

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5398 of 2016

Arising Out of PS. Case No.-440 Year-2015 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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1. Ratan Kumar Joshi and Ors ..o Late Shyamal Joshi.
 2. Amit Kumar Joshi S/o Ratan Kumar Joshi; both 1 and 2 Resident of Mohalla Marwari Bazar, Samastipur, Ward No.22.
 3. Santosh Kumar S/o Late Rajdeo Prasad, Resident of Mohalla Gudri Bazar, Samastipur, All 1 to 3 are of P.S. Samastipur, Town, District- Samastipur.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Smt. Meena Devi Sharma, W/o Dr. Arun Kumar Sharma, Resident of Mohalla Kashipur, ward no. 12 near Dr. G.C. Karn, Samastipur, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Bhushan Prasad
For the Opposite Party/s : Mr.Pradip Nr. Kumar App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 18-04-2023 Heard learned counsel for the petitioners and learned counsel for the State but none appears for the opposite party no.2.

This application has been filed for quashing the order dated 25.6.2015 in C. R. No. 440 of 2015, passed by learned Judicial Magistrate 1st Class, Samastipur by which learned Magistrate has taken cognizance under Sections 427 and 454 of the Indian Penal Code.

The prosecution story in short is that the complainant filed a complaint before the Court of learned



Judicial Magistrate 1st Class, Smastipur bearing Complaint Case No. 440/2015 alleging therein that she run her beauty parlor Shop in rented house of Shyamal Joshi Since 2000 and she is paying rent to him. It is further alleged on 7.9.2015 when the complainant went to open her shop she found that the grill gate was locked then she make call and on her call accused Ratan Kumar Joshi came down with 5 muscles men and said that shift your business at another place and if it was not shifted within 10-15 days then all article would be either seized or sold. It is further alleged that the complainant filed Miscellaneous case bearing Miscellaneous Case No. 313/14 under Bihar House Control Act before the S.D.O. in which report was called for and further after considering the report of Welfare Officer the authority by his order dated 10.10.2014 directed the opposite parties (Petitioner no. 1 and 2) to restore the business of the Petitioner (Complainant). It is further alleged that after getting information of the aforesaid order the accused persons 1 and 2 after hatching conspiracy with accused no.3 after breaking the lock of the shop and looted all article worth of Rs. 3,89000/- along with cash Rs. 5000/-in between 11.10.14 -28.10.14. It is further said that the description of looted article is being given in footage of the



complaint case. It is further said by the complainant with regard to the occurrence filed application in pending in case no. 12 of 2014 on 28.10.2014 where the authority orally suggested for filing F.I.R. and subsequently, the complainant went to police Station with her complaint but no receiving was given and lastly, the complainant filed the present complaint case.

Learned counsel for the petitioners has submitted that the petitioners are the landlord and this case has been filed malafide by the tenant because of the dispute with regard to rent and the learned Court below has issued summons mechanically.

Learned counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others (1998) 5 SCC 749.***

Considering the fact that it is a malicious prosecution launched by the tenant against the landlords, this application is allowed.

The C. R. No. 440 of 2015, passed by learned Judicial Magistrate 1st Class, Samastipur, is hereby quashed.

(Sandeep Kumar, J)

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