IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18338 of 2013

Arising Out of PS.Case No. -1565 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Berger Paints India Ltd. through its Managing Director Sri Subir Bose son of Late Amrendra Nath Bose having its office at 129, Park Street, P.S- Park, Street, Kolkata- 700017
2. D.K. Roy Bardhan, son of Late K.C. Roy Bardhan, the then Regional Manager, Berger Paints India Ltd. having its Office at 129, Park Street, P.S- Park Street, Kolkata- 700017

.... Petitioners

Versus

1. The State of Bihar
2. Rajiv Kumar , son of Late Ramdeo Sahu, Proprietor, M/S Hardware Stores, Kadam Kuan, P.S- Kadam Kuan, District- Patna- 800023

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Sanjiv Sharan, Adv.
For the Opposite Party/s	:	Mr. A.P.P.
	:	Mr. Vishal Saurabh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-08-2016

Heard Sri Sanjiv Sharan, learned counsel for the petitioners, learned Addl. Public Prosecutor as well as Sri Vishal Saurabh, learned counsel, who has appeared on behalf of the complainant/Opp.Party no.2.

2. Two petitioners, who are Managing Director and Regional Manager of Berger Paints India Limited (herein after referred to the as the "Company"), have approached this Court, invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure with a prayer to quash an order dated 22.01.2013

passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.1565 (c) /12. By the said order, the learned Magistrate has taken cognizance of offence under Section 417 of the Indian Penal Code and directed for issuance of summons against them.

3. Short fact of the case is that Opp.Party no.2 filed a complaint on 06.06.2012, which was registered as Complaint case no.1565 (c)/12 against altogether six accused persons including both petitioners, who were arrayed as accused nos. 1 and 2 in the complaint petition. The complainant has alleged in the complaint petition as follows:

> "1. That the complainant is the proprietor of M/S Sahu Hardware Stores, Kadamkuan, which is one of the most reputed Hardware and Paint retail shops in the city of Patna and over the past eight decades has build an impeccable and a huge reputation in the market. The said store started about 80 years ago by the grandfather of the complainant and today it is known for its authenticity, quality and honesty.
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> 2. That the accused person are the office bearers of Beger Paints India Ltd. whose head office and the RO are located at 129, Park Street P.S. Part Street, Kolkata-700017, Berger Paints India Ltd. is also one of the leading paint manufactures in the country.
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> 3. That the accused no.1 is The Managing Director of Berger Paints India Ltd. from the date of

occurrence till date. The accused no.2 was the Regional Manager of the accused company at the relevant time when all the accused persons had entered into a criminal conspiracy to cheat the complainant. Accused no.3 is the present Regional Manager who intentionally and knowing fully well that the complainant has been cheated and duped to the tune of 20-24 Lakhs and is actively supporting and abating and perpetuating a crime is thus also a conspirator. Accused no.5 & 6 were the Area Manager (Bihar) and Area Executive respectively at the relevant time and were an active party to cheating and made false inducements to the complainant. Accused no.6 is the present area Manager who is fully aware of fraud committed by the company and yet he is actively abating and perpetuating the fraud/cheating by the company. Thus, all the aforesaid accused persons who are/were the office bearer of the Berger Paints India Ltd. and they have all conspired and entered into a criminal conspiracy to cheat the complainant.

4. That the complainant is an authorized stockiest cum dealer of the Berger Paints India Ltd. for the last 25 years and the business transactions have been running smoothly and without any hitch for all these years. It is relevant to state here that the complainant had been a Gold card dealer for the year 2008-09 Gold card dealer is a dealer who has benchmarked a turnover of Rs.One Crore and more in one financial year. Due to such a huge turnover the company (Berger Paints India Ltd.) was obliged to give a cash credit facility to the complainant to

a tune of Rs.30 Lakhs for the year 2008-09 and for year 2009-10 it was Rs.20-24 Lakhs meaning thereby, that at one time goods worth the aforementioned amounts could be given on credit to the complainant to by paid within a period of 30-40 days.

5. That the complainant had placed orders for goods worth Rs.7,96,227 from the accused Company & its office bearers and for which bills were raised by the accused company for Rs.7,96,227 on 28.02.2010. The due date for payment was 30. 03.2010. All these bills were raised through Tax Invoice cum challan contained order/BPL Nos. respectively. The details thereof are given as below:-

Invoice/BPL No.	Amount
1. 14826/14809	132632
2. 14827/14810	111613
3. 14828/14811	44236
4. 14829/14812	111268
5. 14830/14813	66343
6. 14831/14814	77099
7. 14832/14815	32585
8. 14833/14816	164493
9. 14834/14817	82840
10. 14842/14825	56763
11. 14856/14839	15885

6. That in response to the aforementioned raised bills, the complainant, least suspecting any foul play or cheating on the part of the accused officers of the company, issued a cheque of Rs.962801 to cover the

aforestated orders (Rs.796227+12.5%VAT i.e. total 895457 and some previous dues).

