

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48226 of 2019

Arising Out of PS. Case No.-3703 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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1. GURU ADHIN Son of Late Jagdish Varma Posted as Joint General Manager (Law), Housing and Urban Development Corporation Ltd. (HUDCO), Regional Office, 2nd Floor, Block-2, Maurya Lok Complex, Dak Bunglow Road, P.S.- Kotwali, District- Patna
 2. Thomas Antony T. @ Thomas T. Antony Son of Late T.M. Antony Posted as Regional Chief, Housing and Urban Development Corporation Ltd. (HUDCO), Regional Office, 2nd Floor, Block-2, Maurya Lok Complex, Dak Bunglow Road, P.S.- Kotwali, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Krishna Mohan Prasad, Advocate Son of Late R.N. Prasad Mohalla - Kajipur quarter, Road No. 3, Thana - Kadamkuan, District- Patna (Bihar)

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chhote Lal Mishra
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 21-08-2023 On 27.04.2023, a cheque was produced by the learned counsel for petitioners for the disputed amount but the same has not been accepted by the learned counsel for the O.P. No. 02 who has appeared in person and therefore the same has been handed over to the learned counsel for the petitioners today.

2. Heard learned counsel for the petitioners, learned APP for the State and the O.P. No. 02 who has appeared in person.



3. This application has been filed on behalf of the petitioners for quashing the order dated 18.03.2019 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3703 of 2016 (Tr. No. 4586 of 2016).

4. The prosecution story in short is that the O.P. No. 02 is a empanelled lawyer for the HUDCO, Patna and was appearing for conducting cases in Civil Court and High Court and when he demanded Rs. 9200 against his professional and expense bill, the opposite party No. 02 was abused by the petitioners and he was also removed from the panel of HUDCO.

5. Learned counsel for the petitioner submits that HUDCO is government institution and like any other portfolio entrusts cases to advocates and pays regular fees to them according to its circulars and the same procedure is followed for payment of the empanelled advocates.

6. Learned counsel for the petitioners submits that the petitioners are innocent and are honest and dedicated officers of HUDCO and they behave with the lawyers and others with full dignity and honour.

7. Learned counsel for the petitioners also submits that the petitioner No. 02 being the head of the Regional Office desired petitioner No. 01 to discuss a case with the complainant



and when petitioner No. 01 discussed the case with the O.P. No. 02 first misguided the petitioners and when he was asked to submit his written version then the complainant made allegations of extortion and bribery against the petitioners and because of this he was asked to return all the briefs after payment of all his earlier dues.

8. Learned counsel for the petitioners further submits that entire dues were paid to the O.P. No. 02 vide cheque No. 450822 and same was credited to his bank account on 16.09.2016 and the amount in question was also included in the amount mentioned in the aforesaid cheque.

9. It has also been submitted by the learned counsel for the petitioners that the O.P. No. 02 has a track record of filing false cases against Banks and Insurance Companies including their officials on the same pretext that his bills are not being paid.

10. The O.P. No. 02 has submitted that his statement made in the Complaint are true and offence has been committed by the petitioners and with regard to statement made in the paragraph 18 of the quashing application, this Court put a specific question to the O.P. No. 02 and on this the O.P. No. 02 has admitted that because of dispute over fees, he has filed



criminal cases against other institutions and its officials also.

11. I have considered the submissions of the parties and examined the documents available on record.

12. From the reading of the complaint and from reading of the quashing application, it appears that the main grievance of the O.P. No. 02 was with regard to dropping the name of the O.P. No. 02 from the panel of HUDCO and because of the same, this present case has been filed.

13. The Hon'ble Supreme Court in the case of ***Mahmood Ali Vs. State of U.P. and Others passed in Criminal Appeal No. 2341 of 2023*** in Paragraph 12 has held as follows:-

“At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to



read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged”.

14. In view of the aforesaid facts, I am of the opinion that it is mala fide prosecution initiated by the O.P. No. 02 against the petitioners who are officials of HUDCO and this kind of malicious prosecution should not be allowed to continue, hence, this application is allowed.

15. Accordingly, the order dated 18.03.2019 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3703 of 2016 (Tr. No. 4586 of 2016) and all the consequential proceedings arising out of aforesaid case is hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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