

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49551 of 2015**

Arising Out of PS. Case No.-3777 Year-2014 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Rajeshwar Prasad, S/o Late Vishwanath Prasad
2. Santosh Kumar, S/o Sri Rajeshwar Prasad, Both resident of Village -
Premganj, P.S. - Lalganj, District - Vaishali

... .. Petitioners

Versus

1. The State of Bihar.
2. Md. Yusuf S/o Yakub Mian, Resident of Mohalla - Repura, Ward No. 18,
P.S. - Lalganj, District – Vaishali.

... .. Opposite Parties

Appearance :

For the Petitioners : Mr. Satya Prakash Sinha, Advocate
For the State : Mr. J.Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 20-09-2023

Heard learned counsel for the petitioners and learned
APP for the State.

2. Even though the name of learned counsel for the O.P.
No. 2 is appearing in the cause list, no one appears for the O.P. No.
2.

3. This application has been filed for setting aside the
order dated 28.08.2015 passed by learned Judicial Magistrate-1st
Class, Vaishali at Hajipur in Trial No. 555 of 2015 arising out of
Complaint Case No. 3777 of 2014 by which the learned court has
taken cognizance of the offences under Sections 323/341/380/34



of the Indian Penal Code and directed issuance of summons to the petitioners.

4. As per the prosecution story, the complainant in his complaint petition stated that he had a sewing shop at Lalganj and petitioner no. 1 is the owner of the said shop. On 14.11.2014, some unknown accused persons looted away readymade garments worth Rs. 40,000/-, three sewing machines of Rs.15,000/- and other articles by cutting the roof of the said shop. In the meantime, the neighbour shopkeeper raised alarm to which the accused persons assaulted him with fists and slaps.

5. Learned counsel for the petitioners submits that the petitioner no. 1 is an Assistant in Nagar Panchayat, Lalganj and petitioner no. 2 is an Advocate of Civil Court, Vaishali at Hajipur. In this case, admittedly, the complainant-O.P. No. 2 was a tenant of the petitioners but he had vacated the shop on 26.01.2005 and take away his goods from the shop. Learned counsel submits that Annexure '4' to this application is a document executed by the complainant saying that he, on his own volition, was vacating the premises on 26.01.2005 and has taken away his articles. The complainant declared that his son Md. Mostakim has requested the house owner to provide him the shop to which he had no



objection. Md. Mostakim would only rent the shop and the complainant-O.P. No. 2 had no concern henceforth.

6. Learned counsel submits that the shop was thereafter given to Md. Mostakim, a dispute arose on account of payment of rent which gave rise to Rent Fixation Case No. 60 of 2009 in which the Sub-Divisional Officer, Hajipur passed the order dated 23.07.2010 in R.F. Case No. 60 of 2009.

7. It is stated that Md. Mostakim had during pendency of the appeal vacated the shop and had taken away the goods which he certified on the bond on 01.12.2012. Thereafter, the premises were let out to one Rakesh Kumar Jaiswal on rent which would be evident from the rent agreement enclosed as Annexure '7' to the application.

8. It is stated that when Rakesh Kumar Jaiswal was keeping his goods in the shop on 06.01.2013 then the complainant and his associates assaulted him and looted his goods for which a Complaint Case No. 96 of 2013 was filed before the learned Chief Judicial Magistrate, Vaishali at Hajipur. The Complainant also lodged a case being Lalganj P.S. Case No. 6 of 2013 for the offences under Sections 461/379/34 of the Indian Penal Code, however, in course of investigation, the said case was found false. The complainant filed a protest-cum-complaint petition in the said



case and cognizance was taken under Section 379 IPC which was later on quashed by this Court vide order dated 21.07.2015 passed in Cr. Misc. No. 17745 of 2015. It is further stated that Sub-Divisional Officer, Hajipur, Vaishali passed an order dated 24.11.2014 in Miscellaneous Case No. 478 of 2013 whereafter the premises were vacated through the Circle Officer, Lalganj and S.H.O., Lalganj Police Station in presence of both the parties. Certified copy of the order dated 24.11.2014 passed by the Sub-Divisional Officer, Hajipur has been enclosed as Annexure '10'.

9. Learned counsel points out that the inquiry witnesses in the complaint case are the interested witnesses. In fact, Inquiry Witness Nos. 1 and 3 are the sons of the complainant and they were accused on bail in Complaint Case No. 96 of 2013 filed by Rakesh Kumar Jaiswal.

10. Even as the complaint petition together with all the documents have been served upon the complainant-O.P. No. 2, no one has appeared to oppose this application. There is no challenge to the documents enclosed with the petition which are the copy of the certified copies of the documents which formed part of the judicial records.

11. It is evident from the materials available on the record that in the FIR, the complainant-O.P. No. 2 claimed that he



was the tenant in the premises and on the alleged date of occurrence i.e. 14.11.2014, he was informed that someone is taking away the readymade garments worth Rs.40,000/- and sewing machines of Rs.15,000/- by cutting the roof of the shop. It was informed to him by the neighbour shopkeeper and thereafter the informant reached there and raised hulla but the accused persons forced the complainant to get away after giving him beatings. In the complaint petition, only two witnesses have been cited. They are Md. Naseem and Md. Firoj who are the sons of the complainant.

12. It is evident from the records that the complainant-O.P. No. 2 had been indulged in several litigations with the petitioners. The dispute was with respect to the shop which was under the tenancy of the complainant-O.P. No. 2. Annexure '10' to the present application is the copy of the order of the Sub-Divisional Officer passed on 24.11.2014 wherein it is clearly recorded that in presence of both the parties, the shop has been vacated. Earlier also, the complainant had made identical kind of allegations alleging that on 05.01.2013, the goods kept in his shop were taken away after breaking the lock of the shop. The case was investigated and was found false.



13. This Court, therefore, finds that the present case is in the nature of a malafide prosecution and the case would be covered under one of the illustrations provided in paragraph ‘102’ of the judgment of the Hon’ble Supreme Court in the case of **State of Haryana and Others versus Bhajan Lal and Others** reported in **1992 Supp (1) 335**.

14. This Court finds that the order taking cognizance and issuance of summons has been passed by the learned Magistrate in a routine and mechanical manner and without being satisfied with the kind of disputes.

15. The Impugned order dated 28.08.2015 is, therefore, not sustainable. It is set aside and the entire prosecution is quashed.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.09.2023
Transmission Date	22.09.2023