7. That it is relevant to state here that the complainant has a very long standing relationship with the accused company and had no occasion to suspect any foul play by the accused company or its officers. The accused no.5 & 6 visited the shop of the complainant during the interregnum and persuaded the complainant to get the cheque cleared before closure of the financial year 2009-10. Upon enquiry about the goods, both these officers represented before the complainant that the goods have been ordered from the Head Office and were in the transit and as soon as it reaches Patna they shall be delivered/supplied to the complainant very soon.

8. That the accused no. 5 & 6 to lend weight to this falsehood and deceit also put the complainant through to the M.D. of the company (Acc. No.1) on mobile and he also repeated that supplies ordered by the complainant were on way to Patna but due to some problem with the transportation it will only reach Patna week of April. Thereafter it shall immediately be handed order to the complainant. The accused no.1 as well as the then Regional Manager of the company Sri D.K. Roy Bardhan (Accused no.2), both talked to the complainant and said that he is a very valued stockiest and the ordered good would be delivered by the first week of April. Accused no. 1,2,5 & 6 asked the complainant to get the cheque cleared before the due dated 29.03.10 as the financial year was about to come to an end. The

complainant said that he will have to pay heavy interest to the Bank but was assured by all the accused persons that by first week of April, he would receive the supplies and he can always compensate the loss due to interest in future.

9. That the complainant little suspecting any cheating or foul play be accused 1,2,5 &6 and considering that they were the top Bosses of the company, he himself got the cheque cleared through his Bank Canara Bank, Kadamkuan Branch on 26.03.10 itself on assurance of the accused persons.

10. That the cheque was cleared on 26.03.10 and upon knowing that the money has been transferred in to the account of the company immediately thereafter, all the invoiced materials were cancelled/returned on 29.03.10. The company after receiving the cheque amount cancelled the Bill and purchase order was returned. It was quite shocking for the complainant that a reputed company could cheat its own stockiest.

11. That the accused company and its officers have, thus, cheated the complainant of a huge amount. The complainant has suffered a huge monetary loss, on account of this day light cheating, loss of face in the market as well as his reputation has suffered a huge dent due to this brazen cheating. The money given to the accused persons was taken on credit from the Bank. The complainant could not make supplies to its customers. The complainant suffered a huge loss to the tune of about Rs.

25 Lakhs. A chart showing the loss on account of cancellation is annexed along with this complaint case.

12. That the complainant was shocked at the way he has been duped by the company and its accused officers. The complainant immediately made a strong protest to the Accused no.1 in writing which went unheeded. The complainant tried to contact him on phone but was thwarted by his personal staffs. The sometime in the third week of June 2010 the complainant went to Kolkata and after waiting for 3-4 days the complainant could meet the accused no.1. The complainant narrated his woes and as to how he has been cheated by the company. The accused no.1 said that he would look into the matter and asked him to meet Acc. No.2. The complainant also met Accused no.2 who, too, said that he would look into the matter and talk to his branch officers and assured that the payments received would be returned back.

13. That on the assurance of the accused no.1 to the complainant that his grievance would be redressed, the complainant came back to Patna. But nothing happened except assurances and again the complainant wrote to the Accused no.1 & 2 and copies thereof he sent to the local branch officials.

14. That in the meantime, accused 5& 6 resigned from the company and one of the accused (Acc. No.6) opened his own hardware shop at Exhibition Road by the name & style of Patna Enterprises, and immediately thereafter, he as a reward for cheating the complainant in connivance with other accused persons was made stockiest

of Berger Paints. The other accused no.5 has become a contractor dealing in paint contractual work.

15. That thereafter, one Animesh Kant Jha became the Area Manager place of Md. Islam. The complainant met the Area Manager all the accused persons kept assuring the complainant that they would refund the money but till date the money cheated by them has not been returned.

16. That the complainant again went to Kolkata in Feb, 2011 and met the M.D. and R.M. & they both said and assured that the money will be returned back but till date it has not been returned by the company. They kept on promising that complainant's grievances are being looked into he should continue to work as an stockiest of the company and assured that he would not be wronged.

17. That the complainant on the false promise of Accused 1 to 3 continued to work for the company with a hope that his nine Lakhs would be returned back.

18. That the complainant on several occasions met the local area Officers and also wrote to the accused 1,2 and 3 but all his pleas fell on deaf ears.

19. That the complaint also wrote to the Head Office on several other dates but all the letters was ignored and brushed aside as subsequently the complainant learnt that he stands cheated at the behest of none other them the accused no.1 and since he is the mastermind then no one else can dare to do anything.

20. That the complainant could not snap ties

with company as his amount was stuck up & was forced to work for them the complainant went to Kolkata in the first week of February, 2012, and tried to meet the Accused no.1. The accused no.1 didn't give an appointment. The complainant met accused no.3 who said that he would make refunds of the money which the company has cheated. He assured the complainant that by March end/First week of April the complainant would receive the cheque. In the middle of April 2012 the complainant talked to the Acc. No.3 on phone and the complainant was informed by the Acc. No.3 that the accused no.1, the M.D. of the company, has asked him not make payments.

21. That the complainant immediately gave a personal notice to the accused 1 & 3 chat either he should be returned the cheated amount or else he would be forced to initiate a criminal proceeding.

