

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14051 of 2015

Arising Out of Complaint Case No.-368(C) Year-2015 PATNA COMPLAINT CASE
District- Patna

Subodh Maskara, son of Sri Kailash Prasad Maskara, resident of Marwari Mohalla, P.S. - Town Than, District - Begusarai, partner of M/s Balaji Flour Mill, NH - 28, Barauni, District - Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Harish Kumar Son of Sri Dev Kumar Agarwal power of Attorney Holder of M/s Mahavira Electric Company, New Dak Bunglow Road, P.S. - Gandhi Maidan, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Mohit Agarwal, Advocate
For the Opposite Party/s	:	Mr. Ashok Kumar, APP Mr. R.K. Agarwal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 21-03-2018

Seeking quashment of an order dated 12.02.2015 passed by Sri A.K. Ram, Judicial Magistrate, Patna in Complaint Case No. 368(C) of 2015 for an offence under Section 406 and 420 of the Indian Penal Code, this application has been filed under Section 482 of the Cr.P.C.

Having heard learned counsel for the parties and on going through the entire complaint, it is seen that the complainant is an employee working with M/s Mahavira Electric Company as a Manager and he is said to have filed a complaint case on the authority given by his employer. It is his



case that in the year 2012-13 the petitioner took some material from the shop in question, namely, electrical goods to the tune of about Rs. 10 lacs and after payment of certain amount as are indicated in the body of the complaint, it is stated that a sum of Rs. 1,59,922/- remained due. When the complainant on 15.01.2015 went for demanding the aforesaid amount, it is said that the petitioner accused did not give the amount, got angry on the complainant, abused him and asked him to go away. Based on the aforesaid narration of fact as is made out in the complaint and the statement recorded under Section 200 the complaint case has been registered and cognizance taken for an offence under Sections 406 and 420 I.P.C.

Having heard learned counsel for the parties, I am of the considered view that a complete reading of the complaint and its acceptance in totality, does not make out any offence under Section 406 or 420 I.P.C. Section 405 of the Indian Penal Code speaks about criminal breach of trust and the ingredients necessary for committing an offence under Section 405 I.P.C. are not made out on a bare reading of the body of the complaint and the statement of the respondent complainant recorded under Section 200. At best it is a case where there is breach of the sale agreement for purchase of the electrical goods and non-payment



of the amount for which the sale was made. For such act of commission and omission in the matter of sale and purchase and payment of consideration, I am of the considered view that a criminal offence under Sections 406 and 420 I.P.C. is not made out and cognizance taken is not permissible under law. It is a civil dispute between the parties arising out of sale of goods for the shop in question and for the same proceedings on the criminal complaint by the learned court below was not called for.

Accordingly, this application is allowed, Complaint Case No. 368(C) of 2015 registered vide order dated 12.02.2015 quashed and set aside and liberty is granted to the respondent or the proprietor of M/s Mahavira Electric Company to proceed in accordance with law for recovery of the amount from the applicant.

With the aforesaid, the application stands allowed and disposed of.

(Rajendra Menon, CJ)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.03.2018
Transmission Date	24.03.2018

