

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1940 of 2015

Arising Out of PS.Case No. -2119 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. M/s Swastika Fruits Product Pvt. Limited through its Director Binay Sarawgi at Swastika House, Upper Bazar, P.S. – Kotwali, Town and District – Ranchi, Jharkhand.
 2. M/s Swastika Overseas Pvt. Limited, through its Director Binay Sarawgi at Swastika House, Upper Bazar, P.S. – Kotwali, Town and District – Ranchi.
 3. Binay Sarawgi, S/O Sri Hanuman Prasad Sarawgi, Resident of Swastika House, Upper Bazar, P.S. – Kotwali, Town and District – Ranchi.

.... Petitioners

Versus

1. The State of Bihar.
2. Sri Pradeep Narayan Jamuar, Director M/s JB Ware Housing & Trading Limited, 17, Ashok Palace, Exhibition Road, P.S. – Gandhi Maidan Town & District – Patna.

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. V. Singh, Advocate.

Mr. Manas Prakash, Advocate.

For the Opposite Parties : Mr. Chandra Bhushan Prasad, Advocate.p

Mr. H.A. Khan (App)

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 27-02-2017

Heard both sides.

2. The petitioners filed this petition under Section 482 of the Code of Criminal Procedure to quash the order dated 08.09.2010 passed in Complaint Case No. 2119 (C) of 2010, whereby the learned Judicial Magistrate, Patna took cognizance under Section 406 of the Indian Penal Code.

3. The opposite party no. 2 on 02.08.2010 filed the Complaint Case No. 2119 (C) of 2010 against the petitioners alleging therein in short that the complainant is Director of a



company M/s J.B. Warehousing & Trading Ltd. and its sister concern namely M/s Bohra Sales & Services Ltd. situated at Patna. The company deals in consumer goods and highly reputed company of India. That the company of the complainant was entered into an agreement to be super distributor for Fruitee products of Parle Agency Pvt. Ltd., Mumbai through Letter No. SFPPL/SD-01/61711 dated 08.09.2005. The complainant deposited Rs. 10 lakhs in the account of M/s Swastik Overseas Pvt. Ltd on 16.08.2004 and on 09.07.2005. On account of some differences, the complainant repudiated the agreement in the month of December, 2005 and returned the products taken from the petitioners on 10.11.2006. It is alleged that the petitioners returned only Rs. 8.5 lakhs and Rs. 1.5 lakhs was kept. The petitioners committed criminal breach of trust. The complainant was examined on SA and the complainant also examined the witnesses.

4. Learned counsel for the petitioners submits that the learned Judicial Magistrate vide order dated 08.09.2010, took cognizance under Section 406 of the Indian Penal Code. The petitioners assailed the order impugned on the ground that firstly there was a business transaction between the petitioners and the complainant. The security was deposited only because in case of



any damages for non-payment of the price of the products the same can be adjusted from the security amount. It is further submitted that according to the submission of the complainant, itself, the agreement was repudiated in the month of December, 2005. The complainant did not file complaint petition within three years from the date of occurrence i.e. repudiation of agreement. The order taking cognizance is barred by Section 468 Cr.P.C.

5. On the other hand, learned counsel for the complainant opposite party no. 2 has submitted that the complainant gave legal notice to the petitioners and, thereafter, Rs. 8.5 lakhs was paid. The cause of action again arose in the year 2009, therefore, the order taking cognizance is not bad.

6. From the facts as disclosed in the complaint, it appears that the complainant has specifically alleged that he repudiated the agreement with the petitioners in the month of December, 2005 itself. The cause of action arose in the month of December, 2005, itself, to return the entire security amount, but the complainant kept mum and filed the complaint petition only on 02.08.2010.

7. Section 468 of the Code of Criminal Procedure says as follows:

468. Bar to taking cognizance after lapse of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, no Court, shall take



cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

8. From perusal of the complaint petition as well as the provisions contained in Section 468 of the Code of Criminal Procedure, it appears that the complainant specifically stated that he repudiated the agreement in the month of December, 2005. Therefore, for any dispute arising out of the agreement the cause of action arose itself in the month of December, 2005. Admittedly, the complaint petition was filed on 02.08.2010 and the learned Judicial Magistrate, Patna took cognizance under Section 406 of the Indian Penal Code on the basis of the material available on the record, but did not consider the fact whether he is competent to take cognizance for the offence under Section 406 of the Indian Penal Code after five years of the date of occurrence. The period for taking cognizance is prescribed for three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. The punishment for the offence under Section 406 is three years.

9. Therefore, I find that the learned Judicial Magistrate,



Patna has erred in law in taking cognizance. Accordingly, the order dated 08.09.2010 passed in Complaint Case No. 2119(C) of 2010 is quashed and this quashing petition is allowed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

U		T	
---	--	---	--