22. That the accused persons never had any intentions to make the payment right from the beginning and have intentionally and fraudulently induced the complainant and have all connived and deceived him and have made him to deliver his property. They all though fraud deceit and misrepresentation and knowingly have cheated the complainant with fraudulent intent as they know from very beginning that they would never return back the deceived and cheated amount. The accused persons were dishonest from the very beginning.

23. That in this way the accused persons have committed a fraud and cheated the complainant and committed criminal breach of trust and have thus

dishonestly by deprived the complainant of his money for then own benefit and interest."

4. After filing of the complaint petition, the complainant was examined on S.A. and witnesses were produced during enquiry in support of the complainant's case. Finally, the learned Judicial Magistrate by the impugned order took cognizance of offence under Section 417 of the Indian Penal Code and directed for summoning only aforesaid two petitioners. Meaning thereby that the order impugned suggests that against other accused, who were arrayed as accused nos. 3 to 6, the proceeding was dropped. The said order has been assailed in the present proceeding.

5. Learned counsel for the petitioners, by way of referring to Annexure-2 to the present petition, submits that since the complainant was stockiest of the petitioners company, a business transaction in between the parties was going on. In the business transaction, the complainant himself had committed some criminal offence. His cheque for an amount of Rs. 2 Lacs had bounced. However, the petitioners company had not taken any legal action against the complainant. Subsequently, the complainant had cheated the petitioners and the petitioners company had suffered a loss of Rs.5 lacs and odd. Accordingly, on behalf of the company, a legal notice was got served on the complainant vide legal notice dated 18.05.2012.

It has been claimed by learned counsel for the petitioners that said legal notice was replied by the complainant through his advocate on 04.06.2012, which has been brought on record as Annexure-4 to the present petition.

6. At the time of argument, learned counsel for the petitioners, by way of referring to complaint petition, submits that as per complaint allegedly offence was committed on 28.03.2010. However, complaint petition was filed on 06.06.2012 i.e. after more than two years from the date of commission of offence. In this case, order of cognizance was passed under Section 417 of the Indian Penal Code, which was passed on 22.01.2013. He submits that in view of Section 468(2)(b) of the Code of Criminal Procedure, there is bar for taking cognizance in a case, in which offence is punishable for a maximum period of one year , after one year from the date of alleged offence. He emphatically argued that as per case of the complainant, offence was committed on 28.03.2010, the complaint was filed on 06.06.2012 and order of cognizance was passed on 22.01.2013. According to learned counsel for the petitioner, the order of cognizance, in which the learned Magistrate has taken cognizance of offence under Section 417 of the Indian Penal Code, is liable to be set aside in view of Section 468(2)(b) of the Code of Criminal Procedure. Besides the fact that the allegation in the complaint petition, if taken

as true on its face, it is apparently evident that in a business transaction, colour has been given regarding commission of criminal offence.

7. Learned Addl. Public Prosecutor and Sri Vishal Saurabh, learned counsel for the complainant/Opp.Party no.2 have opposed the prayer of the petitioners. Sri Saurabh, learned counsel for the complainant/Opp.Party no.2 at the very outset submits that of course, in the present petition in paragraph-11, it has been stated that legal notice was served on the complainant from the petitioners' side, the said fact has been disputed by filing counter affidavit and in the counter affidavit, in paragraph-10, the said fact has been disputed by the complainant. He further submits that while hearing a petition under Section 482 of the Code of Criminal Procedure, this Court may refrain from relying on a document, which has not been taken note by the learned court below. However, on the question of limitation, he submits that limitation on cognizance is to be seen from the date of filing of complaint petition. He submits that in this case, complaint was filed on 06.06.2012 and within one year, cognizance order was passed by the impugned order i.e. order dated 22.01.2013. According to learned counsel for the complainant/Opp.Party no.2, the order impugned may not be interfered with on the ground that it is violative of Section 468(2)(b) of the Code of Criminal Procedure.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the complaint petition itself, the Court is satisfied that only for the purpose of settling the dispute relating to business, the present complaint was filed. In the complaint petition, it is specific case of the complainant that the petitioners had cheated the complainant in the month of March, 2010. Even thereafter, in the complaint petition, the complainant has said that he had not disassociated business with the petitioners and he continued as stockiest of the petitioners even till the year 2011. The Court is surprised to notice that once the complainant was allegedly cheated by the petitioners company, there was no occasion for the complainant to continue with the business relation with petitioners company. However, this observation has got no relevance for application in the present matter. Fact remains that allegedly offence was committed in the month of March, 2010 and the present complaint was filed after two years from the date of occurrence and, as such, order of cognizance is liable to be set aside. Since the order of cognizance was passed after more than two years from the date of commission of an offence i.e. Section 417 of the Indian Penal Code, for which maximum punishment is one year imprisonment.

9. In view facts and circumstances, particularly the fact

that the order of cognizance is barred under Section 468(2)(b) of the Code of Criminal Procedure, the order impugned i.e. order dated 22.01.2013 passed by the learned Judicial Magistrate, 1st Class, Patna passed in Complaint case no.1565 (c)/12 as well as the entire proceeding against the petitioners is hereby quashed. The petition stands allowed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2016
Transmission Date	