

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44599 of 2014

Arising Out of PS. Case No.-142 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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M/s Sai Fertilizer Pvt. Ltd., 21 Princep Street, 2nd Floor, Kolkata through its
Director Nikhil Modi, Son of Late Suresh Kumar Modi, 57, B/1D, Block-B,
New Alipur, Kolkata-700053

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abhimanyu Kumar Singh, Son of Sri Arjun Singh, Proprietor of M/s Abhijeet Enterprises, Mill Road, Nawada, Arrah (Bhojpur).

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arjun Kumar
For the Opposite Party/s : Mr. ARUN KUMAR (APP)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 19-03-2018

Heard learned counsel for the petitioner, learned APP for the
State as well as learned counsel appearing on behalf of opposite party
no.2.

2. The petitioner seeks quashing of the order of cognizance
dated 08.04.2013 passed by learned Judicial Magistrate, 1st Class,
Patna in Complaint Case No.142(C) of 2010 thereby taking
cognizance of the offence under Sections 406, 420 and 120(B) of the
Indian Penal Code.

3. The brief fact giving rise to the case is that the petitioner
company manufactures fertilizer in the brand name of Uma and
keeps buffer stocks in Fatuha wherefrom supply is made. The



complainant in March, 2009 gave order for purchasing 1000 M.T. of the fertilizer worth Rs.30,00,000/- and gave two post dated cheques of Rs.15,00,000/- each dated 30.06.2009 and 15.07.2009. The company issued delivery order but fertilizer was not supplied. The complainant issued letter dated 14.10.2009 to the company requesting for delivery of the fertilizer or to return back the cheque but no reply was heard from the other side, later on the complainant found that company deposited both the cheques in the bank for encashment and encashed Rs.15,00,000/- but delivery of fertilizer was not made, so the complainant asked his banker to stop making payment against the second cheque issued by him, thereafter persuaded the company either to make the delivery against the money already received by him by encashing cheque of Rs.15,00,000/- but supply was not made, so the complaint was filed.

4. Learned counsel for the petitioner contends that the delivery order was issued in favour of the complainant and pursuant to that received the fertilizer worth Rs.21,62,264/- for which relies on Annexure-2, the delivery order, issued by the company and also relies on Annexure-3/A series, communication made by the Incharge of the buffer stock to the company regarding supply of fertilizer and also submits that the complainant had been in business terms with the company and used to get the fertilizer and used to realise payment subsequently; whereas learned counsel appearing on behalf of the



complainant submits that the delivery was made only after receiving the payment, the complainant placed order of 1000 M.T. of fertilizer worth Rs.30,00,000/- and issued two post dated cheques to the company but deposited one cheque of Rs.15,00,000/- and received the amount in advance but no supply was made.

5. Having considered the rival submissions and on perusal of the record, the Court finds that it is not that an offence is not disclosed from perusal of the allegations made in the complaint and material on record moreover the disputed documents relied upon by the petitioner cannot be the basis for quashing the criminal proceeding rather documents of sterling and impeccable nature can be relied upon. Even Annexure-2 delivery order relied upon by the petitioner, is not impeccable document which cannot be considered for quashing the criminal proceeding, so finding no merit in this application, the quashing application stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.04.2018
Transmission Date	21.04.2018

