

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17633 of 2015

Arising Out of PS.Case No. -2229 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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Md. Tajuddin, son of Hasan Imam, resident of village B-102, Alam Cottage,
Tamtam Parav, P.S. Phulwari, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jaishankar Prasad Jha, son of late Ugra Narayan Jha, resident of F-123, P.C. Colony, P.S. Kankarbagh, Distt. Patna.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 18309 of 2015

Arising Out of PS.Case No. -2229 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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Pankaj Parimal @ Parimal Pankaj, son of Rajendra Pd. Sharma, resident of village
A.G. Colony, P.S. Shastrinagar, Distt. Patna, presently working as A.S.M.
Whirlpool of India Ltd., Shalimar Cold Storage New Bypass Road, Anisabad,
Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jaishankar Prasad Jha, son of late Ugra Narayan Jha, resident of F-123, P.C. Colony, P.S. Kankarbagh, Distt. Patna.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.17633 of 2015)

For the Petitioner/s : Mr. Dhannjay Kumar No.2, Advocate.

For the Opposite Party No.2 : Mr. Sunil Kumar, Advocate.

Mr. Sushant Kumar, Advocate.

For the State : Mr. Nirmal Kumar Sinha, A.P.P.

(In Cr.Misc. No.18309 of 2015)

For the petitioner/s : Mr. Dhannjay Kumar No.2, Advocate.

For the Opposite Party No.2 : Mr. Sunil Kumar, Advocate.

Mr. Sushant Kumar, Advocate.

For the State : Mr. Nirmal Kumar Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-02-2018

1. These two applications under Section 482 of the



Code of Criminal Procedure have been filed for quashing the order dated 28.11.2014 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 2229(C) of 2008 by which the learned Magistrate has rejected the petition of these petitioners filed under Section 245 Cr. P.C. for discharge.

2. All these two petition of the petitioners are being taken up and heard together as they are accused in the same complaint petition and petition for discharge filed on behalf of the petitioners under Section 245 Cr. P.C. has been rejected by common order against them.

3. Heard learned counsel for the petitioners learned counsel for the opposite party No. 2 and learned counsel for the State.

4. The main argument on behalf of the petitioners in this case is that from the entire complaint petition it would be apparent that there is no ingredient of any criminal offence whatsoever against these petitioners. The complaint petition has been filed only as a counter blast to harass the petitioners as complainant alleged that he has purchased Refrigerator from the accused persons. The said Refrigerator did not work properly even after attending by Service Engineer of Whirlpool India Limited and when complainant made request to replace the same on full price, the accused persons offered the complainant to return the Refrigerator at half price. It has



further been alleged that when complainant made request with the accused persons to replace the defective Refrigerator, they misbehaved with the complainant and also assaulted him.

5. The petitioner of Cr. Misc. No. 17633 of 2015 is the Service Engineer of Whirlpool Company of India Ltd. whereas petitioner of Cr. Misc. 18309 of 2015 is the Territorial Executive of the aforesaid Company.

6. Learned counsel for the complainant has appeared and submitted that these petitioners deliberately delivered him the defective Refrigerator and when he made request with them to take appropriate action to exchange the same, they misbehaved with the complainant. The complainant was also assaulted by these petitioners and they got his Motorcycle disappeared from the place of occurrence.

7. From perusal of the impugned order it appears that the court below has by order, rejected the petition for discharge filed by the petitioners under Section 245 Cr. P.C. The learned court below has held that on the basis of evidence available in the record, there are sufficient materials to frame charge against them.

8. Section 245 of the Criminal Procedure Code describes about the condition when the accused shall be discharged. Section 246 of the Criminal Procedure Code is the provision which describes the procedure when the accused is not discharged.



9. Section 246 (1) of Criminal Procedure Code speaks that when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

10. In the instant case from the impugned order it appears that there is totally non-application of mind by the learned Magistrate at the time of passing of the impugned order. From the allegation as made in the complaint petition this Court finds that complainant has alleged that he was delivered defective Refrigerator and in spite of several request, the same was not returned. The complaint has been lodged as a counter blast of such grievance of the complainant.

11. The Hon'ble Supreme Court in a Judgment reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors)*. has clearly laid down in Clause-7 of paragraph-102 that “where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”, is liable to be quashed.



12. The counsel for the petitioners has *relied upon a decision* reported in *2010 (4) PLJR 136 (The Managing Director Vrs. Dr. Hari Krishna Singh & Anr.) and 2012 (1) PLJR 360 (Faiz Ahmad & Ors. Vrs. The State of Bihar)* where this Hon'ble High Court has held that in such type of dispute as alleged in the complaint petition, the alternative remedy is available to the complainant by filing proper petition before the Consumer Forum for compensation.

13. Therefore, this Court is of the view that the impugned order passed by the court below is not in accordance with law.

14. Accordingly, the impugned order dated 28.11.2014 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 2229(C) of 2008 along with the entire Criminal Proceeding against the petitioners is hereby quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	17/02/2018
Transmission Date	17/02/2018

