

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38191 of 2015

Arising Out of PS. Case No.-29172 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Sanjay Kumar son of Sri Yogendra Singh, resident of Mohalla- Ashram Gali,
North Sheikhpura, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dinkar Mishra, son of Late Vishundeo Mishra, resident of Flat No.-11, Arya
Apartment, Road No.-10, Patel Nagar, P.S.- Shastri Nagar, District- Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Manish Kumar No 13, Adv.
For the State.	:	Mr.Abhay Kr.Roy, APP
For the O.P. No.2	:	Mr. Prashant Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

18 21-10-2024 Heard Mr. Manish Kumar No.13, learned counsel for
the petitioner, Mr. Abhay Kr. Roy, learned APP for the State and
Mr. Prashant Sinha, learned counsel for the O.P. No.2.

2. The instant Cr. Misc. petition has been filed for
quashing the order dated 02.05.2015 passed in Complaint Case
No. 29172/ 2014 by the then learned Judicial Magistrate, 1st
class, Patna whereby and whereunder a prima facie case under
section(s) 323, 417, 379 and 504 of the Indian Penal Code has
been found to be made out against the petitioner.

3. Learned counsel for the petitioner submits that the
complainant (O.P. No.2) filed the Complaint Case No. 29172/
2014 in the court of learned Chief Judicial Magistrate, Patna



alleging therein that he and his wife had purchased a piece of land of total area 5760 square feet near RPS More, Danapur, Patna in the year 1996 and 2004 through three separate registered sale deeds, which was subsequently handed over to the petitioner for development work by registered agreement dated 12.06.2009. As per the agreement, the petitioner had to construct an apartment over the land of O.P. No.2 within two years and the grace period was three months from the day of approval of the sanction from P.M.C or P.R.D.A. Learned counsel further submits that as per allegation, the construction work could not be completed within the prescribed time limit which gave rise to a dispute in between both the parties and thereafter the petitioner is alleged to have handed over three cheques in favour of O.P. No.2 which were dishonoured. It is further submitted that as per the complaint, the petitioner and the O.P. No.2 mutually agreed that the petitioner would pay Rs. 13,000/- per month as rent to the complainant and the same was initially paid but was stopped later on and thereafter on 07.10.2014 the complainant and his witnesses went to the office of the petitioner but the petitioner was not found at his office and then the O.P. No.2 went to Registry Office, Patna and near parking space of Registry office hot talk started in between



them resulting in abuse and assault of the complainant (O.P. No.2) by the petitioner and in that course, the wife of O.P. No.2 was also assaulted when she tried to save her husband and a gold chain of the wife of O.P. No.2 was also snatched by the petitioner. Learned counsel further submits that it is clearly evident that in between the petitioner and the O.P. No.2, there was a civil dispute and the same was the genesis of the occurrence and the O.P. No.2 filed the complaint case against the petitioner with an intention to harass and pressurize him so that the civil dispute running in between them could be resolved in favour of the O.P. No.2.

4. On the other hand, learned counsel for the O.P. No.2 has submitted that there is sufficient material to proceed with the alleged offences against the petitioner and it would not be proper to exonerate the petitioner from the criminal proceedings without subjecting him to trial at the initial stage as regarding the commission of the alleged offences proper conclusion can be made by the trial court after taking the evidence of the prosecution.

5. I have heard both the parties and perused the relevant materials and given my thoughtful consideration to the above submissions.



6. The main ground taken by the petitioner to invoke the inherent powers of this court is that the facts as well as allegations made in the complaint filed by the O.P. No.2 only disclose a civil wrong for which civil remedy is available to the O.P. No.2 but he has set the criminal law in motion by filing the complaint with an intention to create pressure upon the petitioner so that the alleged civil wrong can be settled in his favour. After perusing the complaint as well as having taken into account the statements of the inquiry witnesses, I find force in the above ground and it appears that there was a dispute with regard to non-completion of development work by the petitioner on the land of O.P. No.2 at the time of filing of the complaint and the same appears to be the genesis of the occurrence and in the course of the dispute, some cheques were issued by the petitioner in favour of O.P. No.2, which were allegedly dishonoured and thereafter, a rent agreement was also made by both the parties which was also not complied by the petitioner and only thereafter, the complaint in respect of the offences was filed. This court is of the view that the O.P. No.2 initiated the criminal proceeding by filing complaint against the petitioner with an ulterior motive for wrecking vengeance from the petitioner and an attempt has been made to give a cloak of



criminal offence to the civil wrong allegedly committed by the petitioner with the O.P. No.2. The learned trial court has taken cognizance of the offences in mechanical manner without applying its judicial mind and if the petitioner is subjected to the trial for the alleged offences then it will be completely an abuse of the process of the court.

7. Accordingly, I find force in the present petition, so, the impugned order dated 02.05.2015 passed in Complaint Case No. 29172/ 2014 by the then learned Judicial Magistrate, 1st class, Patna as well as subsequent criminal proceeding having arisen in the light of the impugned order before the trial court stands quashed against the petitioner. In the result, the instant petition is hereby allowed.

(Shailendra Singh, J)

BKS/-

U		T	
---	--	---	--

AFR

