

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34046 of 2014

Arising Out of PS.Case No. -1093 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. M/s. Suniti Enterprises, through its Proprietor Mr. Sudhanshu Sinha, son of late Lakshmi Kant Sinha, erstwhile C & F Agent, Sita Sadan, Mainpura, Patna - 800001

.... Petitioner/s

Versus

1. The State of Bihar
2. WYETH LIMITED, Registered Office at level 6, Platina, Plot No.C-59, G Block, Bandrakurla Complex, Bandra (East), Mumbai 400098, (Subsidiary of Pfizer Inc.) through its authorized representative Mr. Arunangsu Talapatra, Regional Distribution Manager

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the Opposite Party No.1: Mr. Aditya Nr. Singh, APP

For the Opposite Party No.2: Mr. Abhay Kumar Singh, Sr. Advocate with
Mr. Rakesh Kumar Samrendra, Advocate
Mr. Ajay Singh, Advocate
Mr. Randhir Kumar No.1, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 24-07-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.08.2013 passed by the Judicial Magistrate, 1st class, Patna Sadar, Patna, in Complaint Case No.1093 (C) of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioners for the offence under Section(s) 409 Indian Penal Code.

2. As per Complaint Petition, the Complainant hired



Mr. Sudhanshu Sinha, Proprietor of Suniti Enterprises for carrying and forwarding the products of the Complainant-Company to the customers in the State of Bihar since 2004 vide several agreements, the latest of which was executed on 28th September, 2010, effective from 1st March, 2010, till 29th February, 2012.

3. Pursuant thereto, from and after 1st March, 2010, the Complainant forwarded products and samples, owned by it to the accused for the purpose of dispatching the said products and samples to the Complainant-Company's Stockists/Dealers immediately on receipt of orders from Stockists/Dealers. The forwarded products and samples were stored by the accused at the Warehouse, which was taken on lease by the Complainant-Company at Patna Cold Storage Building, 190/134, Shahganj, Patna. Subsequently, as the term of the said agreement was to determine/end on 29th February, 2012, the Complainant-Company, vide its letter dated 24th February, 2012, informed the accused that it was not desirous of extending the term of the said agreement. The accused intimated the Complainant that he wanted to extend the terms of agreement between the parties and refused to hand over the products and samples, which were entrusted to him. In terms of the said agreement, the Complainant-Company had supplied products and samples to the accused for an aggregate value of Rs.3,80,32,947/-. Upon termination/end of the said



agreement, those products and samples, owned and belonging to Complainant-Company and entrusted to the accused, were to be returned immediately to the company. The accused had products and supplies worth Rs.3,80,32,947/- lying at the Warehouse, which belonged to the Complainant-Company. Most of the aforesaid stocks were Scheduled –H drugs, which cannot be sold without a prescription of a registered medical practitioner. The Complainant-Company filed a suit against the accused in the Hon'ble High Court at Bombay, being Suit No.1432 of 2012, when the products were not returned by the Petitioner, for return of their products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. The Hon'ble Bombay High Court vide its order dated 11.05.2012, granted ad-interim relief restraining the accused in any manner dealing with, disposing, selling, transferring and/or creating any third party right, title and/or interest in or with respect to the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. Pursuant to the aforesaid order dated 30th July, 2012, the representative of the Court Receiver, High Court, Bombay, along with Representative of the Complainant-Company visited Warehouse of the accused at Patna on 4th September, 2012, for the purpose of taking possession of the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts



etc. The total value of products, goods and samples lying with the accused and owned by the Complainant-company as of February, 2012, was of Rs.3,80,32,947/-. The products, goods and samples actually recovered from Warehouse of the accused and taken into custody by the representative of the Court-Receiver was valued as of September, 2012, approximately Rs.1,74,20,319/- out of which products, goods and samples to the value of approximately Rs.6,56,476/- had expired as of September, 2012, and are of no value of the Complainant-Company. The accused in this manner has committed criminal breach of trust by misappropriating medicine and other product of value Rs.2,06,12,628/- to its own use, which legally belonged to the Complainant-Company.

