

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45906 of 2014

Arising Out of PS. Case No.-1565 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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Arjun Prasad S/o Late Jeet Lal Rai resident of Mohalla Saristabad (West
Gardanibag), P.S. - Gardanibag, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. M/S Ravi Coal Briquettes, represented through its proprietor Ravindra Kumar Singh S/o Late Paras Nath Singh of village Rajapur, P.S. - Koilwar, District Bhojpur at present - Gardanibag, P.S. Gardanibag, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. M.P. Bhartee
For the Opposite Party/s : None.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**
ORAL JUDGMENT

Date : 03-08-2018

Heard learned counsel for the petitioner. No one
turned up on behalf of O.P. no. 2 despite putting appearance in
the case.

2. This application under Section 482 of the Code
of Criminal Procedure has been filed for quashing the order
dated 03.07.2014 passed by learned Additional Sessions Judge-
VII, Patna in Criminal Revision no. 879 of 2010, 235 of 2012
whereby the learned Sessions Judge disposing of the aforesaid



Criminal Revision set aside the order dated 09.08.2010 passed by Judicial Magistrate 1st Class, Patna in Complaint Case no. 1565 (C) of 2010 with direction to the court below to make further inquiry and to pass fresh order considering the facts and evidence of the case according to law.

3. O.P. no. 2 (complainant) filed Complaint Case no. 1565 (C) of 2010 against the petitioner and others under Sections 424, 427, 420, 380, 504 and 34 of I.P.C. with the allegation in succinct that Ravindra Kumar Singh is the proprietor of M/S Ravi Coal Briquettes, he applied for loan of Rs. 1.44 lakhs in the Bihar State Financial Corporation, Patliputra Branch, under the liberalized scheme for educated unemployed persons on 27.02.1979. Said loan was sanctioned for starting a Unit of Coal Briquettes and accordingly an unit namely, M/s. Ravi Coal Briquettes was established at Saristabad, Patna. In this regard, Ravindra Kumar Singh took plot no. 1728 on lease for 20 years from Deo Nath Rai, Jeet Lal Rai and Kedar Nath Rai through a registered lease of deed dated 04.03.1979. After inspection of the site by B.S.F.C. officials, loan of Rs. 1.46 lacs was sanctioned in favour of M/s Ravi Coal Briquettes, Saristabad, Patna. After grant of loan, Ravindra Kumar Singh constructed building upon the said plot and also



installed machines for running the Unit. All the properties i.e. plant machinery, constructed portion of building of M/s Ravi Coal Briquettes were hypothecated in the B.S.F.C. Patna against the aforesaid loan amount. After death of Deo Nath Rai and Jeet Lal Rai, their heirs as well as Kedar Nath Rai hatching conspiracy filed Eviction Suit no. 11 of 2004 against Ravindra Kumar Singh. He put his appearance in the case and placed correct facts before the court below to the effect that he left Patna for Gurgaon in connection with his livelihood entrusting the court's work to his learned Advocate R.N. Singh. But said advocate did neither take any interest in the case nor informed him regarding its development. All of sudden, on 15.04.2010, accused persons along with court staff and muscle men took possession over the property of M/s Ravi Coal Briquettes and also obtained a favourable report of delivery of possession. No court has passed decree against the property of M/s. Ravi Coal Briquettes but in spite of that decree was executed and delivery of possession was given to the accused Arjun Prasad and others Bala Bala. On the strength of D.P. accused persons dismantled the constructed building of the company took away all the materials including the machines. The accused persons committed mischief, theft of hypothecated goods of the



company causing loss of more than Rs. 10 Lacs.

4. During course of inquiry proprietor of the firm namely, Ravindra Kumar Singh examined himself on S.A. and also examined his two witnesses. After perusal of complaint petition, S.A., evidence of witnesses and materials available on the record. Learned magistrate finding no prima facie case against the petitioner and other accused persons dismissed the aforesaid complaint case vide its order dated 09.08.2010. Assailing the said dismissal order, said firm namely M/s. Ravi Coal Briquettes filed Criminal Revision No. 879/2010 / 235/2010 which was disposed of by setting aside the impugned order of Magistrate with direction to make further inquiry and pass fresh order by Learned 7th Additional Sessions Judge, Patna vide order dated 03.07.2014. For quashing the aforesaid order, petitioner has filed this quashing petition.

