

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38492 of 2013

Arising Out of PS.Case No. -66 Year- 2010 Thana -BUDDHACOLONY District- PATNA

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1. Manas Kumar, Son of late Narayan Thakur
2. Anant Kumar, son of Narayan Kumar
3. Ajay Ojha, son of Sri K.P. Ojha
All resident of Mohalla-Pandoi Kothi, Boring Road, P.S.-Budha Colony, Town & District-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Puja Kumari, daughter of Sri Chandradeo Singh, r/o House No. 89, Road No 21, Krishna Nagar, P.S.-Budha Colony, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prakash Kumar, Advocate.
Mr. Binod Kumar Singh, Advocate.
Mr. Manoranjan Kumar, Advocate.
For the State : Mr. Narsingh Tanti, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-04-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.06.2010 passed by the learned Chief Judicial Magistrate, Patna, in Budha Colony P.S. Case No. 66 of 2010 (G.R. No. 2071 of 2010) by which the learned Magistrate took cognizance against the petitioners and another accused for the offences under Sections 341, 323, 380, 448, 504 and 506/34 of the Indian Penal Code.

2. In the instant case notice was issued to opposite party No. 2 and service report was returned with endorsement that



opposite party No. 2 has left the house two years ago. Thereafter, notice was published in daily newspaper, but still no body has appeared on behalf of the Opposite Party No. 2.

3. Heard learned counsel for the petitioners and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that there was dispute between landlord and builder. The petitioners are the landlord of Plot in question. The petitioners have filed Title Suit No. 257 of 1999 against the Builder for declaration of his right, title and interest over the entire incomplete building complex, as per the terms of their agreement, and the said suit is still pending in the court of learned Sub Judge – VIII, Patna, for disposal.

5. In the written report the informant has alleged that she lived in Krishna Nagar, Road No. 21, House No. 89, Patna, along with her parents and is working as Sales Officer in a Private Company. She has purchased a flat No. 101 through registered sale deed on 28.03.2010 in Shyameshwari Apartment from Chandra Kala Lama and her husband Bittu Singh Lama. It is further alleged that on 14.04.2010 at about 12:00 a.m., these petitioners along with co-accused Narayan Kumar armed with pistol entered into her Flat and forcibly ousted her from the house and also threw all her belongings. It is further alleged that petitioners assaulted the informant and



snatched golden chain from her neck and purse containing Rs.1,500/- from her hand. Petitioners after forcefully evicting the informant from the Flat in question, put the lock on the door of the flat. Thereafter, the informant went to Kolkata for some urgent work of her office and after return, she again went to her flat on 24.04.2010. She was again assaulted by the accused persons and, thereafter, she lodged the case.

6. From the written report itself it appears that occurrence is said to have taken place on 14.4.2010 and case has been lodged on 24.4.2010 i.e. after lapse of ten days. The informant has alleged that she has purchased the flat in question from Chandra Kala Lama and her husband Bittu Singh Lama, but the informant has not filed any supporting document to show the purchase of the aforesaid flat by her.

7. Learned counsel for the petitioners has submitted that in fact, petitioner No. 1 and 2 are landlords of the aforesaid property and they have entered into agreement with builder M/s. Ishwari House Private Limited who developed the property, but Builder left the building incomplete. As per terms of the agreement, the construction of building was to be completed within a period of 30 months including grace period of six months, failing which the Developer/Builder will have no claim of right, title and interest over the said incomplete building. It has further been submitted that during



construction of building, the Builder has entered into an agreement for sale of Flat No. 101 and 102 with one Bittu Singh Lama who is husband of Chandra Kala Lama but as the said building was left incomplete by the Builder, he fled away. Thereafter, petitioners filed Title Suit No. 257 of 1999 against the Builder for declaration of his right, title and interest over the entire incomplete building complex as per the terms of the agreement. The Title Suit is still pending in the court of learned Sub-Judge-VIII, Patna. Bittu Singh Lama was trying to take forceful possession of the flat by anti social elements and put this informant who works in a Beauty Parlour in front of petitioners and gave threat to falsely implicate in different types of cases for which the petitioners had given written information to the local police on 23.04.2010 prior to institution of the instant case.

8. The instant case has been filed on 24.04.2010 just after one day of filing written report by the petitioner.

9. From the impugned order it appears that court below has on the basis of charge sheet submitted by the police, took cognizance against the petitioners for the offence under Sections 341, 323, 380, 448, 504 and 506/34 of the Indian Penal Code.

10. Learned counsel for the petitioners has submitted that informant has also lodged First Information Report against the petitioner and his family members vide Budha Colony P.S. Case No.



78 of 2010 on 16.05.2010 making almost similar allegation. That case was investigated by the police and police submitted Final Form which was also accepted by the learned Chief Judicial Magistrate. The order dated 30.04.2013 passed by the learned Chief Judicial Magistrate has been enclosed as Annexure-3.

11. In this manner from the allegation in the written report itself it appears that Title Suit No. 257 of 1999 is pending between the petitioners and the Builder for declaration of right, title and interest of entire incomplete building complex.

12. The informant has alleged in the written report that she has purchased Flat by registered sale deed dated 28.03.2010 from Smt. Chandra Kala Lama and her husband Bittu Singh Lama and the matter is still subjudice in the court of learned Sub Judge-VIII, Patna. It further appears that the informant has not produced any document in support of claim that she has purchased the property (Flat No. 101) through registered sale deed on 28.03.2010 from Chandra Kala Lama.

13. In such circumstances, this Court finds that impugned order passed by the court below is not in accordance with law. The impugned order has been passed in mechanical manner only on the basis of charge sheet submitted by the police. From the written report itself it appears that Civil Suit is pending between the parties and without any supporting document, the informant is making claim



over the property in question, of which, the petitioners are the landlords. The petitioners have filed title suit against the Builder for declaration of his right, title and interest and possession over the incomplete portion of building as per terms of agreement entered into between the petitioners and the informant.

14. Therefore, the impugned order dated 30.06.2010 passed by the learned Chief Judicial Magistrate, Patna, along with the entire Criminal Proceeding, in connection with Budha Colony P.S. Case No. 66 of 2010 (G.R. No. 2071 of 2010), with regard to the petitioners, is hereby quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20/04/2018
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