4. The Court below on the basis of aforesaid complaint, examination of the Complainant on Solemn Affirmation and statement of two witnesses and also looking into the copies of the Agreement dated 28.09.2010 and Letter dated 24.02.2012, Stock List as on April, 2012, order of Bombay High Court, Receiver Report and Inventory of Stock prepared by Receiver has found *prima facie* case against the Petitioner for the offence under Section(s) 409 Indian Penal Code.

5. Heard counsel for both the parties.

6. Main contention raised on behalf of the Petitioner



is that Complaint has been filed after inordinate delay of thirteen months and after filing of suit at Bombay High Court. Counsel for the Petitioner further submits that as per own Complaint, Complainant was the owner of the Warehouse. Petitioner has brought copy of the order dated 17.10.2002 passed by Hon'ble Bombay High Court in Notice of Motion No.1545 of 2012 in Suit No.1432 of 2012 (Annexure-9), wherein, it is admission of the Complainant and also recorded by the Bombay High Court that Warehouse, in question, was all along in possession of the Opposite Party No.2. Therefore, instant Complaint filed by the Complainant is malicious and false. It has further been submitted on behalf of the Petitioner that in terms of agreement dated 28.09.2010, Petitioner was never in possession of Warehouse. Possession of Warehouse, in question, was all along with the Complainant-Opposite Party No.2. It has been submitted that the Complainant has also filed Declaratory Suit being Suit No.1209 of 2012 at Bombay High Court. Opposite Party No.2 has also filed Damage Suit bearing Suit No.503 of 2013 before the Hon'ble Bombay High Court. Petitioner appeared in all those cases. Present complaint has been filed by the Opposite Party No.2 on same set of facts only with a purpose to give pressure to the Petitioner. Allegations are purely civil in nature and for contractual violation, one Damage Suit No.503 of 2013 is pending in the



Hon'ble Bombay High Court for claim of damages for the same goods inter se between the same parties and this amounts to double jeopardy and impermissible in the eye of law.

7. Counsel for the Petitioner has relied on the judgments of the Hon'ble Supreme Court in the case of ***CBI Vs. Duncans Agro Industries Ltd. Calcutta***, reported in ***AIR 1996 Supreme Court 2452***, ***Superintendent and Remembrance of Legal Affairs, West Bengal Vs. Birendra Chandra Chakravarty*** reported in ***AIR 1974 SC 290***, ***Binod Kumar Vs. State of Bihar*** reported in ***(2014) 10 SCC 663***, ***G. Sagar Suri Vs. State of UP*** reported in ***(2002) 2 SCC 636*** and ***Indian Oil Corporation Vs. NEPC India Ltd.*** reported in ***(2006) 6 SCC 736*** in support of his submission.

8. Counsel for the Opposite Party No.2 submits that Court below after holding enquiry has found prima facie case against the Petitioner for committing misappropriation of the goods of the Company. Counsel for the Opposite Party No.2 further submits that Cluase-6 of the agreement dated 28.09.2010 provides that the goods stored in the Godown/Warehouse belong to and are the sole property of the Opposite Party No.2. Clause-10 of the said agreement provides that the Agent (Petitioner) shall take immediate delivery of the products from the transporters when brought to its Godown/Warehouse. Clause -11(a) of the agreement provides that