5. It is submitted by learned counsel for the petitioner that the petitioner and his family members had filed Eviction Suit no. 11 of 2004 against Said Ravindra Kumar Singh for eviction from property in question on the ground of personal necessity and default of payment of rent as well as expiry of lease deed executed in favour of said Ravindra Kumar Singh. The said suit was decreed. Which was not assailed by



the judgment debtor in the appeal. On the basis of said decree, the petitioner filed Execution Case no. 22 of 2007 and in execution of the aforesaid decree, the delivery of possession over the aforesaid property was given to the petitioner and his family members through the officials of court and police personnel on 15.04.2010 after removing all the properties including the tools, machinery etc. from the property in question by the complainant and handing it over to his representative, namely Amit Kumar Singh. Thus, the petitioner has obtained possession of the aforesaid property in question through process of law and not forcibly evicting and dispossessing said Ravindra Kumar Singh against the process of law. Hence, no *prima facie* case under Sections 424, 427, 420, 380, 504 and 34 is made out against the petitioner and the learned Magistrate correctly appreciating the facts and material available on record rightly dismissed the aforesaid complaint case finding no *prima facie* case. But, learned Revisional Court wrongly, illegally, perversely and without any basis set aside the aforesaid order of learned Magistrate by the impugned order, which is liable to be quashed.

6. From perusal of record, it appears that the lease regarding property in question was executed by the Deo Nath



Rai, Jeet Lal Rai and Kedar Nath Rai through a registered lease deed dated 04.03.1979 in favour of Ravindra Kumar Singh and not in favour of M/s Ravi Coal Briquettes. Said firm appears to be proprietorship firm and said Ravindra Kumar Singh happens to be sole proprietor of the said firm. Said firm has filed the aforesaid complaint petition through its proprietor Ravindra Kumar Singh. A sole proprietorship firm has no separate legal entity and existence from its owner. It simply refer to a person who owns the business and is personally responsible for its debts. The owner of a sole proprietorship typically signs contracts in his or his own name because sole proprietorship has not separate identity under the law and any order or decree passed against the owner of the proprietorship firm on the basis of said contract is binding on the proprietorship firm as well. In the case under hand as the proprietor of complainant firm namely Ravindra Kumar Singh had got executed lease deed in his own name decree passed in the aforesaid suit and order passed in the said execution case filed against said Ravindra Kumar Singh is also binding on the complainant firm and it cannot escape it.

7. It further appears from the order of learned Magistrate that for eviction Ravindra Kumar Singh from the



said land, the lessor had filed Eviction Suit no. 11 of 2004 which was decreed and on the basis of the aforesaid decree, the lessor had filed Execution Case no. 22 of 2007 and delivery of possession over the suit land was given to the lessor in execution of the aforesaid decree through the officials of court and police personnel and all goods belonging to the lessee were handed over to his representative Amit Kumar Singh and said Amit Kumar Singh has endorsed receiving of goods in safe condition after vacating the house. Thus, all the steps appears to have been taken by the petitioner-lessee under the process of law and they have been given delivery of possession over the property in question in due course and under the process of law. Considering the aforesaid aspects of the case, learned Magistrates appears to have dismissed the aforesaid complaint case finding no *prima facie* case against the petitioner and other accused persons, but the Revisional Court without any basis and material perversely set aside the aforesaid order of learned Magistrate and directed him to make further inquiry and pass fresh order which in my considered opinion is wrong and illegal and is liable to be quashed.

8. In the facts and circumstances, the impugned order dated 03.07.2014 passed by learned



Additional Sessions Judge-VII, Patna in Criminal
Revision no. 879 of 2010, 235 of 2012 is quashed and,
accordingly, the petition stands allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	08-08-2018
Transmission Date	08-08-2018

