

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42753 of 2014

Arising Out of PS.Case No. -462 Year- 2011 Thana -KHAGARIA COMPALINT CASE District-
KHAGARIA

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Bhashkar Gupta, Son of Late Jawahar Lal Gupta, Resident of Village -
Sagarmal Chowk, Ward No. 5, P.S. + P.O.- Khagaria, District - Khagaria

.... Petitioner

Versus

1. The State of Bihar
2. Dinesh Gupta, Son of Late Satyanarayan Sah, Resident of Village -
Mansi Dharari, P.S.- Mansi, District -Khagaria

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal

For the Opposite Party/s : Mr. Ashok Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 10-01-2018 1. The present petition has been filed for quashing the

order taking cognizance dated 24.07.2014 passed by the learned

Judicial Magistrate, Khagaria in complaint case no 462(C) of 2011

by which, cognizance has been taken against the petitioner under

Sections 323, 342, 406 of Indian Penal Code.

2. The case as narrated in the complaint filed by the

opposite party no. 2 is that the petitioner was a tenant of the

complainant and there were arrears of rent for the period starting

from May, 2010 to May, 2011. The further case as stated in the

complaint is that the complainant had been demanding the arrears

of rent however, the petitioner was not paying the same. On



20.05.2011, the complainant along with his wife had gone to the petitioner and asked for the aforesaid arrears but they were threatened. The complainant along with his wife again went to the petitioner on 05.06.2011 and upon being asked for the arrears mentioned hereinabove, the petitioner started using filthy language against the complainant and threatened him with dire consequences as also assaulted the complainant and took away a sum of Rs. 5,000/- from the pocket of the complainant as well as golden chain worth Rs. 36,000/-.

3. The learned Chief Judicial Magistrate by the impugned order dated 24.07.2014 has taken cognizance under Sections 323, 342, 406 of Indian Penal Code. The said order dated 24.07.2014 is under challenge before this Court in the present petition.

4. The learned counsel for the petitioner submits that a bare perusal of the complaint petition would show that no offence as alleged under Sections 323, 342, 406 of Indian Penal Code is made out. It is further submitted that at best, the allegation leveled in the complaint petition constitute a dispute of civil nature and by no stretch of imagination, any criminal offence can be said to have been made out. It is further submitted that Eviction Suit is pending



between the petitioner and the complainant bearing Eviction Suit no. 1 of 2014 and since some delay is taking place in disposal of the said case, the opposite party no. 2 with an oblique motive, has filed the complaint case with a view to extract something by taking recourse to criminal proceedings, which the complainant could not achieve by taking recourse to civil proceeding. It is also submitted that no cognizable offence is made out even if the entire allegations leveled in the complaint petition are accepted on its face value.

5. I have perused the materials on record and heard the learned counsel for the petitioner however, no body has appeared on behalf of the opposite party no. 2 despite valid service of notice. From the records, I find that the learned Chief Judicial Magistrate has passed the order dated 24.07.2014 in a perfunctory manner and the same does show any application of mind, besides the same being an unreasoned order. It is apparent from the complaint petition that the dispute between the parties pertain to arrears of rent and eviction suit is already pending between the parties hence, for the same cause of action which is pending adjudication before the competent court of civil jurisdiction, the present complaint is an abuse of the process of the court.



6. For the reasons mentioned hereinabove, the order dated 24.07.2014 passed by the learned Chief Judicial Magistrate, Khagaria in complaint case no. 462(C) of 2011 is quashed.
7. The petition is allowed.

(Mohit Kumar Shah, J.)

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