

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

**Criminal Miscellaneous No.2760 of 2012**

Arising Out of Complaint Case No. 3042(M) Year-2005 District- PATNA

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1. M/S Balaji Hyundai Through Its Managing Director Dr. Shanti Swaroop Sharma Resident Of Kalambag Road, P.S. Kaji Mohammadpur, District Muzaffarpur.  
2. Shanti Swaroop Sharma S/O Late Shiv Swaroop Sharma Resident Of Kalambag Road, P.S. Kaji Mohammadpur, District Muzaffarpur.

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. L.N. Prasad, Insurance Inspector, ESI Corporation, Regional Office, Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Anil Kumar Singh  
For the Opposite Party No. 2 : Mr. Sanjeev Kumar  
For the State : Mr. Nand Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**  
**ORAL JUDGMENT**  
**Date: 26-07-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 24.11.2011 passed by the learned Judicial Magistrate, 1<sup>st</sup> class, Patna in case No. 3042 (M) of 2005 (Trial No. 1041 of 2011) whereunder the petition of the petitioners filed under Section 245 of Cr.P.C. was rejected.

2. The facts in brief is that on a complain of Insurance Inspector (Legal), E.S.I. Corporation, Patna, the above case was registered for the offence under Section 85G of the Employees State Insurance Act, 1948 (Act No. 34 of 1948 and No. 38 of 1975). The



informant visited at the business premises of petitioners for inspection on 14.07.2004, 11.04.2004 and 13.12.2004 after giving prior information. Thereafter, a registered notice was given to produce the records as required under Section 45(2) of the E.S.I. Act, but the petitioners did not comply and consequently the above case was lodged.

3. Head learned counsel for the petitioners and Opposite Party No. 2.

4. It has been submitted that the O.P No. 2 allegedly inspected the premises of these petitioners on 14.07.2004, 01.11.2004 and 12.12.2004 on which date the company of these petitioners namely Balaji Hyundai was in existence. The dealership of agency was granted as per letter of intent given to these petitioners on 25.05.2006. Thereafter, the firm of these petitioners was inaugurated on 25.04.2008. The petitioners have annexed the papers to show that their firm were not in existence on the date of inspection. The learned Magistrate has passed the impugned order without considering the papers and other material on record and so, the same is fit to be quashed.

5. The learned counsel for the O.P. No. 2, on the other hand, opposed the submission. It has been submitted that the present application is not maintainable in view of the provisions of Section 75



(I)(g) of the Employee’s State Insurance Act. The offence in question is a summons triable case under chapter XX of the Code of Criminal Procedure in which there is no provision for discharging the accused. It was also submitted that the annexures of the criminal miscellaneous application cannot be taken into consideration in a quashing application under Section 482 of the Cr.P.C. The firm of the petitioners was provided Code No. P/NF 4250/Muz/04 for the establishment and thereafter, they were noticed directing them to produce the records as required under Section 45(2) of the E.S.I. Act, 1948. The petitioners have not exhausted the forum as provided under Section 75 (I)(g) of the E.S.I. Act. The petitioners defence at this stage framing of charge cannot be taken into consideration and so, the order refusing to discharge the petitioners has been rightly refused by the court below in view of the nature of the case.

6. In the facts and circumstances stated above, this Criminal Miscellaneous Application is dismissed.

**(Sanjay Kumar, J)**

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