

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36850 of 2022

Arising Out of PS. Case No.-911 Year-2020 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Anand Shah Son Of Mr. Tushar Shah R/O 2/A- 94, Rustomjee Regency, Js Road, Dahisar West, P.S.- Mhb Borivali West, Mumbai - 400068 Presently Working As Partner At Oxford Lab Fine Chem Llp.
 2. Tushar Rajnikant Shah Son Of Mr. Rajnikant Shah R/O 2/A- 94, Rustomjee Regency, Js Road, Dahisar West, P.S.- Mhb Borivali West, Mumbai - 400068 Presently Working As Partner At Oxford Lab Fine Chem Llp.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raj Shekhar Anand Son of Shri Anil Kumar M/s Sri Sai Trading, R/o St. Joseph School Lane Gupta Market, Shop No.- 3 and 4, Govind Mitra Road, P.O.- Bankipur, P.S.- Pirbahore, District - Patna, Pin Code - 800004

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dayanand Singh, Advocate
For the Opposite Party/s : Mr. Bishweshwar Ram, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 22-08-2023 Heard learned counsel for the petitioners, learned
APP for the State and learned counsel for the opposite party no.
2.

2. This application has been filed for quashing of the order dated 18.01.2022 passed by learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 911C of 2020 by which learned Magistrate has taken cognizance against the petitioners for the offences under Sections 406 and 34 of the Indian Penal Code.

3. It is alleged that petitioners were running their business in the name of M/s Sai Traders and engaged in



business of manufacturing chemicals and other relevant articles. The officials of the petitioners' firm offered the opposite party no. 2/complainant to enter into an agreement for sale and marketing of chemical articles of Oxford brand within the area of Bihar and Jharkhand. Thereafter, the petitioners' firm entered into an agreement under terms and conditions. It is further alleged that the Opposite Party No. 2/complainant invested an amount of Rs. 4 to 5 crores for establishment of infrastructure and also advertised the branch of the Petitioners' firm in Bihar and Jharkhand. It is further alleged that the petitioners supplied their products to another distributor without any knowledge or consent of the opposite party no. 2/complainant in Bihar and Jharkhand by violating the terms and conditions of the said agreement and defrauding the opposite party no. 2/complainant. It has further been alleged that the petitioners have taken an advance of Rs. 10 lakhs from the opposite party no. 2/complainant which is false and fabricated and it is nothing to fasten the criminal offence upon petitioners and the present criminal proceedings against the petitioners is an abuse of process of law and the impugned order is fit to be quashed.

4. It has been submitted by learned counsel for the petitioners that opposite party no. 2 had entered into an



agreement with the Petitioners' firm for exclusive distributorship right of sale and marketing of chemical articles of Oxford brand within the area of Bihar and Jharkhand but the petitioners gave the distributorship rights to other Agents without consent of opposite party no. 2/complainant. It is, however, clear that the agreement was issued on a trial basis and exclusive rights of the opposite party no. 2/complainant has not been mentioned anywhere in the agreement. The opposite party no. 2 failed to make payment within the stipulated time, leading to business dispute which forced the petitioner's firm to distribute the products to another dealer in the business interest.

5. It has further been submitted that petitioners' firm issued an Authority Letter to opposite party no. 2 as agreement, however, the same is a general authority letter which is issued by the Company to every dealer who wants to sell Oxford Brand (products). He has relied upon judgment of Hon'ble Supreme Court in case of *Indian Oil Corporation Vs. NEPC India Ltd. and Others* reported in *AIR 2006 SC 2780* and has submitted that for a business transaction between the parties arising out of written agreement and if there is any violation of terms of the agreement, the remedy lies in civil proceedings and no criminal case can continue. He also submits that no offence under



Section 406 of Indian Penal Code is made out against the petitioner as there has been no entrustment of property. He further submits that there was no exclusive agreement between parties for doing business in the State of Bihar and Jharkhand.

6. Learned counsel for the opposite party no. 2 has submitted that business was started with the petitioners and the opposite party no. 2 after huge investment and in the year 2018 an amount of Rs. 10 Lakhs in cash was also paid to petitioners by the complainant. He has further submitted that the opposite party no. 2/complainant has exclusive right of distributorship of the products by the petitioners and the same could not be leased by them and because of the Breach, the opposite party no. 2 had suffered huge loss.

7. I have considered the submissions of both the parties and also perused the materials available on record.

8. From reading the entire complaint and the S.A of the complainant, it appears that the dispute between the parties is basically of civil nature. The parties had entered into an agreement with regard to the complainant doing business of the products of the petitioners and the complainant was appointed as stockists of the said goods of the petitioners and they had not given any exclusive rights to the complainant/opposite party no.



2 for their products for business in the State of Bihar and Jharkhand. If there was breach of terms of agreement between the parties, the complainant could have approached the Civil Court and filed a suit for damages for the suffered loss by the complainant but this kind of criminal prosecution should not be allowed to continue.

9. In view of the above, this application is allowed. The impugned order dated 18.01.2022 passed by learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 911C of 2020 is hereby quashed in the interest of justice.

10. The complainant is given liberty to approach the petitioners for return of the goods which have not been utilized by the complainant and are lying with the complainant. The quashing of this prosecution will not take away the right of the complainant for the refund of genuine goods which are in good condition and which belong to the company. The company is at liberty to take back all these goods which are in good condition.

(Sandeep Kumar, J)

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