

**IN THE HIGH COURT OF JUDICATURE AT
PATNA**

Criminal Writ Jurisdiction Case No.203 of 2014

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Ram Ekwah Sah, Son of Late Mahendra Sah, Proprietor M/S
Sri Om Sales, resident of Bihari Sao Lane, Opposite
Kaamdhenu Hotel, P.S. Pirbahore, District- Patna-800004.

.... Petitioner.

Versus

1. The State of Bihar.
2. Officer-in-Charge, Pirbahore, Police Station, Patna.
3. M/S Balajee Plastic its Proprietor Abha Patel, Son of Late
Raghunandan Singh, resident of Adarsh Colony,
Machharhatta Gali, Near Sankat Mochan Mandir, P.S.
Khajekalan, Patna City, District- Patna.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Binod Kumar Mishra,
Advocate.

For the Respondents : Mr. Vinay Kirti Singh(Ga-3)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 03-07-2015

This writ petition has been filed for
quashing the First Information Report of Pirbahore
P.S. Case No. 432 of 2013 (arising out of Complaint
Case No. 3079-C of 2013) registered under
Sections 406 and 420 of the Indian Penal Code.

2. The F.I.R. has been lodged on the
basis of Complaint bearing Complaint Case no.
3079-C of 2013 which was sent for registration of
F.I.R. under Section 156 (3) of Cr.P.C. and
subsequently Pirbahore P.S. Case No. 432 of 2013

was registered.

3. The prosecution case as alleged by complainant Shri Abhay Kumar, son of Late Raghunandan Pd. Singh, resident of Mohalla-Adarsh Colony, Machharhatta Jeriyatamolin Ki Gali, P.S. Khajekalan, Patna City, that he business of manufacturing of Plastic Bottle. He used to purchase Preform from the accused persons. Accused No. 1 is Proprietorship Firm M/S. Sri Om Sales having its office at Bihari Saw Lane, Opposite Kamdhenu Hotel. Perform is a raw material which is being used in manufacturing of plastic bottle. Accused no. 2 proprietor of M/S Om Sales. It is alleged that on the promise and representation of accused no. 2 to immediately supply the raw material (Preform), the complainant on 29.10.2012 transferred Rs. 4,00,000/- (Four lakh) from his account maintained in Bank of India, Patna City Branch to the account of accused no. 1 bearing account no. 44082011000103 in Bank of India, Muradpur Chauhatta Branch, Patna. After receipt

of the said huge amount, accused no. 2 assured the complainant to supply the Preform within ten days, but his dishonest intention from the very beginning was to cheat the complainant causing wrongful loss to the complainant. Accused no. 1 and 2 did not supply the Preform for illegal gain and profit. Further case is that complainant took steps for establishing his own manufacturing plant of Preform for which accused no. 2 was not happy as he never wanted to loose a big customer as such he was always interested that the complainant may not start his manufacturing unit of Preform. Further case is that when the complainant did not get the raw materials he started his own production and the complainant requested the accused no. 2 for return of his money. Accused no. 2, though, initially assured to return the amount, but subsequently evaded and when the complainant made repeated request for refund of the amount then he asked the complainant to come to his house i.e. the house of accused no. 2 on



04.09.2013. The complainant along with witnesses went to the house of accused no. 2 for refund of the money then instead of refunding the same accused no. 2 with the help of his staff started assaulting the complainant and the witnesses with slaps and fists and abusing complainant and witnesses and also refused to return his amount.

4. The learned counsel for the petitioner submits that petitioner was a supplier of Pet Perform the raw material for the manufacturing of the plastic bottle. There is long standing business deal between the petitioner and the complainant. It is alleged that in an agreement to supply the raw material 'Perform' for manufacturing of plastic bottle, the complainant assured the payment for the supply of the raw material within four months of the supply and for assurance of the payment gave a post dated cheque of Rs.25,00,000/-. The said cheque of Rs. 25,00,000/- was presented for an encashment as per the agreement after supply of raw material which was received by the staff of

the complainant with their signature. However the cheque bounced with a report of insufficient fund. The petitioner gave legal notice and thereafter, a complaint filed bearing Complaint Case no. 1563 C of 2013 and after due enquiry, cognizance was taken under Section 406 of Indian Penal Code and Section 138 of the N.I. Act. Again the complainant issued another cheque of Rs. 20,00,000/- which again bounced in which cognizance was taken and it is alleged that complainant filed this complaint on 02.09.2013 after filing the complaint by this petitioner in retaliation. It is further submitted that complaint filed by this petitioner is dated 07.05.2013 whereas this present complaint which is in issue has been filed by the complainant against this petitioner with malafide intention on 02.10.2013 after lodging the complaint by this petitioner. Hence it is submitted that this complaint has been filed with malafide intention and it is further submitted that transaction between both the parties was going on for supply of raw ,material

'Pet Perform', so parties are having business transaction and matter concerned with breach of contract which is a civil dispute and hence the complaint be quashed on the ground that matter concern with civil dispute.

