

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44298 of 2015

Arising Out of PS.Case No. -1878 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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Ravish Narayan, S/o Sri Yogendra Narayan, aged 47 years, Proprietor of M/s True Style, Situated at Shop No. 201, 205, City Place Building, New Dak Bunglow Road, P.S.- Kotwali, P.O.- G.P.O. Patna, District and Town- Patna-800001 and Resident of Mohalla- Nayatola Saguna Danapur, P.S.- Danapur, District & Town- Patna, Pin- 80002508

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vishwanath Prasad Agrawal, aged about 70 yrs. Son of Late Kashi Prasad Tekriwal, Resident of Mohalla- Sri Krishna Nagar, Road No. 22, Police Station- Budha Colony, District- Patna- 800001

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chiranjiva Ranjan, Advocate.

For the opposite party No.2 : None.

For the State : Mr. Raj Ballabh Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 7.2.2014 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No.1878 (C) of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offences under Sections 420, 323, 385 of the Indian Penal Code and Section 138 of N.I. Act.

2. As per complaint petition, the petitioner is tenant in the shops of the complainant. Initially the tenancy was created by



registered deed of lease dated 8.9.2004 which was effective from 1.9.2004 till 31.8.2009. The monthly rent was fixed for Rs.35,000/- with condition of enhancement @ 15 per cent after expiry of period of three years. The complainant has alleged that after expiry of period of lease, the petitioner who was tenant of the informant, did not pay rent of the premises (shops). He promised to deliver the vacant possession of the tenanted shops after expiry of fixed period of lease to the complainant, but the petitioner did not vacate the premises. The complainant requested the petitioner to deliver the vacant possession and he took time to deliver the vacant possession of the shops till 28.02.2013. He also promised to pay rent of electricity charges regularly but from the conduct of the petitioner it appears that he will not deliver the vacant possession of the shops. He paid rent upto October 2011 which was received by the petitioner with protest. It is further alleged that on repeated demand of rent, the petitioner issued ten cheques regarding dues amount of rent from November 2011 to August 2012. He also assured the complainant that ten cheques given by him will be encashed. He also assured that he will clear the entire dues of the informant and deliver the vacant possession till February. The complainant deposited those cheques in the Bank but all the cheques bounced on 14.03.2011. Thereafter, the complainant went to the petitioner on 16.3.2013 and told about bouncing of cheques and



requested to clear his entire dues as well as to vacate the said shops. He also sent legal notice on 20.3.2013 and gave reminder on 25.4.2013 with request to pay the dues amount and to vacate the four shops. Thereafter, the accused persons came at the office of the complainant on 27.05.2013 and demanded Rs.5,00,000/- as *rangdari* from the complainant to vacate the shops. The complainant has further alleged that the petitioner has dishonestly and intentionally issued the above ten cheques amounting to Rs. 4,23,500/- to induce the complainant and to put the complainant in wrongful loss and to gain advantage wrongfully. The petitioner has also cheated the complainant by such dishonest conduct to digest the huge amount of the complainant and is continuing in the shops of the complainant even after expiry of the lease deed and has committed breach of trust and breach of contract.

3. The court below has after holding enquiry under Section 202 Cr. P.C. found *prima facie* case against the petitioner for the offence under Sections 420, 406, 427 and 384 of the Indian Penal Code and Section 138 of N.I. Act.

4. Heard learned counsel for the petitioner, and learned counsel for the State.

5. Learned counsel for the petitioner has placed reliance on a decision of Hon'ble Supreme Court reported in (2002) 9



SCC 415 (M/s.Shakti Travel & Tours Vrs. State of Bihar and Another.) and argued that complaint did not mention that demand notice was served on the respondent, complaint under Section 138 of Negotiable instruments Act was held to be not maintainable. He has also placed reliance on a decision of the Jharkhand High Court on the similar issue reported in **2013(1) JLJR 233 (Ashwani Kumar Sahu Vrs. The State of Jharkhand & Anr.)** wherein the Hon'ble Jharkhand High Court after refereeing to the aforesaid decision of the Hon'ble Supreme Court has held that presumption cannot be drawn on statement under Section 27 of General Clause Act because no averment that notice sent through registered post with requisite stamps and on proper address – criminal proceeding was quashed on that ground.

6. The name of the counsel for the opposite party No. 2 is appearing in the daily cause list but none appeared on his behalf to argue the case.

7. Learned A.P.P. has appeared and submitted that in the instant case the learned Magistrate has found *prima facie* case against the petitioner for the offences under Sections 420, 323, 385 of the Indian Penal Code besides offence under Section 138 of N.I. Act. He has further submitted that the court below has after examining the complainant on Solemn Affirmation and also looking into the



statement of two enquiry witnesses found *prima facie case* against the petitioner.

8. This court after looking into the allegation made in the complaint petition and the statement of two witnesses, (copy of which, have been enclosed with this petition), finds that the complainant and witnesses have supported the case of the complainant. They have stated that legal notice was sent to the petitioner by the complainant regarding bouncing of cheques on 20.3.2013 and, thereafter, reminder was also sent on 25.4.2013.

9. This Court further finds from the averments made in the complaint that the alleged lease has expired in the year 2009 and the petitioner has continued thereafter in spite of repeated request made by the complainant to vacate the premises (shops). It is further alleged that petitioner was making payment of rent to him and in that course he gave ten cheques to him for the period November, 2011 to August, 2012 but those cheques bounced on 14.3.2013. Thereafter, the informant went to the petitioner on 16.3.2013 and informed about bouncing of cheques and also made request to vacate the premises (shops) but petitioner did not take any step. Thereafter, a legal notice was sent to the petitioner on 20.3.2013 and reminder was also sent on 25.4.2013 with request to pay the dues amount and to vacate the shops. The accused persons on 27.5.2013 came to the office of the



complainant and made demand of Rs.5,00,000/- as *rangdari* to vacate the shops.

10. Learned counsel for the petitioner has further submitted that complainant has already filed eviction suit against him. It has further been submitted that the dispute of tenancy is breach of contract and, therefore, the continuance of the Criminal Proceeding on the basis of impugned order is bad in law.

11. This Court is not satisfied with the submission of learned counsel for the petitioner. The petitioner who was tenant of the shops of the complainant, knowingly continued to stay in the premises (shops) of the complainant even after expiry of lease period and as per complaint petition, he paid rent to him for certain period and, thereafter, he did not pay the rent and on demand he issued ten cheques as mentioned in the complaint, which bounced on 14.3.2013. The complainant on 16.3.2013 went to the petitioner and requested to make payment and vacate the shops, but he did not take any action and, thereafter, legal notice was sent to the petitioner. The petitioner came at the office of complainant on 22.5.2013 and made demand of Rs.5,00,000/- as *rangdari* to vacate the shops.

12. Therefore, this Court finds sufficient ingredients of criminal offence in this case. The impugned order passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No.



1878 (C) of 2013 does not suffer from illegality.

13. This Criminal Miscellaneous application is accordingly dismissed.

14. The petitioner is given liberty to raise all the points as raised in this petition before the court below at the time of framing of charge which shall be considered and disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	30/11/2017
Transmission Date	30/11/2017

