

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35163 of 2013

Arising Out of PS.Case No. -1782 Year- 2011 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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1. Sunil Kumar Jain S/O Late Jaswant Rai Jain R/O 9062/47, Rambagh Road, Ajud
Market, Delh-6

.... Petitioner/s

Versus

1. The State Of Bihar
2. Amarchand Baid S/O Multanmal Jain Through Rajendra Pd. Advocate R/O
Jaiprabha Nagar, Ward No. 29, Saharsa, Post+ P.S+ District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad, Advocate.

For the Opposite Party No. 2 : Mr. Amar Nath Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-01-2017

The present application has been filed on behalf of the
petitioner for quashing the order 27.6.2013 passed by the Sri D.
Kumar, Judicial Magistrate Saharsa, in complaint case no. 1782 of
2011, by which the learned Magistrate finding prima facie case under
Section 406 of the Indian Penal Code, on inquiry, under Section 202
of the Code of Criminal Procedure, against the petitioner, issued
process against the petitioner under Section 204 of the Code of
Criminal Procedure.

The prosecution story, in short, is that the complainant is
the indenting agent for the owner of the cloth in question of M/s
Mahajan Texofin, Industrial Area, Balhotra Rajasthan(consignor)



where as the petitioner is the transport company, having its head office Azad Market, Delhi being the Director of the Company. That the consignee of the consignment in question is Mr. Ramesh Kumar Agrawal of M/s Saurav Textiles, Marufganj, Saharsa. That the Complainant/opposite party no. 2 deals in the cloth business of many companies on the basis of commission. That the complainant takes the order from dealers of clothes and placed the order before the consignor/manufacturer or wholesale dealer of cloth and on address of the consignor sent the ordered goods to the consignee and the consignee goes to the transport company with the bulity and documents to get the goods from the transport company, on the payment of its freight charge. That according to the complaint case the complaint took the order from the consignor and the consignor dispatched the goods in question on 22.3.2005 to Saurva Textiles, proprietor Ramesh Kumar Agrawal of M/s Arun Kumar, Ramesh Kumar Kaparapati, Saharsa through the transport company, and the petitioner vide, in voice no. 008821 for Rs. 12,097 vide bulity no. 4555214 dated 22.3.2005. That the complainant in this case went to the Transport Manager, Saharsa namely Satish with bulity and received information from Transport Manager that the goods has not reached till date. That the complainant, after returning from the transport company Saharsa returned back bulity and bill to consignee



party M/s Saurav Textiles Saharsa and asked him that you get your goods from Transport Company. That the complainant again visited the transport, company, saharsa but did not get the same. That the complainant on non-receipt of goods had earlier filed a complaint case which was earlier rejected and thereafter complaint filed the instant complaint petition.

The learned Chief Judicial Magistrate Saharsa, transferred the case to the court of Sri Dhiraj Kumar, Judicial Magistrate 1st Class, Saharsa, who after inquiry under Section 202 of the Code of Criminal Procedure vide the impugned order dated 27.6.2013 issued process against the petitioner under Section 406 IPC. Against the above order, present application has been proposed by the petitioner.

It has been submitted on behalf the petitioner that complainant is an agent only and he has not been authorized or consigned or by consignee to file the present case nor the consigner nor consignee has come forward to say or to make any statement in the present case and as such the whole case is false and mischievous and has been filed with an intention to harass and humiliate the petitioner. It has further been submitted that for constituting an offence under Section 406 IPC, there must be an entrustment, but in the present case, no such evidence has come either in the complaint



petition or in the evidence collected during the course of inquiry. However, the learned court below without appreciating the aforesaid facts has passed the impugned order in a most mechanical way and the impugned order issuing process is not sustainable in the eye of law and the same is fit to be set aside.

Learned A.P.P. as well as learned counsel for the complainant submitted that the learned court below after considering the materials available, during the course of inquiry, has found a *prima facie* case under Section 406 of the IPC and rightly issued process against the petitioner through the impugned order.

Having heard both sides, it appears from the order of the learned court below that he has not considered this aspect of the matter that the complainant is neither consignee nor consignor, nor he has been authorized by any of them to file this case. Learned court below has also not considered this aspect of the matter that in such a situation, as to whether any offence is made out under Section 406 IPC or not rather in a most mechanical manner, passed order issuing process against the petitioner for the offence under Section 406 IPC. As such it is not sustainable in the eye of law.

Accordingly, the impugned order dated 14.10.2011 passed by Sri D. Kumar, Judicial Magistrate, Saharsa, in Complaint Case No.1782 of 2011 is quashed. The matter is remanded back to the



learned court below for passing the order afresh on the basis of materials available on the record with a reasoned order, preferably within three months from the receipt of the order.

With the aforesaid observation this application is disposed of.

(Vinod Kumar Sinha, J)

siddharth/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

