

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11137 of 2014

Arising Out of P.S.Case No.44 Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

Kedar Nath Singh aged about 78 years son of Late Babu Jugal Kishore Singh R/O 4/B, Anusuiya Apartment, At + Po + Ps - Shastri Nagar, District Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Rakesh Kumar Singh son of Sri Kameshwar Singh R/O Baikunth Bhawan, Ramjee Chak, Digha, P.S. Digha, District Patna

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Dilip Kumar, Advocate
For the Opposite Parties : Mr. Ashok Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-07-2017

The petitioner seeks quashing of the order dated 16.09.2013 passed by Judicial Magistrate, Ist Class, Patna in Complaint Case No.44C of 2011 whereunder cognizance for the offence under Sections 323, 352, 380, 386 and 504 of the IPC was taken against the petitioner.

2. Heard and perused the record.

3. The complainant Opposite Party No.2 was tenant of this petitioner at a monthly rented house of Rs.5500/-. He filed complaint case on the file of CJM, Patna alleging inter-alia that on the date of occurrence, he along with other co-accused came at his shop and hurled threat. This petitioner and co-accused allegedly took money from his possession. After enquiry, the court below took cognizance against the petitioner and other co-accused.

4. It has been submitted by learned counsel that the petitioner is 78 years old, a retired Army Officer, having no antecedent. The complainant defaulted in making payment of rent for which and the petitioner gave registered notice, a legal notice and reminder on 13.03.2008, 02.12.2008 and 14.03.2009 respectively demanding arrears of rent and vacation of the tenanted premises. The



allegation of assault and snatching money is ornamental only to make out a case of serious nature. There are contradictions also in the statement of witnesses and no offence as alleged is made out. The order taking cognizance against the petitioner is an abuse of the process of the Court and is fit to be quashed.

5. Learned APP opposed the submission.

6. On perusal of annexures available on record, I find that the petitioner was landlord of the premises which was let out to the complainant for running a shop. Annexure-4 series shows that the petitioner gave several notices to the complainant to vacate the premises. Thereafter, the petitioner sold the said premises by virtue of registered sale deed dated 25.11.2010. The complainant has filed title Suit No.668 of 2010 against the petitioner restraining the land lord from evicting him. The present complaint case has been filed on 05.01.2011. After sale, the petitioner has no concern with the tenanted premises. The dispute between the parties initially arose on account of non-payment of rent and so in view of the pendency of title suit the continuance of criminal proceeding against the petitioner amounts to abuse of the process of the court. As such the order taking cognizance is not sustainable in the eye of law.

7. In view of the discussions made above, the order taking cognizance dated 16.09.2013 is quashed and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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