

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1574 of 2016

Arising Out of PS.Case No. -68 Year- 2014 Thana -BUDDHACOLONY District- PATNA

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1. Mithilesh Kumar Singh @ Mithilesh Kumar, Son of late Sakaldeep Narayan Singh
2. Raj Lakshmi wife of Sri Mithilesh Kumar Singh@Mithilesh kumar Both resident of Flat no. 104, Aranya Balbhadra Apartment , East Boring Canal Road,P.s Buddha Colony, district Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ratna Ojha W/o Sri Suman Ojha resident of Flat No. 402, Aranya Balbhadra Apartment , East Boring Canal Road, P.s Buddha Colony, Distt Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Saran Singh Mr. Vindhyachal Singh
For the Opposite Party/s	:	Mr. Rajendra Narayan, Sr. Adv. Mr. Pramod Kumar
For State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-09-2018

Heard the learned counsel for the petitioners, O.P. No. 2
as well as the State.

The present application has been filed for quashing the
order dated 04.03.2014 passed by learned Judicial Magistrate 1st Class,
Patna in connection with Budha Colony P.S. Case No. 68/2014, whereby
the court below has found *prima facie* case for offences under Sections
385, 447, 504 and 506/34 of the Indian Penal Code against petitioners.

Learned counsel for the petitioners has submitted that the
informant and her husband in collusion with the builder started making



attempt to illegally usurp and encroach the parking area of the Apartment, for which he has made several complaint with different authorities, copy of which has been annexed as Annexure- 4 series. Thereafter, the instant case has been filed by the informant against petitioners on 03.03.2014 at 3:30 P.M. and the police has submitted charge-sheet on the same day, which will be apparent from Annexure-2 to the petition.

Learned counsel for the petitioners has submitted that from the entire allegation, it will appear that there is dispute between the parties for parking space and therefore no criminal offence is made out against these petitioners.

Learned counsel for O.P. No. 2 has submitted that petitioner no. 1 by misusing his position as officer in C.R.P.F. is attempting to encroach the parking space of Apartment and is also giving several threats. Therefore, the offences under which cognizance has been taken are correct. He has relied on a decision of Hon'ble Supreme Court in case of ***Rakhi Mishra Vs. State of Bihar*** reported in ***2018(2) SCC (Cri)299*** in support of his submission wherein Hon'ble Supreme Court has observed that *the power under Section 482 Cr.P.C. is exercised by the High Court only in exceptional circumstances when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of prosecution is whether the uncontroverted allegations prima facie establish a case.*



This Court after looking into allegation in written report finds that the informant and these petitioners are having flat in the same Apartment. It is alleged in the written report that informant has three parking spaces and petitioners are giving threat to sell one of the three parking space. It is further alleged that petitioners have constructed a shed due to which the passage is also obstructed. It is also alleged that another shed was constructed over room of the informant and 2 to 3 constable is deployed in it.

It is mentioned in para 11 of the petition that petitioner no. 1 being aggrieved by the aforesaid misdeed and illegal activities of the informant acting in connivance with the builder submitted written complaint on 12.11.2013 and other different dates as mentioned in para 11, before different authorities regarding informant and her husband attempting to illegally usurp and encroach the parking area of the owner of flat in the Apartment.

Learned counsel for petitioners has pointed out sale deed, annexed as Annexure-3 to the petition, wherein it is mentioned that there will be common parking space for all the flat owners.

It appears from perusal of charge-sheet (Annexure-2) that after filing of the written report on 03.03.2014 at 15.30 P.M., the police has submitted charge-sheet on the same day for the offence as alleged without making any endeavour to arrive at real truth by taking pain to enquire from the witnesses including the petitioners with regard to the



alleged occurrence. The court below has in mechanical manner on the basis of charge-sheet took cognizance in the case.

This Court after looking into allegation in the written report finds that there is dispute between the parties for parking space. The civil remedy is available for the same. The Hon'ble Supreme Court has observed in judgment reported in **(2009) 8 SCC 751** in case of ***Md. Ibrahim Vs. State of Bihar*** that *there is growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes.*

In view of such, the impugned order dated 04.03.2014 passed by learned Judicial Magistrate 1st Class, Patna along with entire criminal proceeding against the petitioners is hereby quashed.

This Criminal Miscellaneous is, accordingly, allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.10.2018
Transmission Date	01.10.2018