5. Learned counsel for the complainant however filed a counter affidavit and submits that a complaint has been filed which was sent for lodging F.I.R. and consequently investigation started and it is stated that allegation made against the petitioner for embezzlement of Rs. 4,00,000/- (Four lakh) and it is alleged that money was given for supply of raw materials, but neither materials were supplied nor money was refunded and accused persons called the complainant through mobile for taking money but instead of payment of money, the petitioner and other accused persons abused and assaulted the complainant with refusal to refund the same. Hence it is contended that as such investigation is going on and it is not proper to quash the F.I.R.

6. However taking into respective submissions and case of the parties, it is apparent that as per allegation in the complainant the complainant is proprietor of M/S Sri Bala Jee Plastic which is a manufacturer of plastic bottle and the accused persons M/S Sri Om Sales the proprietor firm who are engaged in business of selling "Pet Perform" the raw material for plastic bottle and there was an agreement between two firms for supply of raw materials for manufacturing plastic bottle and allegation is that money was paid for supply of raw material hence, it is not dispute firm of the accused person is not a firm for supply of raw material and if I go to this fact, it is apparent that it is a case of contract between two parties, parties are manufacturing firm of plastic bottle and other is supply of raw material for manufacturing of plastic bottle. Hence the allegation is that Rs.4,00,000/- was paid to supply the raw material but the same was not supply but the fact remains that both are firms as manufacturing unit and



supplier and since the petitioner was a supplier firm and used to supply and hence non-supply even for a transaction will not make, a case of deception but can only be a case of breach of contract a civil dispute between the parties for which criminal prosecution is not maintainable. So far the allegation that the complainant was called to collect the money and when he reached to receive the money then complainant abused and assaulted is apparently appears to be patently absurd and inherently improper. Moreover (annexure-C) the complaint filed by M/S Sri Om Sales bearing Complaint Case No. 1563 (C) of 2013 on 07.05.2013 and the accused persons has not been controverted deception in his counter affidavit and this is a document of unquestionable character. Further the fact that a cheque was issued by the complainant of Rs, 20,00,000/- (twenty lakhs) (photo copy of which attached) with this petition bearing annexure-6 and is a document of undisputed question.

7. It is true that for considering the quashing the F.I.R., the defence of the accused should not be considered. However, going into the allegation, it is apparent that both parties are proprietorship firms, one is manufacturer and other is supplier of raw material for manufacturing of plastic bottle and both are engaged in contract and there is agreement between the parties which as per allegation has been breached then normally it is a breach of contract. Moreover, in view of stand taken that prior to the instant case a complaint case was filed by the petitioner with regard to bouncing the cheque issued by the complainant and if goes to that complaint then this present case has been filed after filing of that complaint for bouncing of cheque of Rs. 20,00,000/-(twenty lakhs) and the allegation of the complainant that he paid Rs.4,00,000/- (four lakh) for supply of raw material, but supply has not been made and if goes to that document of the complaint and photo copy of cheque annexed in the complaint then it is



apparent that acquisition made in the complaint cannot said on the face of the document. The complaint filed by the petitioner bearing Complaint Case No. 1563 (C) of 2013 on 07.05.2013 and photo copy of cheque attached which was bounced then acquisition in the complaint cannot be stand on the face of the document which appears to be suspicion or doubt then it will be transversity of the justice if the accused who is petitioner is relegated of trial placed his defence before the trial hence it appears that the present complaint is in retaliation of the complaint filed by the petitioner bearing Complaint Case No. 1563 (C) of 2013. Moreover, it appears that both parties are in business transaction as well as going into the complaint, it is a civil dispute between the parties for breach of contract, but criminal writ has been filed. Hence in pursuance of civil dispute between the parties and civil litigation has brought giving colour of criminal offence.

8. Hence taking into consideration, the

allegation does not make out an offence as it appears outright of civil dispute between the two parties. Further allegation appears to be malafide and subsequent part of allegation of assault and abuse by calling the complainant at Bihari Saw Lane is apparently appears to be inherently improper and manifestly absurd. Hence allowing the allegation is abuse of process of law. **Accordingly, the F.I.R. is hereby ordered to be quashed and petition is allowed.**

m.p.

(Gopal Prasad, J)

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