

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45122 of 2011

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1. JB Formwork Systems through its Proprietor, Mr. Ramesh Bothra
35, Chitranjan Avenue, 5th Floor, Kolkata-700012
 2. Mr. Ramesh Bothra, Proprietor, 35, Chitranjan Avenue, 5th
Floor, Kolkata-700012
 3. Mr. Shyam Prasad Sarkar, Manager, M/S JB Formwork Systems
35, Chitranjan Avenue, 5th Floor, Kolkata-700012

... .. Petitioners

Versus

1. The State of Bihar
2. Vinay Kumar Singh, son of Late Bhuneshwar Pd. Singh, resident of Kanti
Factory Road, Mahatma Gandhi Nagar, Patna

... .. Opposite Parties

Appearance :

For the Petitioner/s :	Mr. Sudhir Kumar Raj, Adv.
For the Opposite Party/s :	Mr. Damodar Prasad Tiwary, A.P.P. Mr. Mithilesh Kumar Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT

Date : 11-09-2017

Heard Sri Sudhir Kumar Raj, learned counsel for the petitioners, Sri Damodar Prasad Tiwary as well as Sri Mithilesh Kumar Rai, learned counsel for complainant/Opp. Party no.2.

2. Petitioner no.1 is a proprietorship firm in the name and style of JB Formwork Systems under the proprietorship of petitioner no.2, whereas petitioner no.3 is the Manager of JB Formwork Systems. Petitioners 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 31.05.2010 passed by the learned Judicial Magistrate, 1st Class,



Patna, in Complaint Case no.3287 (C)/2009. By the said order, the learned Judicial Magistrate has taken cognizance of offence under Section 420 and 34 of the Indian Penal Code and summoned the accused persons.

3. Learned counsel for the petitioners at the very outset, by way of placing entire complaint petition, submits that on perusal of the complaint petition, it is evident that the dispute of civil nature has been given colour of criminal offence and on this ground alone, the order taking cognizance is liable to be set aside. He submits that though the petitioners provided machine, subsequently dispute was raised that sub-standard machine was provided. He submits that in any event, the allegation made in the complaint petition does not constitute any criminal offence, however the learned Magistrate in a mechanical manner after examining enquiry witnesses has passed order of cognizance.

4. Learned Addl.Public Prosecutor and Sri Mithilesh Kumar Rai, learned counsel for the complainant/Opp.Party no.2 have vehemently opposed the prayer of the petitioners. Learned counsel for the complainant submits that the petitioners can take those plea at the time of charge before the court below, not at the stage of order of cognizance.



5. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the entire complaint petition. It would be appropriate to quote entire complaint petition, which is as follows:

“1. That the complainant is a respectable contractor of Govt. of Bihar or Govt. of India, Department of Railways Bihar Road Construction Department etc. having his own residential house at Kanti Factory Road, P.S. Kankarbagh, District-Patna.

2. That the accused persons are M.D. or Manager having registered office of M/S J.B. Form Works System 35 Chitranjan Avenue, 5th Floor at Kolkata 700012.

3. That the accused no.2 and 3 approached the complainant's office at his Patna office to sale the equipment New or semi new condition for works machine, that complainant having faith in your words he had a meeting with accused no.1 and 2 and after finalising the rates complainant paid the amount to supply the material.

4. That after complainant received the above equipment through the transport concrete mixed machine, concrete vibrate suffering and scaffolding material etc, but all the equipments delivered were of substandard quality, the re-conditioning machine was also sub-standard and



damaged socket was duplicate prepared and wineshing machine was fully damaged.

5. That the grasus machine was also old and you have false certificate for new one, the said machine is not in working condition, accused also sent crevice, sanliver, piston, all are damaged and are not repairable.

6. That accused no.1 and 2 also supplied trimipipe which is old and very light in weight D.M.C. Pipe was also old. Socket was duplicate vaethal pump was also old and not in working condition.

7. That complainant complained after receiving the same that the all machines and equipments were not in working condition but the accused avoided to talk him even several times trying on mobile phone and also complainant came in accused no.1 and 2 Kolkata office but they avoided to meet him.

8. That the complainant feels that the accused were trying from very beginning to cheat him, with fraudulent dishonest intention at that time promised the complainant that all the machines are in good and new condition but the reality was just contrary.

9. That the complainant suffered huge loss and several projects were delayed due to accused nos. 1 and 2 supplied inferior or not working condition machine which were damaged and not repairable is clearly show the conduct of the



accused no.1 and 2 they through beginning trying to cheat the complainant to his wrongful gain and wrongful loss to the complainant.

10. That the complainant also send a legal notice through his advocate to clear direction to after receiving of this notice within 30 days you return the money failing which against the damage machine, otherwise complainant will take legal action in the court of law.

11. That the accused no.1 and 2 made conspiracy among each others through beginning they got knowledge that the complainant have good contactors trying to cheat him and they succeeded for his purpose.

12. That the accused no. 1 and 2 are liable to be punished under various sections of the Indian Penal Code u/S 406, 420, 467, 468 and 471 of the said Indian Penal Code.”

On perusal of the complaint petition, I am satisfied that the dispute was completely of civil nature and colour of criminal offence has been given.

6. Considering the facts and circumstances, the Court is of the opinion that allowing the proceeding on the basis of such complaint may certainly amount to allowing abuse of the process of the court and, as such, with a view of prevent abuse of the process of the court, it is necessary to interfere with the matter.



7. Accordingly, the order dated 31.05.2010 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case no.3287 (C)/2009 is hereby set aside. The petition stands allowed.

(Rakesh Kumar, J)

nawalkrs/-

AFR/NAFR	
CAV DATE	N/A
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