

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42413 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Asish Nayak, S/O Madhabendra Nayak, resident of Quarter No.23/A, Agrico (Home Pipe Line), P.S.-Agrico, District- Jamshedpur (Jharkhand), Pin Code- 831009, Ex- Service Manager, Hitachi Home Life Solution India Ltd. Patna.
 2. Nishant Prabhakar, S/O Sri Nipendra Narain, resident of House No.100, S.K. Nagar, P.S.- Budha Colony, District- Patna, the Managing Director cum Proprietor M/S Aditya Vision Pvt. Ltd. Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Rishi Kumar Jaiswal, S/O Late Yogendra Pd. Jaiswal, resident of Mohalla- Mussallahpur Hat, P.S.- Pirbahore, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tejendra Sinha, Advocate
For the Opposite Party/s : Mr. J. Upadhayay, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-10-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.04.2010 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.607 of 2010 by which learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 348 and 420 Indian Penal Code.

It is alleged in the Complaint Petition that the Complainant purchased AC from petitioner No.2. Petitioner No.1 is Area Service Manager of Hitachi Home & Life Solution India Ltd. Complainant has alleged that aforesaid Hitachi AC split AC 1.5 Ton



never worked properly. The Complainant approached the accused persons and also made telephonic calls to sort out the problem, but no proper action was taken by the accused persons. Legal notice was served by registered post on 16.02.2010 and thereafter instant case has been filed.

Counsel for the petitioners has submitted that no offence under Section(s) 348 and 420 Indian Penal Code is made out.

Counsel for the petitioners has read out Solemn Affirmation of the Complainant, which has been annexed as Annexure-2, wherein, the Complainant has admitted that AC was delivered to him on 15.03.2009. He has further stated in Solemn Affirmation that AC did not work properly and thereafter he lodged complaint with petitioner No.2. Petitioner No.2 sent an Engineer, but it did not work. Then, he told the Complainant to lodge complaint with the Company (petitioner No.1). Thereafter, the Complainant sent legal notice and then filed the present complaint.

From the allegation in the Complaint Petition and the statement of the Complainant on Solemn Affirmation, it appears that AC was delivered to the Complainant. There was some technical defect(s) which was also attended by petitioner No.2. The complaint has been filed after one year.



From the Solemn Affirmation of the Complainant and statement of the witnesses, this Court does not find any ingredients of offence under Section(s) 348 and 420 Indian Penal Code against the petitioners.

Therefore, the impugned order is not in accordance with law.

Accordingly, impugned order dated 30.04.2010 passed by learned Judicial Magistrate, 1st class, Patna, in Complaint Case No.607 of 2010, along with entire criminal proceeding against the petitioners is hereby quashed.

The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14-10-2017
Transmission Date	14-10-2017

