

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25984 of 2014

Arising Out of PS.Case No. -373 (C) Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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Shyam Nandan Prasad, Son of Late Shittal Prasad, R/o Chaparatar, P.S.- Pandarak,
District- Patna, At present Star Rasaify (SSPS) Kadarma, Near Bharat Mata
Kalyan Mandap Bharan Bara Kali Hari Sabha Roja Tala, P.S.- Kodarma, District-
Kodarma (Jharkhand)

.... Petitioner

Versus

1. The State of Bihar
2. Krishna Nandan Prasad, Son of late Rameshwar Pd, Resident of Chapara Tar,
P.S.- Pandarak, Dist.- Patna

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Manoj Kumar Pandey, Advocate.

For the Opposite Party/s : None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 04-08-2017

Heard Sri Manoj Kumar Pandey, learned counsel for the
petitioner.

2. No one appears either on behalf of the complainant or
on behalf of the State.

3. The petitioner in the present case is seeking quashing of
the order dated 14.08.2013 passed by learned Judicial Magistrate 1st
Class, Barh, District Patna in Complaint Case No. 373(C)/2013 by



which the learned Magistrate while taking cognizance of offences under Sections 420, 406, 504 of the Indian Penal Code issued summons to the accused-petitioner. A perusal of the complaint petition filed on 28.05.2013 in the court of the learned A.C.J.M., Barh (Patna) would show that the allegations against the petitioner are that he had received a sum of Rs. 24,50,000/- from the complainant by way of advance. He had agreed to execute a sale deed in respect of Plot No. 4849 under Khata No. 342 measuring 2 Kathha 14 Dhur, the description of which has been given in the complaint petition, for a total consideration amount of Rs. 24,50,000/-, out of which he had received Rs. 18,50,000/- from the complainant. The complainant alleged that he had given Rs. 24,50,000/- to the accused-petitioner but the petitioner neither executed the sale deed nor returned his amount of Rs. 24,50,000/-, therefore, it is alleged that the petitioner had misappropriated the entire amount. It is further alleged that on 26.05.2013 the accused entered in the house of the complainant and took away one steel box in which a sum of Rs. 25,000/- was kept and further the wife of this petitioner had taken away one pair of gold ear rings from the wife of the complainant and the son of the present petitioner had taken away one gold chain from Bablu Kumar, who is the son of the complainant. It is also alleged that this petitioner said to have told the complainant that the amount of Rs. 24,50,000/- has been



taken by way of rangdari tax. The complainant alleged that the information was given to the Officer-in-charge of the Police Station but he did not lodge the F.I.R. Learned counsel for the petitioner submits that under Annexure-2, which is an Agreement to Sell, the petitioner had agreed to sell the land for a consideration amount of Rs. 24,50,000/-, however, the complainant was unable to pay the entire amount and to get the sale deed executed, on which a Panchayati had also taken place in which it was agreed that the petitioner shall return a sum of Rs. 22,49,000/- which he had received. It was also agreed that the amount will be returned by way of a cheque. Learned counsel refers to Annexure-3, which is the statement of account of the present petitioner to show that the amount as agreed was returned to the complainant through bank transactions and these returns were already made prior to 28.05.2013.

4. Submission of the learned counsel is that in the present case when this petitioner filed Anticipatory Bail Petition No. 78/2014 in the court of learned Additional Sessions Judge 1st, Barh, the complainant appeared in the said case and filed an affidavit in which he had admitted to have received Rs. 22,00,000/- in his account prior to filing of the present case. The statement of the learned counsel for the petitioner is recorded in the order dated 21.04.2014 passed in A.B.P. No. 78/2014 and since it is a matter of fact recorded in a



judicial order, this court quotes the same as under for a ready reference.

“..... From perusal of document filed on behalf of the petitioner and affidavit filed by complainant it transpires that it is admitted fact that complainant has received Rs. 22,00,000/- in his account prior to filing of this complaint case. There is dispute regarding specific performance of contract and maximum consideration amount has already received by the complainant from the petitioner....”

5. Learned counsel submits that this being the position apparently the complainant has filed the present complaint making false statement on oath in the court of the learned A.C.J.M., Barh in order to harass this petitioner. This petitioner has filed Complaint Case no. 387(C)/2014 alleging against the complainant and has brought it to the notice of the learned A.C.J.M., Barh that the complainant had filed the present complaint on a totally false statement which was also supported by the enquiry witnesses, who were none-else than his family members. Thus, learned counsel submits that in a matter, which could have been at best a civil dispute, the complainant having received the money from the petitioner, there is no purpose of filing this *mala fide* prosecution and just to harass the petitioner, his entire family, such as wife and son, have been involved



by making a cooked up story of snatching of ornaments.

6. This case is of the year 2014. Notice was issued to the opposite party no. 2, who has appeared through a learned advocate of this Court. However, the opposite party no. 2 has not filed any affidavit in denial of the statements made in this petition and / or against the genuineness of the documents enclosed with the petition. In these circumstances, following the judgments of the Hon'ble Supreme Court in the case of **Prashant Bharti Vs. State of N.C.T. of Delhi**, reported in **AIR 2010 SC 2753**, the documents enclosed with the petition are taken to be genuine and unimpeachable documents. This Court has one more reason to accept those documents, i.e., the facts noted by the learned Additional Sessions Judge, Barh in the order granting Anticipatory Bail Petition which has been quoted herein-above.

7. No one appears for the opposite party to oppose the application.

8. Having heard the submissions advanced on behalf of the petitioner and upon perusal of the complaint petition as well as the materials available on the record, such as, the details of the statements of account appearing from the bank transactions of this petitioner and the facts noted in the order passed by the learned Additional Sessions Judge, this Court is of the opinion that there are unimpeachable



documents to show that it is a case of *mala fide* prosecution. The complainant filed the present complaint on 28.05.2013 making a false statement therein that neither the registry of the land was done nor the money was refunded to him. The complainant has apparently concealed these facts in order to maintain the present complaint and with an intention to harass the petitioner; the complainant concealed these facts for purpose of getting summons issued to the present petitioner. The learned Magistrate did not find any *prima facie* case of entering in the house of the complainant and taking away of the cash and ornaments alleged, hence apparently those were cooked up story. In the circumstances stated hereinabove, this is a case of *mala fide* prosecution fully covered under one of the illustrations mentioned in the judgment of the Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.**, reported in **AIR 1992 SC 604**.

9. Having arrived on the conclusion that it is out and out a *mala fide* prosecution in a case, which could have been a case of civil dispute, this Court accepts the prayer of the petitioner to quash the order taking cognizance. The order dated 14.08.2013 passed by Sri Lalan Kumar, Judicial Magistrate 1st Class, Barh in Case No. 373(C)/2013 under Sections 420, 406, 504 IPC is hereby quashed.

10. In the facts of the present case, this Court does not



want to stop here and would direct the learned Chief Judicial Magistrate to look into the matter in the circumstances stated here-in-above and examine as to how an appropriate action may be taken against the complainant for filing a case with a false statement and then if an appropriate application is filed by the petitioner the Magistrate shall also consider payment of compensation in terms of the provisions of the Code of Criminal Procedure.

11. The application stands allowed with the observations and directions here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	A F R
CAV DATE	N/A
Uploading Date	08.08.2017
Transmission Date	08.08.2017

