

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.65826 of 2018**

Arising Out of PS. Case No.-1978 Year-2018 Thana- PATNA COMPLAINT CASE District- Patna

1. M/s. Canon India Pvt. Ltd. Through Its Authorised Representative, Mr. M Sivakumar Son of Late Mr. B. Mallegowada(Working as Legal Counsel) having its registered Office at Unit No.214 to 218, 2nd Floor ,Narain Manzil,Barakhamba Road,Connaught Place,P.S. Barakhamba Road,New Delhi-110001
2. Me. Amit Khare Son of Mr. R.B.L. Khare Senior Manager-Marketing, Document Consulting,Business Imaging Solutions Cente, Canon India Private Ltd having his Corporate office at 7th Floor,Tower B.Building 5, DLF Epitome,DLF Phase III, P.S. DLF Phase II, Gurgaon-122002,Haryana
3. M/s Digital Equipmmments, Through its partner Mr. Arun Rungta Son of Mr. Govind Rungta,Samriddhi Commercial Center, S.P. Verma Road, P.S. Kotwali, Patna, Bihar 8000001
4. Mr. Arun Rungta Son of Mr. Govind Rungta Partner of M/s Digital Equipments Samriddhi Commercial Center, S.P. Verma Road, P.S. Kotwali, Patna, Bihar 8000001
5. Mr. Aakash Tiwari @ Aakash Tiwari @ Akash Son of Jyotish Tiwari Manager of M/S Digital Equipments, Samriddhi Commercial Center S.P. Verma Road, P.S. Kotwali, Patna, Bihar 8000001

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mr. Ranjan Kumar Son of Mr. Brij Kishore, Resident of Asthana House Block-A. New Area, Kadam Kuan P.S. Kadam Kuan,Patna-800003

... .. Opposite Party/s

**Appearance :**

|                         |   |                                                                                                                    |
|-------------------------|---|--------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s    | : | Mr. Sandeep Kumar, Adv.<br>Mr. Raghav Sabarwal, Adv.<br>Mr. Rohit Raj, Adv.<br>Mr. Alok Kumar @ Alok Kr Shahi, Adv |
| For the State           | : | Mr. Anant Kumar, APP                                                                                               |
| For Opposite Party No.2 | : | Mr. Sanjeev Kumar & Preeti, Advocates.                                                                             |

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
CAV ORDER

6      13-02-2019                      Heard learned counsel for the petitioners, learned  
  
APP as well as learned counsel representing Opposite Party  
  
No.2.

2.      Petitioners have challenged the order dated



16.08.2018 passed by Sri Om Prakash, VI ACJM-VII, Patna in connection with Complaint Case No. 1978(C) of 2018 whereby and whereunder petitioners have been summoned to face trial for an offence punishable under Section 418/34 of the IPC.

3. The allegation as has been levelled at the end of OP No.2 in the complaint is to the effect that he had purchased Canon Printer-E-510 Model from Digital Equipments situated at SP Verma Road, Patna on 18.10.2016 bearing Serial No. LXGA58128 along with cartridge Canon P6-88 Black having warranty of two years. Within the warranty period, the aforesaid Printer had gone out of order and for that, he approached the authorized dealer from where purchase was made, who declined to respond, then service centre was also approached having no fruitful result. Then company's, call centre over Toll Free No. 1800 2083366/1800 1803366 was contacted, even then, there was no response at an initial stage, subsequently thereof, it was disclosed that warranty period was only available for the period of one year. Advocate notice was also served without yielding fruitful result. Under the aforesaid eventuality, OP No.2 found himself to be duped by misrepresentation of fact at the end of accused persons at the time of purchase and in likewise manner, the accused persons who under terms of warranty were bound to



repair/replace the defective part, but on account of their refusal, they put the complainant under wrongful loss.

4. Learned Magistrate took up and proceeded in accordance with Section 202 CrPC and after concluding the same, by the order impugned summoned the petitioners, subject matter of the instant application.

