

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3113 of 2016

Arising Out of PS.Case No. -2229 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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Prabhat Kumar Sah, son of late Chandradeep Sah, resident of House No. 5A/14,
West Vivekanand Marg, North S.K. Puri, P.S.- S.K. Puri, Boring Road, District-
Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Jai Shankar Prasad Jha, son of Late Ugra Narayan Jha, resident of F-123, P.C.
Colony, Kankarbagh, P.S.- Kankarbagh, Patna- 800020

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
Mr. Rajeev Shekhar, Advocate.
For the State : Mr. Braj Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-02-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.09.2008 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 2229(C) of 2008 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and other accused persons for the offences under Sections 323, 504 and 379/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. The main argument on behalf of the petitioner in



this case is that from the entire complaint petition it would be apparent that there is no ingredient of any criminal offence whatsoever against this petitioner. The complaint petition has been filed only as a counter blast to harass the petitioner as complainant has purchased Refrigerator from the accused persons which did not work properly even after attending by Service Engineer of Whirlpool of India Limited, and when complainant made request to replace the same on full price, the accused persons offered the complainant to return the Refrigerator at half price. The complainant has further alleged that when complainant made request with the accused persons to replace the defective Refrigerator, they misbehaved with the complainant and also assaulted him.

4. The allegation against this petitioner is that he gave order to Security Guard to assault and, thereafter, accused persons assaulted the complainant causing injury to him. The accused persons finally refused to return the Refrigerator. The complainant went to Police Station to lodge the case, but police did not register the case. Thereafter, the instant complaint has been filed. It is also alleged that the accused persons got the Motorcycle of the complainant disappeared from the place of occurrence.

5. Learned counsel for the complainant has appeared and submitted that this petitioner deliberately delivered him the



defective Refrigerator and when he made request with accused persons to take appropriate action to exchange the same, the petitioner misbehaved with the complainant. The complainant was also assaulted by this petitioner and he got his Motorcycle disappeared from the place of occurrence.

6. In the instant case from the impugned order it appears that there is totally non-application of mind by the learned Magistrate at the time of passing of the impugned order. From the allegation as made in the complaint petition, this Court finds that complainant has alleged that he was delivered defective Refrigerator and in spite of several request, the same was not returned. The complaint has been lodged as a counter blast of such grievance of the complainant.

7. The Hon'ble Supreme Court in a Judgment reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors)*. has clearly laid down in Clause-7 of paragraph-102 that “where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”, is liable to be quashed.

8. The counsel for the petitioner has *relied upon a decision* reported in *2010 (4) PLJR 136 (The Managing Director*



Vrs. Dr. Hari Krishna Singh & Anr.) and 2012 (1) PLJR 360 Faiz Ahmad & Ors. Vrs. The State of Bihar) where this Hon’ble High Court has held that in such type of dispute as alleged in the complaint petition, the alternative remedy is available to the complainant by filing proper petition before the Consumer Forum for compensation.

9. Therefore, this Court is of the view that the impugned order passed by the court below is not in accordance with law.

10. Accordingly, the impugned order dated 10.09.2008 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 2229(C) of 2008 along with the entire criminal proceeding against the petitioner is hereby quashed.

11. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	20/02/2018
Transmission Date	20/02/2018

