

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40121 of 2015

Arising Out of PS. Case No.-218 Year-2012 Thana- PATLIPUTRA District- Patna

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1. Indu Devi Wife of Yogendra Singh
 2. Yogendra Singh Son of Sri Ram Jatan Singh Both resident of Flat No. 201 Ankur Anand Apartment, Road No. 4, Mahesh Nagar, P.S. Patlipura, District - Patna, Bihar

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ajay Kumar Karna S/o Late Jogeshwar Lal Karna resident of Indrapuri Main Road, P.S. Patliputra, District - Patna, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ganesh Prasad Singh
For the Opposite Party/s : Mr. Nand Kumar APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 27-07-2023 Heard the parties.

2. This application has been filed on behalf of the petitioners for quashing the order dated 09.07.2014 passed by Judicial Magistrate 1st Class, Patna in G.R. No. 4850 of 2012 / Tr. No. 825 of 2014 arising out of Patliputra P.S. Case No. 218 of 2012.

3. The allegation against the petitioners is that the petitioners entered in the flat of O.P. No. 02 in Ankur Anand Apartment armed with weapons and have threatened the O.P. No. 02 and his family to vacate the flat and if the O.P. No. 02 will not vacate the flat then they will have to face dire



consequences.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and they have falsely been implicated by the Opposite Party No. 02 in collusion with the police.

5. It is also submitted by the learned counsel for the petitioners that the petitioners are absolute owners of flat No. 201 in Ankur Anand Apartment and they are in the possession of the same since 28.07.2012 as they have purchased the same from one Sarojini Kumari Paul and it is also relevant to state here that Sarojini Kumari Paul had purchased this flat from builder M/s Karna Constructions, Indrapuri, Patna.

6. It has further been submitted by the learned counsel for the petitioners that on 23.05.2005 an agreement for sale was executed by One Sanjay Kumar Karna on behalf of Karna Construction and after payment of entire consideration amount the the possession letter was issued in the name of Sarojini Paul on 11.02.2006.

7. Learned counsel for the petitioners further submits that the name of Sarojini Paul was entered into all the Government records also i.e. Patna Municipal Corporation, Electricity Department and from the recors it is also clear that



Sarojini Paul was regularly paying the energy and PMC charge.

8. He also submits that Sarojini Kumari Paul was a widow and due to her illness she started to live with her relatives and in the meantime the builder removed the belongings of Sarojini Kumari Paul and for that she also had registered a case bearing Patliputra P.S. Case No. 75 of 2009.

9. Learned counsel for the petitioner further submits that due to the dispute between the builder and Sarojini Paul the builder did not execute the required sale deed in the favour of Sarojini Kumari Paul and as a result she applied to the PMC under Section 21(4) of the Bihar Apartment Act, 2006 and an order was passed by the Executive Officer of New Capital Circle, PMC for unilateral execution of registration under Bihar Apartment Act, 2006 and accordingly a deed of absolute sale was registered in the name of Sarojini Kumari Paul.

10. Learned counsel for the petitioners further submits that after being a registered owner of the flat, Sarojini Kumari Paul executed a registered power of attorney in the name of one Ram Shankar Prasad Singh and considering the power of attorney, the petitioners bought the said flat.

11. Learned counsel for the petitioners further submits that after shifting in the flat, one Ajay Kumar Karna demanded



an extortion money from the petitioners and after the petitioners denied to pay the demanded amount, the O.P. No. 02 has filed this false case against the petitioners.

12. It has further been submitted by the learned counsel for the petitioners that the petitioners are owners of the flat in question and they have purchased the same after paying the consideration amount and the present case has been initiated by the builder just to extract some money from the petitioners.

13. Learned counsel for the informant has submitted that the petitioners have purchased the flat illegally and they have not purchased the same from the builder.

14. From the aforesaid facts it appears that the present is a malicious prosecution initiated by the builder against the purchaser of the flat from its allottee i.e. Sarojini Kumari Paul, as the builder was issued notice before the flat was transferred under the Bihar Apartments Act in favour of the Sarojini Kumari Paul but the builder did not cooperate with the authorities and thereafter an order was passed for execution of the sale deed by the authorities in favour of Sarojini Kumari Paul and it is also clear that the petitioners have bought the flat from Sarojini Kumari Paul who was the rightful owner of the flat and therefore no case is made out against the petitioners.



15. Considering the aforesaid facts, this Court is of the view that the present is a malicious prosecution and the same should not be allowed to continue in the interest of justice.

16. Accordingly, the order dated 09.07.2014 passed by Judicial Magistrate 1st Class, Patna in G.R. No. 4850 of 2012 / Tr. No. 825 of 2014 arising out of Patliputra P.S. Case No. 218 of 2012 as well as all the consequential proceedings arising out of Patliputra P.S. Case No. 218 of 2012 are hereby quashed.

(Sandeep Kumar, J)

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