

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

**Criminal Miscellaneous No.31683 of 2013**

Arising Out of PS.Case No. -2253 Year- 2010 Thana -MUZFFARPUR COMPLAINT CASE District-  
MUZAFFARPUR

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Rajan Kumar Son of Late Kamta Prasad Verma, Resident of 147 Ashok Nagar  
P.S. Angoa, Distt Ranchi, Jharkhand.

.... .... Petitioner

Versus

1. State of Bihar.
2. Dr. Vishnu Kumar Agarwal, Son of Shir Umesh Agarwal, M/s Kisan Engineering Company, resident of Kalambagh Road, Ramna, P.S. Kaji Mohammadpur, Distirct Muzaffarpur.

.... .... Opposite Parties

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**Appearance:**

For the Petitioner : Mr. N.K.Agrawal, Sr. Advocate

Mr. Anish Kumar, Advocate

For the OP No. 2 : Mr. Manoji Kumar Manoj, Advocate

For the State : Mr. J. Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 06-12-2016**

Heard learned senior counsel for the petitioner, learned  
counsel for the OP No. 2 and learned APP for the State.

2. The present petition has been filed for quashing the order  
dated 25.04.2011 by which the learned Judicial Magistrate Ist Class,  
Muzaffarpur has taken cognizance and directed issuance of processes  
in Complaint Case No. 2253 of 2010 for the alleged offences under  
Sections 406, 420, 323, 504 and 34 of the Indian Penal Code.

3. According to the prosecution case, the complainant runs  
his business styled M/s Kisan Engineering Company dealing in supply  
of shuttering and scaffolding materials. The accused persons including



the petitioner introduced themselves as the employees of M/s S.D.E. and Shrinet & Shandilya Construction Pvt. Ltd., Delhi and placed orders for supply of materials which were supplied by the complainant on the assurance that payment for the goods would be made within 30 days from the date of supply of goods. However, only part payment was made and an amount of Rs. 13,61,190/- remains outstanding despite legal notice having been served. It is further alleged that accused persons Nishit Kumar and Atul Kumar took away Rs. 10,000/- and a wristwatch respectively.

4. Learned senior counsel, Mr. N.K. Agrawal appearing on behalf of the petitioner submits that the criminal proceeding against the petitioner who was the Project Manager of M/s S.D.E. and Shrinet & Shandilya Construction Pvt. Ltd., is wholly unsustainable. The criminal case has been instituted with oblique motive and to pressurize the petitioner in respect of a transaction which in essence constitutes a contractual dispute in the ordinary course of business without any criminal ramification whatsoever. Even according to the complainant, he is aggrieved only by reason of non-payment of the alleged dues for supply of materials and by the non-furnishing of Form 'C' to the complainant.

5. Learned counsel for the complainant on the other hand, submits that the order of cognizance has been properly passed with due application of mind and having regard to the materials on record.



6. Having heard the parties and on a careful consideration of the materials on record, this Court is of the view that continuance of the criminal prosecution of the petitioner would amount to an abuse of process of Court and the same is accordingly liable to be quashed. The averments in the complaint clearly disclose a business dispute between the parties and the complainant is aggrieved by non-payment of dues against supply of materials said to have been made by him. It is well settled that criminal proceedings cannot be resorted to for settling scores in a dispute of a predominantly civil nature, as has clearly been done in the present case.

7. In the above view of the matter, the impugned order dated 25.04.2011 taking cognizance against the petitioner in Complaint Case No. 2253 of 2010 by the Court of learned Judicial Magistrate Ist Class, Muzffarpur, is hereby quashed and the petition stands allowed.

**(Vikash Jain, J)**

Chandran/BT

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