

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44079 of 2013

Arising Out of PS.Case No. -608 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Ramesh Duivedi @ Ramesh Kumar Duivedi S/O Yogendra Dubey R/O Vill- Fuliya Khadia, P.S- Bairiya, Distt- W. Champaran.
 2. Pappu Dubey S/O Yogendra Dubey R/O Vill- Fuliya Khadia, P.S- Bairiya, Distt- W. Champaran.
 3. Mantu Duivedi S/O Yogendra Dubey R/O Vill- Fuliya Khadia, P.S- Bairiya, Distt- W. Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Kapildeo Choudhary S/O Late Gobardhan Choudhary R/O Vill- Ratanpur, Bakuliya Tola, P.S- Bairiya, P.S- Bairiya, Distt- W. Champaran.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 17134 of 2014

Arising Out of PS.Case No. -2183 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

- =====
1. Ramesh Kumar Duivedi R/o Village Fuliya Khada, P.S. Bairiya, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kapildeo Choudhary S/o Late Gobardhan Choudhary R/o Village Maldaihiya, P.S. Bairiya, District East Champaran.

.... Opposite Party/s

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Appearance :

(In both cases)

For the Petitioner/s : Mr. Dhananjay Kumar, No. 2, Adv.

For the Opposite Party No. 2 : Mr. Bimlesh Kumar Pandey, Adv.

For State : Mr. Ashok Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date:-10-2017

1. Both these petitions are being heard together as the complainant in both the petitions is same.



2. Cr. Misc. No. 44079 of 2013 has been filed to quash the order dated 10-03-2014 passed by Shri N.P. Singh learned Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 608C of 2013 by which and whereunder, the learned Magistrate has found prima facie case against the petitioners under Sections-417, 323, 504, 465/34 of the Indian Penal Code.

3. Cr. Misc. No. 17134 of 2014 has been filed to quash the order dated 21-06-2013 passed by Shri A.K. Pandey, learned Judicial Magistrate-Ist Class, Bettiah, West Champaran in Complaint Case No. 2183C of 2013 by which and whereunder, the learned Magistrate has found prima facie case against Ramesh Kumar Dwivedi under Section-420 of the Indian Penal Code

4. Since the complainant in both cases are the same, both cases were heard together. But separate orders are being passed in both the Cr. Misc. Cases because different impugned order have been challenged in both the petitions.

5. The complainant in Cr. Misc. No. 44079 of 2013 has alleged that petitioners required land on lease to obtain HPCL dealership for petrol pump. The petitioner No. 1 has entered into agreement with the complainant for four Kathas of land appertaining to Khata No. 121 Khesera No. 3840 for executing lease for 30 years. The registered lease was also executed on 28-06-2010 but the



aforesaid land was not sufficient for the petrol pump, then accused persons made request to the complainant to execute lease deed with respect to another land appertaining to Khata Nos. 366, 124, Khesera Nos. 3828, 3829, total area of 4 Kathas 13 Dhurs, out of which, 1 Katha 15 Dhurs belongs to the complainant and 2 Kathas 18 Dhurs land belonged to witness no. 1 of the complaint petition. Lease agreement was prepared on 28-02-2011. As per agreement, 900 sq. metres of land was given on lease for 30 years @ Rs. 2000/- per month but the accused by forgery, has got the period 70 years in place of 30 years mentioned in the lease and also modified the area as 1444 sq. metres in place of 900 sq. metres. The monthly rent payable was also modified in the agreement as Rs. 5000/- in place of Rs. 2000/- The accused persons concealed the facts of increase in rent @ 2% per annum. The complainant learnt about such act of the accused persons in the lease and cancelled the aforesaid lease and prepared another lease No. 20622 dated 22-09-2012. The aforesaid lease was prepared in English and the complainant and the witness No. 1 could not understand the contents in English. The accused persons have entered into agreement for lease of 900 sq. meters of land but they got the lease executed for 1444 sq. meters of land in place of 900 sq. meters of land and the period for lease was mentioned as 99 years. The accused persons produced the aforesaid lease before Hindustan



Petroleum Ltd. The accused persons entered into an agreement with Hindustan Petroleum only for 30 years for 900 sq. metres. But the accused persons after keeping the complainant and witness No. 1 in dark, and with intention to usurp the land, got prepared lease for 99 years in place of 30 years and also got mentioned the area of land as 1444 sq. meters in place of 900 sq. meters The accused persons put Rs. 2000 as rent in place of Rs. 1580/- In this manner, the accused persons tried to commit fraud with the complainant in preparing the lease deed in English.

