

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.265 of 2022

Arising Out of PS. Case No.-5518 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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1. JET KNITEARS LTD MANUFACTURERS OF EXPORTS QUALITY UNDERGARMENTS THROUGH DIRECTOR ANKUR NARULA, Son of Balram Kumar Narula having its registered office at B/0119/410, B- 1, Darshan Purwa, Kanpur- 208012, U.P. (India). Resident of 125/67-C, Block - K, Govind Nagar, S.O.- Kanpur U.P.
 2. ANKUR NARULA Son of Balram Kumar Narula, Resident of 125/67-C, Block - K, Govind Nagar, S.O.- Kanpur U.P.
 3. Rakesh Kumar Narula Son of F.C. Narula, Resident of 125/67-C, Block - K, Govind Nagar, S.O.- Kanpur U.P.
 4. Anil Kumar Narula Son of F.C. Narula, Resident of 125/67-C, Block - K, Govind Nagar, S.O.- Kanpur U.P.

... .. Petitioner/s

Versus

1. The State Of Bihar through S.P. Patna, Bihar
2. Mohan Kumar, Son of Shri Rajnandan Prasad Bihariji Kona Chanpurbela, P.S. - Jakkanpur, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha @ Archana Shahi, Advocate Mr. Alok Kumar, Advocate
For the O.P. No. 2	:	Mr. Rajnandan Prasad, Advocate Mr. Vishesh Kumar Singh, Advocate
For the State	:	Mr. Deepak Kumar, AC to GP 4

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

CAV JUDGMENT

Date : 06-03-2024

The petitioners have approached this Court under Article 226 of the Constitution, praying for setting aside the order of cognizance dated 06th October 2021 passed by the learned Judicial Magistrate Ist Class, Patna, in complaint Case No. 5518(c) of 2019 against the petitioners, holding *inter alia* that the



complainant/ opposite party no. 02 had been able to establish sufficient ground for proceeding against the petitioners under Section 406/34 of the IPC and thereby issued process against the petitioners. Case of the complaint, in brief, is that on 29th May 2018, one Vikash Kumar Soni, proprietor of Fuel India Company, claimed to be authorized by the petitioner no. 01 company executed a franchise operated (FOFO) agreement with the complainant, under the terms and conditions that Fuel India, proprietorship concerned of Vikash Kumar Soni has been authorized by the petitioner no. 01, Jet Knitwears Ltd., Kanpur to sell and do marketing of the goods and products manufactured by Jet Knitwears Ltd.. It was agreed that Fuel India would open (FOFO) stores, as per the guidelines of petitioner no. 01 and accepts such appeals, to act as a FOFO stores for LYCOT brand of Jet Knitwears Ltd., to be only to the customers located in the territory. The exclusive stock point of the company was named as F.S. in the said agreement. As per the agreement, it was the duty of the F.S. to raise bill of products in face to face transactions to physical stores being the exclusive outlets in the territory. The FS was prohibited to market or sell the products using any internet site or mail order catalog, online mobile applications and other modes of Information technology without specific written



authorization by the petitioner no. 01. It was also agreed that the complainant would deposit an amount of Rs. 10,00,00/- (Ten lakhs only) in favour of Jet Knitwears Ltd., Kanpur. As per the agreement, all billings to the second party will be done by the Fuel India, Kanpur and all the payment by second party will be deposited to Fuel India. Jet Knitwears Ltd. would assure in writing that agreement of business is as per its business policy. It was further stipulated in the agreement that goods would be supplied by the Jet Knitwears Ltd. on instructions of Fuel India. After getting the proper order on mail by FS, to FS which further would be distributed to FOFO in designated area as per the instructions of Fuel India. The complainant as well as Fuel India would get commission at the rate of 3% of the sale to FOFO stores which would be paid to Fuel India to the exclusive stock point company, i.e., the FS. It was further agreed by and between the parties that Fuel India would open FOFO stores on advance basis, for which goods would be supplied by FS. The payments for the same would be collected by Fuel India. The cheque/RTGS/DD of all FOFO stores collected would be in the name of Fuel India only. FF will not be responsible for any payment, collection or outstanding of the market. However, FS would help in future to resolve the issue of market amicably.



