cr.P.C. the learned court below issued summons against the petitioner to face the trial for the offences under Sections 379, 341, 323, 427, 387 and 504 of the Indian Penal Code. The aforesaid



order of issuance of process dated 26.11.2012 is under challenge in Cr.Misc.No.13696 of 2013 aforesaid.

5. The opposite party no.2 had filed another case against the petitioners of Cr.Misc.No.1685 of 2015 bearing Khagaria P.S. Case No.343 of 2010 dated 14.08.2010. In this case also, allegation against the petitioners is that on 14.08.2010 the petitioners came to the shop of the informant and asked the opposite party no.2 by taking his caste name to vacate the shop. On refusal, they committed assault. There is allegation against the petitioner Ratnesh Kumar of firing though the same got misfired. Thereafter, crowd assembled and the accused persons fled away committing theft of Rs.1200/- from the pocket of opposite party no.2.

6. After investigation of this case also, the police submitted final form no.185/12 dated 30.04.2012 stating that the case is false one. In this case also, a protest petition was already on the record filed on 20.08.2010. The court below considered the final form and accepted the same by order dated 20.02.2012 and treated the protest petition as Complaint Case No.188C of 2013. After enquiry under Section 202 Cr.P.C. the petitioners were issued summons to face the trial for the offences under Sections 379 and 504 of the Indian Penal Code as well as under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act by the impugned order dated 13.10.2014 which is



under challenge in Cr.Misc.No.1685 of 2015.

7. With consent of the parties, both the aforesaid applications were heard together as the parties involved are same and question for consideration is also the same.

8. Contention of the petitioners is that the opposite party no.2, while filing both the aforesaid cases, suppressed the material fact regarding relationship of landlord and tenant between the parties and just to put undue pressure on the petitioners to not to ask the opposite party no.2 to vacate the shop the criminal cases were lodged which suffers from malafide and continuance of the same would amount to abuse of the process of the Court. Further contention is that there is no material brought on the record to substantiate that the complaint cases were fit to be proceeded with though the police had found the allegations untrue after investigation of both the cases.

9. Learned counsel for the opposite party no.2 submits that once the Magistrate found the allegations prima facie true against the petitioners, after due enquiry under Section 202 Cr.P.C., this Court should not exercise its discretion to interfere with the same merely on the statement of the petitioners.

10. Now the point for consideration is whether in view of the relationship of landlord and tenant between the parties and the admission that the occurrence allegedly took place for dispute relating



to the aforesaid shop which was admittedly settled in the name of petitioner Ramesh Prasad and no paper of settlement is in favour of opposite party no.2 as well as in view of the finding of the investigating agency that the allegations are untrue, can it be said that the criminal proceeding is manifestly attended with malafide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused.

11. In the **State of Haryana Vs. Bhajan Lal reported in 1992 SCC (Cri) 426** one of the circumstance enumerated by the Hon'ble Apex Court for quashing the criminal prosecution under Section 482 Cr.P.C. was to see whether the criminal proceeding in question is manifestly attended with malafide and/or the same 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.

12. In the present case, the opposite party no.2 had suppressed the real relationship between the parties while lodging both the criminal cases against the petitioners. The opposite party no.2 could vomit only in the counter affidavit regarding settlement of the shop in favour of the petitioner Ramesh Prasad only to bring to the notice of the court that the said settlement has already been cancelled by the competent authority for the reason of subletting of the same to



the opposite party no.2. Therefore, relationship of landlord and tenant between the parties is admitted.

13. In **Chandrapal Singh Vs. Maharaj Singh reported in 1982 SCC (Cri.) 249** there was relationship of landlord and tenant between the parties and criminal proceedings were launched by the frustrated landlord against the tenant after losing before the Civil Court. The Hon'ble Apex Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

14. What this Court finds in the present applications under Section 482 Cr.P.C. that the opposite party no.2 did not come up with clean hands disclosing real background of the allegation and real nature of allegation while lodging the criminal cases respectively. Within few days of registration of the respective police cases at different stations protest petitions were filed. The police after investigation found the allegations untrue. Thereafter, on protest petition the matter processed and the opposite party no.2 has not brought on the record the material on the basis whereof the impugned orders summoning the petitioners would be justified. The record



further reveals that after cancellation of the settlement in favour of the petitioner the opposite party no.2 has vacated the said premise and the real dispute between the parties is over. Therefore, in my view, continuance of both the aforesaid criminal proceedings between the parties suffers from malafide and would amount to abuse of the process of the Court.

15. Hence, both the impugned orders aforesaid stand quashed and both the criminal miscellaneous applications stand allowed.

(Birendra Kumar, J)

Arvind/-

AFR/NAFR	AFR
CAV DATE	22.03.2017
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