

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32562 of 2012

Arising Out of PS.Case No. -1611 Year- 2011 Thana -null District- PATNA

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1. Smt. Anita Kumari W/O Shri Sanjay Kumar Resident Of A-10, Harihar Chambers, Boring Road, P.S.- Buddha Colony, District- Patna-1
 2. Abha Singh W/O Shri Raj Kumar Singh Resident Of Anandpuri, Boring Canal Road, P.S.- Buddha Colony, District- Patna
 3. Shanta Devi W/O Late Vidyadhar Prasad Singh Resident Of Village- Ghoswari, P.S.- Bakhtiyarpur, District- Patna. Presently Residing At 62-A, Patliputra Colony, P.S.- Patliputra, District- Patna
 4. Ravi Ranjan Kumar S/O Late Vidyadhar Prasad Singh Resident Of Village- Ghoswari, P.S.- Bakhtiyarpur, District- Patna. Presently Residing At 62-A, Patliputra Colony, P.S.- Patliputra, District- Patna
 5. Chitranjan Kumar Singh S/O Late Vidyadhar Prasad Singh Resident Of Village- Ghoswari, P.S.- Bakhtiyarpur, District- Patna. Presently Residing At 62-A, Patliputra Colony, P.S.- Patliputra, District- Patna
 6. Shiv Ranjan Kumar Singh S/O Late Vidyadhar Pd. Singh Resident Of Village- Ghoswari, P.S.- Bakhtiyarpur, District- Patna. Presently Residing At 62-A, Patliputra Colony, P.S.- Patliputra, District- Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Jay Kumar Singh, Director CECON Engineers India Pvt. Ltd. having its Registered Office at Bank Colony, St. Karen's School, Gola Road, Patna-810503

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
Mr. Aaruni Singh, Adv.
For the Opposite Party No. 2 : Mr. Jagarnath Singh, Adv.
For the State : Mr. Ashok Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 22-06-2017

The present application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.09.2011 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1611 (C) of 2011 whereby



finding prima facie case for the offences punishable under Sections 406 and 120B of the Indian Penal Code, the learned Magistrate summoned the petitioner.

2. Heard Mr. Akhileshwar Prasad Singh, learned Senior Counsel for the petitioners, Sri Jagarnath Singh, learned counsel for the Opposite Party No. 2 and Sri Ashok Kumar, APP for the State.

3. The facts in brief is that the Opposite Party No. 2 (complainant), Jay Kumar Singh, Director, CECON Engineers India Pvt. Ltd. filed a Complaint Case No. 1611 (C) of 2011 on the file of C.J.M., Patna alleging inter alia that he entered into a tripartite agreement. The agreement was executed by the complainant as Project Partner, land owners and one Smt. Neena Das, Director of Ashray Engcons Pvt. Ltd. for construction and development of multi-storied commercial building known as Harihar Chamber. The work for completion of the building was started after investing of an amount of Rs. 3 crores collected from the market as also from the shares / loans from different private financier. The building could not be completed and so, the Opposite Party No. 2 decided to lease out the premises of commercial complex and in course of which the petitioner nos. 1 and 2 approached him for shop No. A-10 having area 549 sq. feet. They agreed to make payment of Rs. 10500/- per



month besides security money to the tune of Rs. four lacs. The Complainant considering the financial scarcity in completion of the building agreed and consented for opening the shop to the petitioner nos. 1 and 2 on the above terms and conditions. The security amount of Rs. 4 lakhs was agreed to be paid at the time of execution of the deed of agreement. The petitioner nos. 1 and 2 after settling their shop paid the agreed rent of Rs. 10500/- per month till August 2006, but thereafter they neither paid any rent nor came to execute the deed of agreement on payment of security money Rs. 4 lacs. The complainant sent a legal notice on 09.08.2008 and a reminder dated 01.10.2008 to which they gave reply on 22.09.2008 and denied the relationship of landlord and tenant. The complainant then filed an Eviction Suit No. 66 of 2008 for evicting the petitioner Nos. 1 and 2 from the said premises. In the said suit they appeared and filed their written statement denying the relationship of landlord and tenant. The accused persons have thus misappropriated the huge amount of rent and security money for their personal gain causing loss to the complainant. The complainant, in course of enquiry, examined the witnesses. The learned Magistrate after going through the statement of complainant, his witnesses and documents on record found prima facie case for the offences under Sections 406 and 120B of the Indian Penal Code and ordered for issuance of



summons against the petitioners and other co-accuseds.

4. The learned counsel for the petitioners submitted that from the statement made in the complaint petition itself no offence under Sections 406 and 120B of the Indian Penal Code is made out. There was absolutely no contract between the petitioners and the complainant as asserted in the complaint petition. The allegations are vague and misconceived and if the criminal prosecution of these petitioners are allowed, it would amount to abuse of process of law. There was absolutely no entrustment and so no offence under Section 406 is made out. The complainant has already filed an eviction suit against the petitioner nos. 1 and 2 and if he succeeds in establishing the relationship of landlord and tenant, the complainant would certainly get relief. The dispute between the parties is purely a civil dispute and so, the criminal prosecution of these petitioners is bad in law and fit to be quashed.

5. The learned counsel for the informant as well as the learned APP for the State submitted that since the accuseds in collusion with each other have cheated the complainant by not abiding the terms and conditions of tenancy and also refused to make payment of security money and monthly rent, they are liable to be prosecuted.



6. On going through the rival contentions of the parties and the documents on record, I find that the complainant of this case had entered into tripartite agreement with the land owner and developer for constructing a business complex known as Harihar Complex. The complainant was project partner and the petitioner nos. 3, 4, 5, 6 along with three others being land owners had executed deed of agreement for construction of business premises. The construction work could not be completed and the land owner leased out one of the shop in the premises which was partly constructed in terms of their agreement. The petitioner nos. 1 and 2 are undisputably running their shop in the said complex. The complainant has filed an Eviction Suit No. 66 of 2008 (Annexure 5 of the Application) against the petitioner nos. 1 and 2. In the said eviction suit, the complainant (plaintiff) has sought relief of decree of eviction of defendant from the said premises and also the arrears of rent, besides cost of the suit. The dispute between the parties is purely a civil dispute and the complainant will get the relief on proving his relationship of the landlord and tenant. It further appears that the complainant had filed series of complaint cases against the parties to the agreement, who had executed deed of agreement to construct the business premises namely, Harihar Complex. The learned counsel for the petitioners filed web copies of the orders



passed in Criminal Miscellaneous Nos. 25077 of 2013, 41361 of 2012, 43695 of 2012, 43621 of 2012, 40655 of 2012, 33939 of 2012, 42236 of 2012, 42464 of 2012 and 42081 of 2012 to show that all the complaint cases filed by the complainant (Opposite Party No. 2) has either been quashed or has been disposed of with certain direction in view of pending arbitration proceeding.

7. In view of the above facts, I find that the criminal prosecution of the petitioners would amount to abuse of process of the Court in face of civil nature of dispute for which eviction suit is pending between the parties. This petition is, accordingly, allowed and the order dated 14.09.2011 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1611(C) of 2011 is quashed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.07.2017
Transmission Date	05.07.2017

