

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50787 of 2018

Arising Out of PS. Case No.-103 Year-2016 Thana- RAJIVNAGAR District- Patna

Kapoor Chand Prasad S/o Gorakh Nath Prasad, R/o Vill.- Singahi, P.O.- Hussainganj, P.S.- Aandar, District- Siwan, at present residing in Quarter No. 31/48, C.I.D. Colony, Lal Bahadur Shastri Nagar, Patna, P.O. P.S.- Shastri Nagar, Patna, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sanjay Kumar S/o Ram Sewak Prasad, R/o Mohalla- Dhelwa Bagicha, P.O.- Dhelwa, P.S.- Ram Krishna Nagar, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bibhakar Tiwary, Adv.

For the Opposite Party/s : Mr. Upendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 08-05-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. The petitioner is a constable of Police. On the basis of a written complaint submitted by the opposite party no. 2, Rajiv Nagar P.S. Case No. 103 of 2016, dated 15th May, 2016 was registered against the petitioner under Sections 341/323/448/379/504/506/34 of the I.P.C.

3. It is ascertained from the written complaint submitted by the opposite party no. 2 before the S.H.O. Rajiv Nagar Police Station that the informant/opposite party no. 2 was running a business of Boarding House under the name and style of Patliputra



Guest House in a tenanted premises on the basis of an agreement for tenancy, executed by and between the wife of the petitioner and the opposite party no. 2. It was alleged by the informant that at the time of execution of the agreement for tenancy, the wife of the petitioner agreed to deliver vacant and ready possession in favour of opposite party no. 2 of 9 rooms and 1 dormitory, but the land lady failed to deliver possession of the said 9 rooms and 1 dormitory. There was a growing dispute between the parties regarding using of electricity in the said premises. On 11th May, 2016 the petitioner allegedly manhandled the Manager of the said Guest House namely Indrajit Kumar and abused him in filthy language. On 15th May, 2016 at about 1:00 P.M. the petitioner, one Umesh Kumar and 5 unknown persons armed with deadly weapons trespassed into the tenanted Guest House of the petitioner and took away the tenancy agreement, other valuable documents and sum of Rs. 2500/- from the front counter of the said Guest House. Moreover, they damaged the Signboard and Banner of the Guest house.

4. It is submitted by the learned Advocate for the petitioner that the petitioner is a Police Constable attached to Bomb Squad at Patna. On 15th May, 2016 at about 1:00 P.M. he was performing his duty in his office. After the aforesaid criminal



case being registered against him, a departmental enquiry was conducted in order to ascertain whereabouts the petitioner on 15th May, 2016 at about 1:00 P.M. and the higher officials of the Police Department found that the petitioner was on duty on the date and time of the alleged occurrence. Therefore, the story regarding presence of the petitioner on the spot on 15th May, 2016 is absolutely incorrect and concocted. Secondly, it is submitted by the learned Advocate for the petitioner that a tenancy agreement was executed by the wife of the petitioner with the opposite party no. 2, wherein it was agreed upon that the opposite party no. 2 would pay a sum of Rs. 3,50,000/- (three lakhs fifty thousand) towards advance payment and a sum of Rs. 45,000/- (Forty five thousand) towards monthly rent of the said Guest House, but the opposite party no. 2 did not pay the advance money to the wife of the petitioner. Due to such reason the wife of the petitioner made an application before the jurisdictional Sub-Registrar and the original agreement of tenancy was handed over by the Sub-Registrar, Danapur to her. Subsequently, the opposite party no. 2 filed a suit against the wife of the petitioner for possession and other incidental relief and in the said suit the application for injunction filed by the opposite party no. 2 was rejected.



5. At this stage, this Court is concern about petitioner’s alleged involvement in the incident dated 15th May, 2016. From the departmental enquiry, it is clear that on 15th May, 2016 at about 1:00 P.M. he was performing his duty in the Bomb Squad Police Department at Patna. Therefore, his presence on the place of occurrence is proved to have been false and on the basis of a false complaint Rajiv Nagar P.S. Case No. 103 of 2016, dated 15th May, 2016 was instituted against the petitioner.

6. For the reasons stated above, the above mentioned Police case and the consequence criminal case cannot continue against the petitioner. The complaint lodged against the petitioner is absolutely absurd on the face of the record.

7. Therefore, the application under Section 482 of the Cr.P.C. is allowed. The order of taking cognizance against the petitioner vide order dated 19th August, 2017/24th February, 2018, passed by the learned Additional Chief Judicial Magistrate-III, Patna is set aside and quashed.

8. The instant Cr. Misc. Case is accordingly allowed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