the Agent (Petitioner) shall allow the Company's (Opposite Party No.2) authorized personnel to visit the Godown/Warehouse. Clause 11(g) of the agreement provides that Agent (Petitioner) shall allow the authorized representative of the Company (Opposite Party No.2) at all times to enter upon and be on the premises where the products of the Company (Opposite Party No.2) may be stored by the Agent (Petitioner). Clause 22 of the said agreement provides that upon termination of the agreement for whatever reason, the Agent (Petitioner) shall immediately return to the Company (Opposite Party No.2) or otherwise dispose of the products in its possession as the Company may direct and shall forthwith remit the products thereof to the Company (Opposite Party No.2). Pursuant to Clause 22, a request was made to the Petitioner to make a list of products, samples and promotional items in his possession and arrange to hand over custody of the same to representative of the Opposite Party No.2. The Petitioner on receipt of the aforesaid letter dated 24.02.2012 had intimated by a handwritten note dated 28.02.2012 that he wanted to continue operations and needs a letter extending agreement. Petitioner has further stated that he would not hand over any record or stocks to the Opposite Party No.2. A copy of handwritten note dated 28.02.2012 duly signed by the Petitioner is annexed as Annexure-B to the Counter Affidavit filed by the



Opposite Party No.2. The Petitioner refused to return the medicine and locked the Warehouse. Then Opposite Party No.2 filed a Civil Suit against the Petitioner in Hon'ble Bombay High Court vide Suit No.1432 of 2012 for return of its products, goods, samples etc. The Hon'ble Bombay High Court by its order dated 11th May, 2012, granted urgent ad-interim relief in favour of the Opposite Party No.2 restraining the Petitioner in any manner dealing with disposing, selling, transferring and/or creating any third party right, title and/or interest in or with respect to the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. The Bombay High Court appointed Court Receiver for taking possession of the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. lying with the Petitioner with the assistance of local police and handing over the same to the Opposite Party No.2. In compliance of the aforesaid order of the Hon'ble Bombay High Court, the representative of the Court Receiver, High Court of Judicature at Bombay, along with representative of the Opposite Party No.2 visited the Warehouse in Patna on 4th September, 2012, for the purpose of taking possession of the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. The representative of the Court Receiver, High Court of Judicature at Bombay, tried to contact the Petitioner over telephone



calling upon him to open the Warehouse, which had been locked by him without any authority, in order to allow him to take possession of relevant products in execution of the directions passed by the Bombay High Court. The Petitioner informed the representative of the Court Receiver that he can do whatever he wants since he does not care for any body. In view of the illegal conduct of the Petitioner, representative of the Court Receiver, High Court of Judicature at Bombay, broke open the locks of the Warehouse. The representative of the Court Receiver made a detailed inventory of the products, goods and samples, assets, equipments, literature, manuals, vouchers, accounts etc. (Recovered Goods) lying at the Warehouse in the custody of the Petitioner.

9. In this manner, from the submission made on behalf of the Opposite Party No.2, as well as detailed Counter Affidavit, it appears that products, which were supplied to the Petitioner by the Complainant-Company being Carrying & Forwarding Agent of the Company, on termination of the agreement, was not handed over to Opposite Party No.2, on making request and even after the order of Hon'ble Bombay High Court. Representative of the Court Receiver, ultimately, broke open the lock of the Warehouse, which was in possession of the Petitioner, and prepared inventory of the recovered articles from the Warehouse. It was found



that this Petitioner has committed criminal breach of trust by misappropriating medicine and other products of value Rs.2,06,12,628/- i.e. more than two Crores to its own use, which legally belonged to the Complainant-Company.

10. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar* reported in (2009) 8 SCC 751 has held that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.

11. In the instant case, from the conduct of the Petitioner as well as allegation made in the Complaint Petition, it appears that even after termination of the agreement, the Petitioner did not handover the medicines supplied to him by the Complainant being Carrying & Forwarding Agent of the Company and on inspection of the Warehouse in possession of this Petitioner by the Court Receiver appointed by the Bombay High Court, it was found that this Petitioner has committed criminal breach of trust by misappropriating medicine and other products of value Rs.2,06,12,628/- to its own use, which legally belonged to the Complainant-Company.

12. The Court below is required to see only prima facie case at the time of taking cognizance.



13. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

14. In view of such, this application is **dismissed**.

15. The Petitioner is given liberty to raise all the points, as raised in the present application, at the appropriate stage including at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	01-05-2018
Uploading Date	25-07-2018
Transmission Date	25-07-2018

