

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 17675 of 2013

Arising Out of Complaint Case No. -1754 C Year- 2011 Thana -PATNA COMPLAINT CASE
District- PATNA

- =====
1. Ashok Kumar Singh (Manager Unique Surigical Pvt. Ltd.) Son of Late Bhola Nath Singh Resident of Building No. 2C/159, GD Mishra Path, New Patliputra Colony, P.S.- Patliputra, District- Patna.
 2. Pramod Kumar, Son of Shri Rajendra Prasad Resident of Building No. 2C/159, GD Mishra Path, New Patliputra Colony, P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Dr. Ashok Prasad Son of Late Hari Garia R/O- 501 Shiv Ganga Bihar Ambedkar Path, Bailey Road, Patna- 800014, at Present Director of Patliputra Divine Hospital, Munna Chak, P.S.- Patrakar Nagar, District- Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL ORDER

4 02-07-2015 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for the opposite party no. 2 (complainant).

Despite upon notice being issued to opposite party no. 2 (complainant) and learned counsel having entered appearance and his name also appearing in the cause list, nobody is present when the case is called out. On the last occasion on 25.06.2015 also when the case was called out, learned counsel for the opposite party no. 2 was not present and by way of last indulgence, the matter was adjourned. In view of the fact that today also learned counsel for the opposite party no. 2 is not present, the case has been taken up and

heard.

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the entire complaint case as well as the order taking cognizance dated 27.09.2011 passed by the Judicial Magistrate, Ist Class, Patna by which cognizance has been taken against the petitioners under Section 406 of the Indian Penal Code.

The petitioners are accused of having supplied machinery with regard to examination of blood to the complainant which later on turned out to be defective and despite a complaint being made for rectification the same was not done.

Learned counsel for the petitioners submits that they are authorized dealer for the supply of the machine and the machine supplied by the petitioners was working and with regard to the same the complainant had also given clean chit as the document shows that the machine on the date of installation was properly working. Learned counsel further submits that the complaint is also time barred in the sense that the normal period of warranty of the machine had lapsed and he will have to go through the normal procedure and also pay the charges. It is submitted that with ulterior motive the complaint has been filed and further the submission is that even today the machine is working.

Learned A.P.P. submits that the complainant

has made the allegation that despite the petitioners having been informed of the defect, the same has not been rectified.

This Court finds substance in the submission of learned counsel for the petitioners. The matter being purely of a commercial transaction and there being a remedy under the Consumer Protection Act, the same not having been availed of and further admittedly from the complaint itself it is obvious that the complainant had waited for quite sometime on the ostensible assurance given by the petitioners that the defect would be rectified and no action being taken again if at all there remained any defect in the machinery, does not inspire confidence in the complaint. Further, neither anybody has appeared on behalf of the complainant nor any counter affidavit been filed on his behalf and thus the averments made in the application also stand unrebutted indicating that the opposite party no. 2 does not desire to contest the matter.

In view of the aforesaid, the application stands allowed. The order dated 27.09.2011 passed in Complaint Case No. 1754C of 2011 by the Judicial Magistrate, Ist Class, Patna taking cognizance under Section 406 of the Indian Penal Code against the petitioners is quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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