

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.5176 of 2019

Arising Out of PS. Case No.-1145 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Pallavi Prakash and Anr Brajesh Prakash Resident of -156 Prince Charles, Crescent/18-17, Singapore at present R/o128 A.G colony Shekhpura, P.S-Shastrinagar, Dist.-Patna
 2. Brajesh Prakash Lala Prakash Chandar Lal The State Of Bihar Through The Principal Secretary Bihar Excise And Prohibition Department Bihar, P
... .. Petitioner/s

Versus

1. The State Of Bihar and Anr Patna
2. Niraj Chandrayavi Sri Nawal Kishore Prasad Resident of 104, Prannaj Mension Park, Kadamkuan, P.S-Kadamkuan, Dist.-Patna
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Kumar
For the Opposite Party/s : Mr.Rajeev Shekhar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 12-04-2023 Heard learned counsel for the petitioners and learned

APP for the State. Learned counsel for the Opposite party No.

02 has not appeared today however he has appeared earlier in

this case.

This application has been filed on behalf of the
petitioners for quashing the order taking cognizance dated
2302.2018 passed by learned ACJM, VII in Complaint Case No.
1145 of 2017.

It has been submitted by the learned counsel for the
petitioner that the present case is a malicious prosecution and
the application has been filed only to harass the petitioners.



The dispute between the petitioners and the opposite party No. 02 has already been settled in an arbitration proceeding vide an arbitration award dated 29.03.2015. The Arbitration was conducted by Hon'ble Mr. Justice Ghanshyam Prasad who is a retired judge of this Hon'ble Court.

The Opposite Party No. 02 has challenged the award dated 29.03.2015 under Section 34 of the Arbitration and Conciliation Act which is pending vide Misc. Case No. 42 of 2017 in the Court of Additional District and Sessions Judge II, Patna.

It seems that the Opposite Party No. 02 has bent upon harassing the petitioners by filing the present case which is a false and fabricated case.

Considering the law laid down by the Supreme Court in the case of *State of Haryana Vs. Bhajanlal reported in 1992 SC 604*, this application is allowed.

Accordingly the order dated 23.02.2018 passed by learned ACJM VII Patna City in Complaint Case No. 1145 of 2017 is hereby quashed.

Before parting with the case, this Court is disturbed by the fact that an arbitration award dated 29.03.2015 has not been executed only because a petition under Section 34 of the



Arbitration and Conciliation Act is pending for disposal before the Additional District and Sessions Judge, II, Patna.

The Additional District and Sessions Judge, II, Patna, who is hearing the case (Misc. Case No. 42 of 2017) cannot keep the matter pending indefinitely and he is directed to hold day to day hearing in the matter and conclude the same within two months from communication/receipt of a copy of this order.

If either of the two parties does not cooperate in the Court in the disposal of the Misc. Case No. 42 of 2017 then the Court below will be at liberty to proceed against the non-cooperating party and decide the matter *ex parte*.

The Additional District and Sessions Judge, II, Patna will also send a status report of the case after two months.

(Sandeep Kumar, J)

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