

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 45401 of 2014

Arising Out of PS. Case No.-472 Year-2011 Thana- KOTWALI District- Patna

Sanjay Kumar @ Sanjay Kumar Singh Son of Late Nand Kishore Singh
resident of Ujjain Kothi, Dak Bangla Road, Police Station- Kotwali in the
District of Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Diwakar Prasad Singh S/o Sri Sukhdeo Prasad Singh Resident of Village-
Pyerepur, P.S. Sarmera, District- Nalanda presently residing at Bhama Colony
(Dusadhi Pakadi), Hanuman Nagar Kankargbagh, P.S.- Kankarbagh, District-
Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gopal Prasad Roy, Advocate
For the Opposite Party/s	:	None
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 20-02-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Despite service of notice on opposite party no. 2,
nobody appeared on his behalf when the matter was taken up
and heard.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this is an application for quashing the
order dated 18.06.2012 passed by learned Chief
Judicial Magistrate, Patna in Kotwali P.S. case No.
472/2011 by which cognizance under section 427,
461, 379, 411/34 of the Indian Penal Code has been
taken against the petitioner.”*



4. The allegation against the petitioner is of stealing of footwears from the shop of the opposite party no. 2 by breaking the grill of the back portion of the shop and trying to break the shutter.

5. Learned counsel for the petitioner submitted that the FIR is totally false and frivolous and patently *mala fide*. It was submitted that the petitioner is the landlord of the premises of which opposite party no. 2 was tenant and running a shop of footwear in the name and style of Puma. It was submitted that because of there being dispute of rent between the parties, to exert pressure and harass the petitioner, the opposite party no. 2 has made this patently false allegation. It was submitted that though the allegation is that the back grill was broken and articles were taken away, there has been no recovery and even the recovery is of old pedestal fan, broken table and broken chair. Learned counsel submitted that the petitioner resides in the same premises and just across the road is the local Kotwali police station. Learned counsel submitted that subsequently the shop has also been vacated by the opposite party no. 2. It was submitted that no such incident took place, much less as alleged by the petitioner, who had no reason to do so and during investigation, neither the police has found nor



recovered any stolen footwear articles or back grill and shutter of the shop broken.

6. Learned A.P.P., after going through the case diary, was not in a position to controvert the submissions of learned counsel for the petitioner on facts.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The petitioner being the landlord living in the same campus and admittedly, the opposite party no. 2 being the tenant of a shop in the premises, first and foremost such allegation itself raises serious doubt with regard to its authenticity. Subsequently, the area being a busy locality and just across the local police station and further there being persons in the area, such open theft through many vehicles, is not fit to be believed. Moreover, the police investigation not corroborating the allegation of breaking of the back door and shutter and also there being no recovery, clearly indicates that there is hardly any truth in the allegation. Another factor, which cannot be lost sight of, is the fact that the opposite party no. 2, despite service of notice has chosen not to appear in the present proceeding.



8. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Kotwali P.S. Case No. 472 of 2011, including the order dated 18.06.2012, by which cognizance has been taken, stands quashed.

(Ahsanuddin Amanullah, J.)

Anand Kr.

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