

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3237 of 2015

Arising Out of PS.Case No. -39 Year- 2014 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

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1. Bhaskar Saha Son of Madhab Chandra Saha Resident of Balliganj Palace - 42, P.S. - Garihat, Kolkata - 700019, West Bengal.
 2. Abhijeet Das Gupta Son of Niharendu Das Gupta Resident of Talpukur, Ward No. 101, Jadav Pur South, 24, Pargana, P.S. - Jadavpur, Kolkata - 700031, West Bengal.
 3. Ashim Maitra Son of Arunendra Mohan Maitra Resident of 251A/23A, Netaji Subhash Chandra Bose Road, P.S. - Netaji Nagar, Kolkata - 700032, West Bengal.
 4. Ujjawal Ray @ Ujjwal Kumar Ray Son of Dev Narayan Ray Resident of 233C, Fakir Para Road, P.S. - Watgunge, Kolkata - 700034, West Bengal.
 5. Avijit Kumar Ganguly Son of Late Shailendra Nath Ganguly Resident of Ramsita Lane, Hali Sahar, 743/34, P.S. - Bijpur, West Bengal.
 6. Devopam Sur Son of Samir Sur Resident of 73/1, Bagh Bazar, Strict No. - 7, P.S. - Shyampukur, Kolkata - 7000003.
 7. Gautam Sarkar Son of Sarda Kant Sarkar Resident of C.M.C. - 116, P.S. - Behala, 24 Pargana, Kolkata - 700053. Petitioners

Versus

1. The State of Bihar.
2. Shashank Shekhar Son of Ajay Kumar Singh Resident of behind State Bank, Ujjain Tola, P.S. - Bettiah Town, District – West Champaran
..... Opposite Party

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Appearance :

For the Petitioner s : Mr. Lal Babu Singh
Mr. Jay Prakash Singh
For the State : Mr. Ajay Kumar-I, APP
For the O.P. No. 2 : Mr. Shiv Kumar Trivedi

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

5 02-01-2018 Heard learned Counsel for the petitioners as well as the

learned Counsel for the State and the learned Counsel appearing on

behalf of Opposite party No. 2.

The petitioner seeks quashing of the cognizance order dated 26.5.2014 passed by the Judicial Magistrate, 1st Class, Bettiah, West Champaran, thereby taking cognizance of the offence under Sections 406 and 420/34 IPC and issued summons to stand trial.

The brief fact giving rise to the case is that the complainant



made contact with the accused persons of the company for selling tea of the Company in Bettiah and they gave the CNF agency to the complainant. The complainant paid Rs. 3,50,000/- as advance to the accused persons for supply of tea and also assured that they would appoint a representative of the company who will make advertisement of the product and advertisement in the TV shall also be given by the company. The company supplied him tea worth Rs. 5,51,000/- and later on the complainant paid the remaining amount of Rs. 2,24,000/-, so in total he paid Rs. 5,74,000/- only and could sell tea worth Rs. 2,00,000/-. The remaining tea worth Rs. 3,50,000/- remained unsold. The complainant informed the company but no action was taken. After ten months the complainant returned back the remaining tea to the office of the company at Patna. The company later paid Rs. 1,00,000/- but the remaining amount was not paid.

Learned Counsel for the petitioners submits that it was a purely business transaction, the complainant approached the company and was appointed as Wholesale Stockiest and tea worth Rs. 5,74,000/- was supplied to him. There was no condition or any agreement that unsold product will be returned back, however, he returned back the unsold tea after ten months after getting the product damaged so only Rs. 1,00,000/- was returned by the company and in the backdrop of this fact no prima facie offence either of cheating or criminal breach of trust is made out, as there was no any entrustment of any property in supply of tea, rather it was a business transaction and the same was purchased by the complainant.



However, learned Counsel appearing on behalf of Opposite party No. 2 submits that the company assured him to appoint a local person for advertisement of the product, but it was not done as a result tea could not be sold and unsold tea worth Rs. 3,50,000/- was returned back but only Rs. 1,00,000/- was returned to the complainant and the remaining amount was withheld. Learned Counsel also submits that the tea was not damaged.

Having considered the rival submission and on perusal of the record it appears that the company has not been made accused in this case, only its Directors have been made accused. The vicarious liability cannot be fixed to the company officers unless the company itself is made accused. However, it was purely a business transaction. There was no written agreement or condition that unsold product would be purchased by the company and the money will be returned back. So, prima facie no ingredient of cheating or criminal breach of trust is made out in the present case.

Hence entire criminal proceeding against the petitioners inclusive of the cognizance order dated 26.5.2014 passed in Complaint Case No. 39 (C) of 2014 is hereby quashed.

The application stands allowed.

(Arun Kumar, J.)

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