

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.21639 of 2016**

Arising Out of PS. Case No.-2541 Year-2012 Thana- PATNA COMPLAINT CASE District-  
Patna

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1. Shankar Kumar Ghosh @ S/o Late Charu Chandra Ghosh, mohalla Bhikhanpur, G.N. Mukherjee Lane, P.S.- Kotwali, District- Bhagalpur.
  2. M/s Shri Shankar Enterprises, M.P. Dwiwedi Road, P.S.- Bhagalpur, District- Bhagalpur through its Proprietor, Shankar Kumar Ghosh, S/o Late Charu Chandra Ghosh.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bhola Nath Dubey, S/o late Shiv Shankar Dubey, Proprietor of M/s Sunrise Transport Corporation, Janak Kishore Road, Kadamkuan, District- Patna.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Kundan Kumar Singh, Advocate  
For the Opposite Party/s : Mr. Anil Pd. Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL ORDER**

2      12-09-2023                      1. Heard learned counsel for the petitioners and  
learned A.P.P. for the State.

2. The present application has been filed seeking quashing of the order dated 05.02.2013 passed by Smt. Shefali Narayan Jha, the learned Judicial Magistrate-1<sup>st</sup> Class, Patna in Complaint Case No. 2541(C) of 2012 whereby cognizance has been taken against the petitioners under Section 418 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the complainant, who is proprietor of M/s. Sunrise Transport



Corporation, deals in transport business and had instituted the aforesaid complaint alleging that one M/s Indchemic Health Specialities Private Limited booked medicine worth Rs. 45,906/- *vide* consignment note no. 30091 dated 06.10.2006 from Patna to Bhagalpur at petitioners' address, further the goods reached in safe and sound condition at Bhagalpur where the accused no.2 of the complaint petition reached the branch office of the complainant at Bhagalpur and requested to deliver the said goods and further told that original consignee copy of the said consignment has been misplaced, further assured that he will submit the same as soon as it is traced. Accordingly, the Branch Manager of the complainant company advised the accused no.2 to meet the complainant, who is competent authority for allowing to deliver the goods, thereafter accused no.2 on 09.10.2006 came to the office of the complainant at Patna and requested to deliver the goods under the said consignment without original consignee copy which, he stated, had been misplaced but assured to submit it whenever traced. On such assurance and for smooth running of the business, the complainant allowed the accused no.2 to take delivery of goods under the said consignment, thereafter accused no.2 took delivery of goods on 10.10.2006 and put his signature



with rubber stamp on the back of the consignment note no. 30091 dated 06.10.2006, further accused no.2 also assured at the time of delivery of goods that all dues amount of M/s Indchemic Health Specialities Private Limited, Patna shall be paid within the stipulated time. It is next alleged that complainant did not get any complaint from M/s Indchemic Health Specialities Private Limited about their due payment and thus thought that the matter was settled, when all of a sudden the complainant received a notice dated 18.01.2012 from M/s Indchemic Health Specialities Private Limited, about recall of goods under consignment note no. 30091 dated 06.10.2006 which was booked from Patna to Bhagalpur and also disclosed that M/s Shri Shankar Enterprises has not paid the dues, thereafter the complainant replied the legal notice and also contacted the accused no.2 and requested him to pay the amount with respect to the goods or to return the original consignment copy of the medicines but neither the amount was paid nor the original consignment note was returned, accordingly a legal notice was sent by the complainant to the accused persons on 08.05.2012 by registered post requesting to pay the amount involved or to return the original consignment note of said medicine but the legal notice was not replied nor



the goods were returned along with the original consignment note, accordingly the instant complaint was filed.

4. The learned counsel for the petitioners submits that from perusal of the allegations as alleged in the complaint it would manifest that the dispute was purely civil and it arose in pursuance of an agreement entered in between the petitioners' company and M/s Indchemic Health Specialities Private Limited whereby certain medicines were to be delivered to the petitioners through the complainant. Learned counsel thus submits that from perusal of the allegations as alleged in the complaint and the evidence on record it would manifest that there was absolutely no material before the learned trial court to take cognizance of the offence under Section 418 of the Indian Penal Code.

5. Shri Chandra Bhushan Prasad, the learned A.P.P. for the State vehemently opposes the quashing application and submits that from perusal of the allegations as alleged in the complaint it would manifest that the petitioners being a company indulged in cheating as the complainant has alleged that the medicine which he transported to the petitioners' company was accepted by the petitioners and relying on their assurance, the same was delivered without obtaining the



original consignee copy after taking receiving on the back of the consignment note. The learned A.P.P. next submits that complainant is a transporter and no prudent businessman would indulge in an act which would discredit his own business. He further submits that a prudent businessman would never indulge in filing criminal cases knowing that his business would also get discredited later, it is thus submitted that it appears that the complainant had no option but to file the complaint when he realized that he was cheated. It is also submitted that from perusal of the order impugned it would manifest that even the learned Magistrate has found the *prima-facie* case against the petitioners based on material on record, further submits that delay in filing the complaint no doubt is fatal but then in the nature of allegations as alleged, the delay stands explained.

6. Considering the submissions made by the learned A.P.P. for the State, the Court is not inclined to entertain the quashing application.

7. The quashing application is thus rejected.

8. The learned trial court is directed to expedite the case as it gives a very grim picture to the Court that after 2016, the matter is still pending at the stage of cognizance.



9. Let this order be communicated to the learned  
District Judge, Patna.

(Satyavrat Verma, J)

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