

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.9571 of 2024

Arising Out of PS. Case No.-3016 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

Om Prakash Sharma @ Om Prakash Son of Ramdhyan Sharma Resident of
A-131 AG colony, main road, P.S.-Shastri Nagar, Distt.-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
 2. Rekha Devi Wife of Pradeep Gupta Resident of Phulwari Chunauti Kuan,
P.S.-Phulwarisharif, Distt.-Patna
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate
: Mr. Binod Kumar Singh, Advocate
For the Opposite Party/s : Mr. Yogendra Kumar, APP
For the O.P. No. 2 : Mr. Prem Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

C.A.V. JUDGMENT

Date : 02-02-2026

Heard learned counsel for the petitioner, learned
counsel appearing on behalf of the State and learned counsel for
the Opposite Party No. 2/complainant.

2. The present application has been filed under
Section 482 of the Code of Criminal Procedure for quashing the
order dated 09.02.2018, passed by the learned Judicial
Magistrate, 1st Class, Patna, whereby cognizance has been
taken for the offence punishable under Section 379 of the Indian
Penal Code, 1860, against the petitioner in Complaint Case No.
3016(C) of 2017, instituted by Opposite Party No. 2, namely
Rekha Kumari.

3. Notice was issued to Opposite Party No.
2/complainant, which was duly served and she has appeared



before this Court.

4. The case of the Opposite Party No. 2, in brief, is that in the year 2015 she had taken a shop situated at A.G. Colony, Patna, on rent from the petitioner after allegedly paying a sum of Rs. 1.5 lakhs on two different dates and advance rent of Rs. 24,000/-. It is alleged that after carrying out false ceiling and rack work and keeping garments worth about Rs. 10 lakhs in the said shop, a dispute arose between the parties, whereafter both the parties put their own locks on the shop. It is further alleged that the petitioner subsequently broke open the lock and committed theft of the articles kept therein. On the alleged inaction of the police, the present complaint was filed on 07.08.2017 before the Chief Judicial Magistrate, Patna.

5. Learned counsel for the petitioner submits that the entire complaint case is false, concocted and an abuse of the process of law. It is submitted that the complainant herself has stated in the complaint petition that the police did not register her case, whereas Shastri Nagar P.S. Case No. 355 of 2015 had already been registered on the basis of information given by the Opposite Party No. 2 for the same set of facts and cause of action.

6. It is further submitted that in the aforesaid police



case, the petitioner had filed a discharge application under Section 239 Cr.P.C. which was rejected vide order dated 17.03.2018 by the learned Judicial Magistrate, 1st Class, Patna. The said order was challenged before this Court in Cr. Misc. No. 28532 of 2018, and this Court, vide order dated 04.05.2023, allowed the application and quashed the proceedings. Despite the same, the complainant has again initiated the present complaint case on identical facts, which is impermissible in law.

7. Learned counsel for the petitioner further submits that the dispute between the parties is purely civil in nature, arising out of a landlord-tenant relationship. The petitioner is the undisputed owner of the shop and the criminal colour has been deliberately given to the dispute only to harass the petitioner. It is further contended that the complaint petition does not disclose any material to *prima-facie* constitute the offence of theft under Section 379 IPC.

8. Learned counsel appearing on behalf of the Opposite Party No. 2 as well as learned APP for the State have opposed the present application and supported the impugned order.

9. Learned counsel for the complainant submitted that the petitioner, without any prior information or consent of the



complainant, unlawfully removed the articles kept in the shop and thereby committed theft, for which the present complaint case has been instituted.

10. Having heard the submissions advanced by the parties and upon careful perusal of the materials available on record, it emerges that the allegations levelled in the present complaint case are founded on the very same cause of action and identical set of facts which had earlier culminated in registration of an FIR and subsequent criminal proceedings. It further appears that the earlier proceedings, arising out of the same allegations, have already been set aside by this Court. The institution of the present complaint, therefore, amounts to a second prosecution on the same facts, which is impermissible in law.

11. Having considered the submissions advanced by the parties and on perusal of the materials on record, it is manifest that for the same cause of action and identical allegations, an FIR had already been lodged earlier, which ultimately stood quashed by a coordinate Bench of this Court. The present complaint case is nothing but a second attempt to re-agitate the same allegations, which is clearly barred in criminal jurisprudence.



12. Though, *Section 300 of the Code of Criminal Procedure, 1973*, in its strict sense, applies to cases of prior conviction or acquittal, the principle underlying the said provision, namely that no person should be vexed twice for the same offence on the same set of facts, is a well-recognised facet of criminal jurisprudence. Once criminal proceedings arising out of identical allegations have already been set aside by this Court, permitting the complainant to initiate a fresh complaint on the very same cause of action would defeat the object of Section 300 CrPC. and would amount to a clear abuse of the process of law

13. The Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335*, has categorically held that criminal proceedings can be quashed where the allegations do not disclose the commission of any offence or where the proceedings are manifestly attended with mala fide intention and instituted maliciously with an ulterior motive for wreaking vengeance on the accused.

14. In the present case, initiation of a second criminal proceeding on the same facts, after failure in earlier proceedings, clearly falls within the categories laid down in **Bhajan Lal (supra)**. Allowing such prosecution to continue



would amount to abuse of the process of the Court and result in harassment of the petitioner.

15. It is a settled principle of law that for the same set of facts and cause of action, a person cannot be subjected to repeated criminal prosecution, particularly when the earlier proceedings have already been adjudicated upon by a competent court.

16. In view of the aforesaid facts and settled legal position, this Court is of the considered opinion that the impugned order taking cognizance cannot be sustained in the eyes of law.

17. Accordingly, the present application is allowed. The order dated 09.02.2018, passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 3016(C) of 2017, and the entire criminal proceeding arising there from, is hereby quashed.

(Rudra Prakash Mishra, J)

Alok Verma/-

AFR/NAFR	NAFR
CAV DATE	16.01.2026
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