2. It is the case of the complainant that after execution of the said agreement on 29th May 2018, the complainant gave Rs. 5,00,000/- (Five lakhs only) by two cheques on 30th May 2018 and 06th June 2018 to the petitioner no. 01. The complainant also pleaded that he spent Rs. 4,00,000/- (Four lakhs only) in advertisement of business of accused no. 01, as per the instruction of the accused persons. He altogether paid Rs. 2,40,000/- (Two lakhs Forty Thousand only), in favour of Fuel India on several dates starting from 28th June 2018, thereafter on 20th July 2018, the complainant also transferred Rs. 40,000/- (Forty Thousand only) and on 30th July 2018, he transferred Rs. 50,000/- (Fifty Thousand only) through NEFT in favor of the accused person. Thus, it is the case of the complainant that the accused person has not received Rs. 1141000/- (Eleven lakh forty one thousand only) from the complainant. In spite of discharging his part of agreement the accused persons failed to establish any shops or stores till date and thereby misappropriated the said sum of Rs. 1141000/- (Eleven lakh forty one thousand only).

3. It is already mentioned that the petitioner no. 01 is a private limited company dealing with the manufacturing and distributionship of LYCOT brand undergarments. Petitioner Nos. 2



and 3 are the Directors of petitioner no. 1 and petitioner no. 4 of the Chief Executive Officer of the said company.

4. The learned counsels appearing on behalf of the petitioners as well as the respondent no. 02/ complainant have advanced their submissions. They have also filed notice of written arguments during hearing of the writ petition.

5. It is urged by the learned advocate appearing on behalf of the petitioners that the petitioners are not parties to the agreement in question dated 29th May 2018. the said agreement was executed between the proprietor and one Fuel India who represented themselves as the agents of Jet Knitwears Pvt. Ltd., and the complainant. As per Clause 3 of the agreement, it was the obligation of Fuel India to open FOFO stores as per the guideline of the petitioners and accepts such appeals to act as FOFO stores for selling the products of Jet Knitwears Ltd. The FS stated, as per agreement, they are only to raise bills in support of the products in face to face transactions to physical stores, exclusive outlets in the territory. The FS was also prevented from carrying on any business, in respect of the products of petitioner no. 01 company through online mode. The learned advocate for the petitioners next refers to the Clause 5 of the agreement. It is stipulated in Clause 5 of that as well as that of the petitioners company's product to



FOFO stores shall be made pursuant to the agreement at such prices and on such terms and conditions, as per the policy decided by the petitioner company and implemented by Fuel India. Clause 6 of the agreement clearly states that Jet Knitwears Ltd., will not be responsible with regard to the billing. The job of billing and delivery of product was decided to be made by Fuel India. It is also the duty of Fuel India to open FOFO stores on advance basis for which goods will be supplied by FS. The payment for the same will be collected by Fuel India through the cheques, RTGS/DD/ NIFT by virtue of which payments would be decided to be made, would be in the name of Fuel India.

6. Therefore, it is submitted by the learned advocate for the petitioners that they are nowhere in the picture for any fraud committed by the proprietor of the Fuel India, namely, Vikash Kumar Soni, who has been aggrieved as accused no. 06 in the above stated complaint case. The said accused no. 06 was given the agency to carry out marketing activities and appoint the dealers and FOFO stores in Bihar, Jharkhand and Nepal on 01st May 2018.

7. It is submitted by the learned advocate for the petitioners that the petitioners received in all Rs. 5,00,000/- (Five Lakhs Only) by way of bank transfers from the complainant. The complainant failed to deposit Rs. 10 lakhs as per Clause 06 of the



agreement dated 29th May 2018. Due to the dispute between the complainant and accused no. 05 and 06, the petitioners cannot be held liable. Moreover, the petitioners have declared that they are always ready and willing to pay Rs. 5,00,000/- (Five lakhs only) in favour of the complainant, which was accepted by the petitioner no. 01 company.

8. The learned counsels for the petitioners next submitted that the proposed business speaks about execution of a tripartite agreement. First agreement was made between Fuel India and the complainant. Subsequently, it was decided that after establishment of new FOFO shops by Fuel India, a tripartite agreement would be executed between Jet Knitwears Ltd., Fuel India and the proprietor of the new FOFO shops. As no shop could be established by Fuel India, the said tripartite agreement was not executed. The petitioner no. 01/ complainant and other petitioners are all alone ready and willing to make repayment of Rs. 5,00,000/- which was communicated to the complainant, in reply to the legal notice which was served upon the petitioners.

9. For the reasons stated above, it is submitted by the learned advocate for the petitioners that the complainant failed to establish even *prima facie* ground of proceeding against the petitioners under Sections 406/34 of the IPC. The dispute is



exclusively between the complainant and the accused no. 05 and 06. The said dispute arose out of an agreement and the complainant practically discloses a case on breach of the contract as civil remedy.

