

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29281 of 2013

Arising Out of PS.Case No. -598 Year- 2011 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

- =====
1. Laxmi Kant Agarwal, S/o Late Bishamber Lal Agarwal, R/O 15-2-449-7, Kishanganj, P.S.- Afzal Gunj, Hyderabad-500012, Andhra Pradesh
 2. Sandeep Agarwal, S/o Laxmi Kant Agarwal, R/O 15-2-449/7, Kishanganj, P.S.- Afzal Gunj, Hyderabad-500012, Andhra Pradesh
 3. Ramcharan Oil Industries, through its partner Sandeep Agarwal, R/o 15-2-449/7, Kishanganj, P.S.- Afzal Gunj, Hyderabad-500012, Andhra Pradesh
 4. Ramesh H Shah, S/o Late Hirji Shah, C/o Ramesh Marketing, 2-1, First Floor, Raghav Ratna Towers, Opposite Medwin Hospital, Chirag Ali Lane, P.S.- Abids, Hyderabad-500001, Andhra Pradesh

.... Petitioners

Versus

1. The State of Bihar
2. Sanjay Kumar Gupta, S/o Baidnath Prasad Gupta, Proprietor M/S Bajrang Traders, Arya Samaj Road, P.S.- Town, District- Samastipur, Bihar
3. Raj Enterprise through Sri Vimal, Highway, APMC Circle, Patna Road, Unjha-384170, Gujarat

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 02-09-2015

Heard learned counsel for the petitioner, State and opposite party no.2.

The petitioners seek quashing of the order dated 24.08.2011, passed by the Judicial Magistrate, 1st Class, Samastipur in Complaint case no. 598 of 2011, whereby the learned Magistrate was pleased to take cognizance of the offences under Sections 406, 420 and 120B of the Indian Penal Code against the petitioners.

As per the prosecution case, the petitioners accepted a sum

of Rs. 35 lakh from opposite party no.2 for supply of 500 Metric tons of caster cake. The allegation in complaint is that only 241 Metric tons of caster cake amounting to Rs. 17 lakh and odd was supplied. Thereafter Rs. 6 lakhs and odd was further refunded.

As per the complainant, a sum of Rs. 7 lakhs still remains with the petitioners.

Counsel for the petitioners submits that the complainant has already filed Money Suit for recovery of the aforesaid amount. He relied upon a judgment in case of S.W. Palanitkar & Others Vs. The State of Bihar & Another, reported in (2002) 1 SCC 241 and submits that presence of mens rea is necessary for an offence under Sections 405 and 406 of the Indian Penal Code. Learned counsel submits that it is not a case where there were no supply of the materials. Furthermore, besides supply of goods, a sum of Rs. 6 lakh and odd was also refunded to the complainant. He submits that that in case, if the petitioners had mens rea, they would not have returned a sum of Rs. 6 lakh and odd.

So far as offence under Section 406 of the Indian Penal Code is concerned, I find substance in the submission of the learned counsel appearing for the petitioners and as such cognizance of offence, so far as under Section 406 of the Indian Penal Code is concerned, is set aside. However, I find that there is prima facie

material for proceeding under Section 420 of the Indian Penal Code.

In the result, this application is allowed only to the extent mentioned above.

So far as interlocutory applications are concerned, it will be open for the petitioners/complainant to pursue the same before the appropriate authority.

(Samarendra Pratap Singh, J.)

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