

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42445 of 2012

Arising Out of PS.Case No. -2661 Year- 2007 Thana -null District- SARAN

- =====
1. Vijay Kumar, son of Shri Mukh Lal Prasad,
 2. Parma Nand Prasad, son of late Ram Chandra Prasad Yadav, both are resident of Sonali Auto Agency, Bye Pass Road, N.H. 30, Anishabad, P.S.- Phulwari Sharif, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Hari Narayan Sharma, S/O Late Bachu Sharma, R/M- Salempur, P.S.- Town, District- Saran (Chapra)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Sudha Ambastha, Advocate
Ms. Anjana Gupta, Advocate
For the Opposite Party/s : Mr. Murlidhar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.05.2012 passed by the Judicial Magistrate, 1st class, Saran at Chapra, in Trial No.730 of 2012 arising out of Complaint Case No.2691 of 2007 by which learned Court below has rejected the petition filed by the petitioners under Section(s) 245 Cr.P.C. for their discharge.

2. Heard counsel for the petitioners and the learned APP for the State. None appears on behalf of the Opposite Party No.2, although name of the counsel for the Opposite Party No.2 is



appearing in the daily Cause List.

3. It has been submitted that petitioners are the Manager and Chief Engineer of Sonali Auto Agency, Bye Pass Road, NH 30, Anisabad, Phulwarisharif, Patna.

4. A complaint has been filed by the Complainant alleging therein that he has purchased BOLERO vehicle from the dealer Sonali Auto Agency on 03.02.2007 after making full payment. Later on, defect was found in the BOLERO vehicle. The accused persons told the Complainant that defect(s) will be removed after servicing of the vehicle. The Complainant came with the purchased vehicle to his house at Chapra, but the defect(s) was not removed even after five servicing. The Complainant contacted the accused persons on phone from his village at Chapra. The accused persons sent Engineer for removing the defect(s). Accused nos. 1 and 2 came to the residence of the Complainant and made effort to remove the alleged defect(s), but in vain. The Complainant asked to replace the vehicle but the accused persons refused for the same. It is further alleged that the Complainant also telephoned the Chief General Manager, Mahindra & Mahindra, but they did not take any action and even did not talk on telephone and said to take appropriate action in the matter.

5. Learned Court below after holding enquiry has



found *prima facie* case against these petitioners for the offence under Section(s) 406, 420 Indian Penal Code.

6. Learned Magistrate has mentioned in the impugned order that from perusal of the Complaint Petition (para 2 and 3), and evidence before Charge, it transpires that the Complainant purchased the said vehicle on the assurance of Service Engineer and Manager that defect(s) will be removed after next service. Learned Magistrate only on such ground has rejected the petition filed by the petitioners under Section 245 Cr.P.C.

7. This Court after looking into the entire allegation in the Complaint Petition, finds that the vehicle was delivered to the Complainant after purchase. The agency made all efforts to remove the defect(s). As per the statement made by the Complainant himself in the Complaint Petition, total five servicing was done by the Company. Accused nos.1 and 2 (petitioners) even visited the house of the Complainant to remove the defect of the vehicle. The Complainant has alleged that the defect has still remained.

8. In such view of the matter, this Court is of the view that it will be a matter of deficiency in service and not a criminal offence even if the defect(s) continued in the vehicle after taking all proper steps by the accused persons.

9. From the own averments made in the Complaint



Petition, the petitioner took all steps for removal of the defect(s). Therefore, they had no motive from very beginning to commit cheating with the Complainant by giving defective vehicle.

10. Therefore, the Court below was not justified in rejecting the petition under Section(s) 245 Cr. P.C. filed by the petitioners.

11. Accordingly, the order dated 04.05.2012 passed by the Judicial Magistrate, 1st class, Saran at Chapra, in Trial No.730 of 2012 arising out of Complaint Case No.2691 of 2007, is hereby set aside. The petitioners are discharged from the offences alleged against them.

12. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23-01-2018
Transmission Date	23-01-2018

