

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1910 of 2018

Arising Out of PS. Case No.-95 Year-2018 Thana- SARAI District- Vaishali

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1. Vishwa Vijay Paul and Anr Son of Late Shivadhin Prasad, resident of H/No.- 39, Road No. 3, West Boring Canal Road, P.S.- S.K. Puri Distt.- Patna.
 2. Vishwa Prakash, Son of Sri Vishwa Vijay Paul, resident of H/No.- 39, Road No. 3, West Boring Canal Road, P.S. S.K. Puri, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal, Secretary Home, Old Secretariat, Bihar, Patna and Ors
2. Director General of Police Bihar, Patna.
3. Inspector General of Police, Muzaffarpur.
4. Deputy Inspector General of Police, Muzaffarpur.
5. Superintendent of Police, Hajipur at Vaishali.
6. Deputy Superintendent of Police, Hajipur Town, Hajipur at Vaishali.
7. Inspector of Police, Sarai Police Station, Hajipur.
8. Investigating Officer, Sarai Police Station, Hajipur.
9. Ashok Kumar Chaudhary S/O Late Ramchandra Chaudhary resident of Village- Fetehpur, P.S. Mahanagar, presently residing at Bag Dulhan, P.S.- Nagar Hajipur, Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan, Advocate

For the Respondent/s : Md. Harun Quereshi, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 25-06-2024 Heard learned counsel for the petitioners. None appears for the respondent no. 9. Earlier also, none has appeared for respondent no. 9, though one Vakalatnama on behalf of respondent no. 9 has been filed by Ms. Madhubala Verma.

2. The present writ petition has been preferred on behalf of the petitioners to quash the First Information Report



vide Sarai P.S.Case No. 95 of 2018 registered for offence under section 457, 380 and 34 of the Indian Penal Code as it amounts to an abuse of the process of law.

3. That prosecution case in brief is that the complainant alleged that he is a registered dealer of chemical fertilizer seeds and pesticides and had taken on rent 2 godowns situated West Cabin Rake point near Sarai Railway Station from Vish Vijay Paul from September, 2012 for Rs. 43200/- per month. The goods of the complainant used to come from Railways and the complainant used to keep these goods in the said godown and sold the goods in retail from the godown. After some years, the owner of the godown Vish Vijay Paul started putting pressure for enhancing the rent or otherwise to vacate the godown. In the mean time, when the complainant reached the godown on 4.5.2018, he noticed that the locks of both the godowns was broken and some other lock was put on the ledge. The complainant learnt from neighbours that for the last 2 to 3 days, the accused persons by engaging large number of labourers had removed the goods in 20 to 25 trucks from the godown and had taken it to somewhere. The accused persons removed the goods as the complainant was not enhancing rent. The accused persons had obtained an ex-parte judgment and



therefore, nothing is going to happen to them. On 5.5.2018, the complainant came to know that Vish Vijay Paul had instituted an eviction suit no. 03/2015 for vacating the godown and obtained an ex-parte judgment in eviction suit no.3 of 2015, which the complainant had no idea. Thus, the accused persons had committed theft when they removed chemical fertilizer seeds, pesticide without the consent of the complainant. The complainant went to lodge a case at Sarai police station on 6.5.2018 and filed a written application for recovery of goods which were stolen but the police station in collusion with the accused did not lodge the case. The complainant, thereafter, sent the said application through registered post to S.P., Vaishali but no action has been taken till date. Thus, the complainant was filing the complaint alongwith affidavit of written report which was sent to S.P. and concerned police station.

4. Learned counsel for the petitioners further submits that the petitioner no.1 is the owner of the said godown whereas petitioner no.2 is his son. It is admitted fact that petitioner no.1 has let out 2 godowns by making it one unit to the complainant for storage of fertilizer for eleven months commencing from 15th September, 2012 on a monthly rental of Rs.43,200/- per month.

5. It is alleged that since the inception, the



complainant defaulted in payment of rent and evaded to make payment of rent on one pretext or another. The accused no.1, therefore, sent legal notice dated 20.5.2015 to the complainant to pay arrear of rent to vacate the suit premises within a month but the complainant chose not to reply to the said notice. The petitioner no.1 did not renew the lease rent agreement. Thus, on 13.8.2015 eviction suit no.3 of 2015 was filed by the petitioner no.1 in the court of Sub-Judge on the ground of expiry of lease as well as for default in payment of rent for more than 2 months. The accused persons also paid advalorem Court fee over Rs.15,12,000/- which was the arrear of rent claimed for 35 months @ Rs.43,200/- per month. The said eviction suit was registered as eviction suit no.3 of 2015.

6. Learned counsel further submits that the court of Sub- Judge vide judgment and order dated 2.12.2016 passed in eviction suit no.3 of 2015 decreed the suit and held that the defendant is directed to hand over possession of the suit premises within 2 month and is liable to pay Rs.5,18,400 as 12 months arrear of rent and Rs.15,12,000/- as arrear of 35 months rent @ Rs.43,200/- totaling Rs.20,30,400/- on the date of suit till the date of vacating the suit premises. If the defendant complainant failed to comply with the above direction, the



plaintiff accused is entitled to get delivery of possession through the process of court.

7. The decree was executed on 20.01.2018. Thereafter, the petitioners filed an application for recovery of the arrears of rent and thereafter the present FIR has been filed on 19.05.2018 making the allegations as mentioned above.

8. Learned State counsel has submitted that the facts are admitted and it is an admitted fact that the petitioners are the landlords and respondent no. 9 is the tenant.

9. I have considered the submissions of the parties. It is not in dispute that the petitioners are landlords and respondent no. 9 is the tenant, who has been evicted and after his eviction, he has filed this false FIR to wreck vengeance upon the landlord. This is a *mala fide* prosecution and the same should not be allowed to continue.

10. The FIR vide Sarai P.S. Case No. 95 of 2018 and all further proceedings consequential to the lodging of the FIR are quashed.

11. Accordingly, this application stands allowed.

(Sandeep Kumar, J)

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