5. It has been submitted at the end of petitioners that the instant prosecution happens to be malicious one in the background of the fact that neither there was misrepresentation of fact nor was allurements to purchase rather after verifying, satisfying with the performance purchased the Printer. Had there been any kind of manufacturing defect, it would have been exposed just after installation. From own narration of OP No.2/complainant, it is evident that after more than a year the Printer developed some defect. There happens to be own admission at the end of the OP No.2/complainant that it was within the period of warranty even then, in worst case, the non honouring of immunity of warranty will not attract the criminal prosecution rather it will cover the deficiency in service and for that, the matter has to be sailed under Consumer Protection Act. Furthermore, it has also been submitted that an Advocate Notice was issued at the end of the OP No.2 which was properly



responded at their end requesting OP No.2 to produce the Printer for proper maintenance till then, the case has been filed without awaiting response within reasonable time.

6. Apart from this, it has also been submitted that from perusal of the facts of the complaint petition as well as S.A, statement of witnesses, it is apparent that no offence under Section 418 of the IPC is made out as there was no deception/cheating by way of inducing the OP No.2 to deliver the cash to the authorized dealer, nor the petitioners under guise of warranty were under obligation to protect the OP No.2 from any loss and that being so, none of the ingredients is found duly satisfied whereupon, no offence under Section 418 IPC is found appropriately. Hence, the order impugned is fit to be set aside.

7. Also relied upon the judgment dated 06.07.2018 passed in connection with Cr. Misc. No. 58249/2015, order dated 16.01.2012 passed in Cr. Misc. Nos.14537/2010, 14626/2010, 14548/2010, order dated 02.07.2013 passed in Cr. Misc. No. 9653/2012 as well as order of Hon'ble Apex Court passed in Appeal (Crl.) 173/2008.

8. On the other hand, learned APP along with learned counsel representing OP No.2 have submitted that the learned lower court has rightly summoned the petitioners to face trial for



an offence punishable under Section 418/34 IPC on account of the fact that within the warranty period, petitioners undertook to repair the fault, if any, so developed and by such undertaking, petitioners were to maintain/repair/replace the Printer within the period of warranty on account of snag so developed/persisting and by such activity, petitioners vow to protect loss to the OP No.2 by way of expenses which OP No.2 was going to meet by getting the snag removed/repared.

9. So far ambit and scope of Section 482 is concerned, the same has been considered in the case of ***Parbatbhai Aahir v. State of Gujarat*** as reported in (2017) 9 SCC 641 whereunder after considering the earlier judgments the following criteria has been culled down:-

16. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:-

(16.1) [Section 482](#) preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(16.2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While



compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

(16.3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(16.4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(16.5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(16.6) In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(16.7) As distinguished from serious offences, there may be criminal cases which have an



overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(16.8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(16.9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

**16.10.** There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

10. In business dealings two words are frequently used, admitted, enforceable under the guise of Different Act, the first one is “Guarantee” which is properly taken care of under Section 126 of the Contract Act. The second one is “Warranty” and the same is duly recognized under the Sale of Goods Act. For better appreciation Section 12 is quoted hereinbelow:

**12. Condition and warranty.—**



(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

11. Hulsbery Fourth Edn. Volume 9 para 542

observed as follows:-

“82. Conditions and Warranties.-- The predominant modern approach is to consider the nature of the terms of the contract in order to decide whether those terms are conditions or warranties. Prima facie a breach of condition entitles the innocent party to rescind the contract and claim damages for any loss he may have suffered, whereas a breach of warranty only entitles him damages.”

12. In *Indochem Electronic v. Additional Collector of Customs, A.P.* as reported in (2006) 3 SCC 721, it has been

held as follows:-

“28. Although in terms of sub-section (3) of Section 12 no right accrues to a purchaser to reject the goods on breach of stipulation of warranty, the same would not mean that the extent of damages cannot be equivalent to the price of the goods inasmuch as such a power has specifically been conferred upon the Commission.

29. It is true, where a stipulation in a contract of



sale is a warranty, its breach may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, but, where a stipulation in a contract of sale is a condition, its breach may give rise not only to a claim for damages but also generally to a right to treat the contract as repudiated.”

13. As stated above, Section 12(3) of the Sale of Goods Act speaks only about the identification of damage for neglect/breach of warranty. That being so, inter se relationship being that of manufacturer/supplier as well as customer did not justify the instant prosecution though, OP No.2 will be entitled for damage, if any and for that, he may choose appropriate forum for the same. However, so far criminal prosecution is concerned, the same is found misconceived whereupon, the order impugned is set aside.

14. Petition is allowed.

**(Aditya Kumar Trivedi, J)**

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