

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 3408 of 2014

Arising Out of Complaint Case No.-54 C Year-2013 Thana- PATNA COMPLAINT CASE
District- Patna

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1. Raj Kumar Gupta, Son of Sri Babu Lal Gupta, Resident of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S. - Bara Bazar, Kolkata, District- Kolkata, West Bengal.
 2. Harish Kumar Gupta, Son of Late Shyam Sunder Gupta, Resident of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S. - Bara Bazar, Kolkata, District- Kolkata, West Bengal.
 3. Binu Lal Kariwal, Son of Late Mul Ram Kariwal, Resident of 208, Ravindra Sarani, P.S. - Bara Bazar, District- Kolkata.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manish Kumar Son of Surendra Prasad, Resident of Salempur, Gola Road, Dalpatti, Barh, P.S.- Barh District- Patna, Partner - Proprietor M/S M.J. Enterprises, Dal Mills, Salempur, Gola Road, Dalpatti, Barh, P.S.- Barh, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar and Mr. Rohit Raj, Advocates
For the Opposite Party no. 2	:	Mr. Surendra Singh, Ms. Tulika Singh and Ms. Sudha Chandra, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 03-01-2019



Heard learned counsel for the petitioners; State and opposite party no. 2.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That, this is an application for Quashing of the order dated 04.04.2013 passed by Sri R V Kumar, Judicial Magistrate, 1st Class, Barh in Complaint Case No. 54(C) of 2013 by which cognizance of offences under section 420 of the IPC has been taken against the petitioners.”

3. The allegation against the petitioners is that despite having received Rs. 6,75,020/- for supply of 390 bags of Masoor, the same was not delivered to the opposite party no. 2 (complainant).

4. Learned counsel for the petitioners submitted that from the plain reading of the complaint itself, it is apparent that the dispute relates to financial transaction, that too arising out of a commercial agreement between the parties and the institution of a criminal case is an abuse of the process of the Court as the opposite party no. 2 has the remedy under the common civil law by approaching the Civil Court of competent jurisdiction. It was submitted that the petitioners have been unnecessarily harassed by lodging of the present case, as in course of doing business, there are various issues which the petitioners would put forth as and



when the time arises before the appropriate forum, in accordance with law.

5. Learned A.P.P. and learned counsel for the opposite party no. 2 submitted that there are facts which cannot be decided in the present proceeding. Learned counsel for the opposite party no. 2 drew the attention of the Court to the fact that in five other cases of similar nature filed against the petitioners and others by opposite party no. 2 and his father, co-ordinate Benches have not interfered in the matter.

6. Learned counsel for the petitioners submitted that the submissions of learned counsel for the opposite party no. 2 is not factually correct to the extent that the cases have been withdrawn and not dismissed on merits.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. In the present transaction, it is apparent that the allegation relates to a business transaction in which the opposite party no. 2 has alleged that he had paid an amount to the petitioners for purchasing 390 bags of Masoor but the allegation is that the same was not delivered to him. The same is a business transaction and further, for constituting an offence under Section 420 of the Indian Penal



Code, there should be cheating and dishonest intent to deceive the person to deliver any property. In the present case, the Court does not find that there was any cheating involved for the reason that if there is failure on the part of one of the parties to act in terms of a business/commercial agreement, that too, involving payment of money and non performance or supply of any goods, the issue is purely civil in nature and the course obviously is the civil Court of competent jurisdiction either for recovery of the money or for a direction to supply the goods and/or payment of compensation/cost etc. However, a criminal case being instituted in such case clearly would be abuse of the process of the Court.

8. Moreover, the Court finds that the present case is covered by the decision of the Hon'ble Supreme Court in the case of **Indian Oil Corpn. v. NEPC India Ltd.** reported as **(2006) 6 SCC 736**, where at paragraph no. 13, it has been held as under:

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

9. For the reasons aforesaid, the application is allowed. The order dated 04.04.2013 passed by the Judicial Magistrate, 1st Class, Barh in Complaint Case No. 54(C) of 2013, by which



cognizance has been taken under Section 420 of the Indian Penal Code, as against the petitioners, stands quashed.

(Ahsanuddin Amanullah, J.)

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