6. It has further been alleged that in the first two lease agreements, there is signature of the complainant but in the last agreement, there is thumb impression of the complainant. It is alleged that the accused persons have got the lease deed dated 22-09-2012 prepared by committing fraud and with intention to cheat him. The complainant and the witness No. 1 sent legal notice to the accused persons to modify the lease deed dated 22-09-2012 but no action was taken.

7. Heard learned counsel for the petitioners as well as learned counsel for the opposite party No. 2 and learned APP for the State.

8. From perusal of the averments made in the complaint, this court finds that the complainant has stated that three lease deeds



have been prepared between the parties. The last deed has been prepared on 27-09-2012 for a period of 99 years with respect to the land as mentioned in the lease deed vide deed No. 20622 dated 22-09-2012 as mentioned in the complaint petition. The complainant has alleged that petitioners got wrong fact mentioned in the lease deed with respect to area of land and amount of rent. As such, it is matter of civil dispute.

9. Therefore, the impugned order passed by the court below is not in accordance with law.

10. Accordingly, the impugned order dated dated 10-03-2014 passed by Shri N.P. Singh learned Judicial Magistrate, Bettiah, West Champaran in Complaint Case No. 608C of 2013 along with entire proceeding is hereby quashed with respect to these petitioners.

11. Accordingly, Cr. Misc. No. 44079 of 2013 is ***allowed***.

12. Cr. Misc. No. 17134 of 2014 has been filed to quash the order 21-06-2013 passed by Shri A.K. Pandey, learned Judicial Magistrate-Ist Class, Bettiah, West Champaran in Complaint Case No. 2183C of 2013 by which and whereunder, the learned Magistrate has found prima facie case against the petitioner under Section-420 of the Indian Penal Code.

13. It is alleged in this complaint petition that petitioner entered into an agreement with the complainant and total 3 deeds were



prepared. The last deed was prepared in English in which, the period of lease was illegally changed from 30 years to 99 years and the agreement for hike in rent @ 2% per annum was concealed. It is further alleged in the instant complaint that as per lease agreement, the accused Ramesh Kumar Dwivedi paid the amount of rent amounting to Rs. 1100/- through cheque No. 001512 drawn at Allahabad bank which bounced on 12-06-2013. The complainant sent legal notice to the accused petitioner but he did not give any reply. The complainant went to Petrol Pump on 03-08-2013 and made request to cancel the lease agreement and also informed him about bouncing of cheque, then the accused petitioner abused and assaulted him by fist and slaps. The brother of the petitioner Pappu Dwivedi torn shirt of the complainant and also gave threat to kill the complainant if he again comes to Petrol Pump.

14. The court below after holding inquiry found prima facie case against the petitioner for the offence under Section-420 of the Indian Penal Code by the impugned order.

15. Counsel for the petitioner has submitted that second complaint has been filed by the complainant merely to harass the petitioner. The complainant has earlier filed complaint against this petitioner and other accused persons bearing Complaint Case No. 608C of 2013 with similar allegation. The court below has in



mechanical manner without applying judicial mind, found prima facie case against the petitioner in the instant case. The dispute is purely of civil nature.

16. Learned counsel for the opposite party No. 2 and learned APP for the State has submitted that there is no illegality in the impugned order.

17. From perusal of the averments in the complaint, this court finds that lease deed was executed by the complainant in favour of petitioner. The complainant has alleged that modification was made in the lease deed by the petitioner illegally. The period of lease was modified as 99 years in place of 30 years. The increase in rent @ 2% per annum was concealed. The complainant has also levelled allegation that with respect to rent, the petitioner gave cheque of Rs. 1100/- drawn at Allahabad Bank which bounced on 12-06-2013. It is also admitted by the petitioner that prior to filing of this complaint, the complainant earlier filed Complaint Case No. 608C of 2013 against this petitioner and other accused persons with similar cause of action.

18. From the averments made in the complaint, it appears that nature of dispute is of civil nature. The instant criminal proceeding has been filed by the complainant maliciously with intention to harass the petitioner out of vengeance with a view to spite



the petitioner on account of private and personal grudge.

19. Therefore, the impugned order passed by the court below is not in accordance with law.

Accordingly, the impugned order dated order 21-06-2013 passed by Shri A.K. Pandey, learned Judicial Magistrate-Ist Class, Bettiah, West Champaran in Complaint Case No. 2183C of 2013 as well as entire criminal proceeding is hereby quashed with respect to these petitioners.

Accordingly, Cr. Misc. No. 17134 of 2014 is *allowed*.

In the result both Cr. Misc. Applications are *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	NAFR
CAV DATE	01-08-2017
Uploading Date	19-10-2017
Transmission Date	19-10-2017