10. Referring to a decision of Hon'ble Supreme Court in ***Vijay Kumar Ghai v. State of W.B.***, reported in **(2022) 7 SCC 124**. It is submitted by the learned advocate for the petitioner that in order to establish the case under Section 406 of the IPC, it is a duty of the complainant to prove criminal breach of trust. The essential ingredients of the offence of criminal breach of trust are:

“(1) The accused must be entrusted with the property or with dominion over it,

(2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.”

11. Thus, entrustment of the property under Section 405 of the IPC is the basic ingredient to constitute an offence under Section 406. The word used are, “ in any manner entrusted with property”. So, it extends to entrustment of all kinds, whether to clerks, servants, business partners or other partners provided that they are holding a position of trust. A person who, dishonestly misappropriate property entrusted to them contrary to the terms of



an obligation imposed is liable to criminal breach of trust and is punished under Section 406 of the IPC.

12. Coming to the instant case, it is submitted by the learned advocate appearing on behalf of the petitioners that the complainant / respondent no. 02 failed to make out any case that the petitioners were entrusted with or as otherwise dominion over the property. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract expressed or employed relating to carry out the trust.

13. In the instant case, no contract, either employed or executed between the complainant and Jet Knitwears Ltd. Therefore, no process can be issued against them.

14. In *Anand Kumar Mohatta v. State (NCT of Delhi)*, reported in *(2019) 11 SCC 706*, it was held by the hon'ble Supreme Court that the essence of Section 405 and 406 of the IPC lays in the use of the property entrusted to a person by that person in violation of any direction of law or any legal contract which he has made during discharge of such trust. In the instant case, no part of the property was entrusted to the petitioner no. 01 company. It was agreed between the complainant and accused nos. 05 and 06 that in order to carry out the business the complainant would require to make initial deposit of Rs. 10 lakhs in favour of



petitioner no. 01 company. The complainant deposited Rs. 5,00,000/- in two installments, however, since, FOFO stores were not established by accused no. 05 and 06, the petitioner no. 01 consistently urged that they are ready and willing to pay the said Rs. 5,00,000/- which was deposited by the complainant to them. Referring to the same judgment, it is contended by the learned advocate for the petitioners that the Hon'ble Supreme Court under the facts and circumstances of the aforesaid report held that in case of security deposit by one person to another person in a business transaction, allegation of misappropriation of non-payment of security money makes a civil dispute and not a case under Section 406 of the IPC.

15. Learned advocate for the opposite party no. 02, on the other hand, submits that the instant application under Article 227 of the Constitution is not maintainable because the order of cognizance taken by the Judicial Magistrate VI, at Patna, in complaint case no. 5518(c)/2019 is assailable in criminal revision or by final obligation under Section 482 of the CrPC. The Court cannot assume jurisdiction under Article 227 of the Constitution in the instant writ petition. Referring to the indisputable factual circumstances, it is submitted by the learned advocate for the opposite party no. 02 that M/s Fuel India has been authorized to



carry out business and to sign agreement with Jet Knitwears Ltd., Kanpur and such letter of authorization was issued by the petitioner no. 01, in favour of Fuel India on 01st May 2018. Learned advocate for the opposite party no. 02 has also interpreted Clause 3, 5 and 6 of the FOFO agreement. Clause 5 clearly states that all sells of Jet Knitwears Ltd., Kanpur, products to FOFO storage shall be made pursuant to the agreement at such price on such terms and conditions as per the policy decided by Jet Knitwears Ltd., and implemented by Fuel India. The petitioner paid Rs. 2,40,000/- to Fuel India on different dates. The petitioner also spent Rs. 4,00,000/- (Four Lakhs only) for advertisement of Jet Knitwears Ltd., which are liable to be adjusted by Fuel India.

16. It is submitted by the learned advocate for the opposite party, referring to Section 24 of the IPC, submits that “whoever, does anything with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that thing dishonestly.” It is submitted by the learned advocate for the respondent no. 02 that it is essential in every case to prove or show how the accused has misappropriated the case of his master. The intention, hence, there is no need to have direct proof of misappropriation. Accused no. 06 by executing the agreement in question authorized the complainant to pay money to Jet



Knitwears Ltd., who spent huge amount for advertising and also handed over a sum of Rs. 2,40,000/- to accused no. 06. The entire act was done by the petitioners in collusion with accused nos. 05 and 06 to misappropriate the money of the complainant. In such view of the matter, the petitioners were also held to be liable for proceeding for offence under Section 406 of the IPC.

17. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I would like to record at the outset that the Code of Criminal Procedure vests inherent power to this Court under Section 482 to prevent miscarriage of justice. It is no longer res integra that Section 482 of the CrPC should be used by the High Court very sparingly and cautiously. The High Court would be loath and circumscribed to exercise its extra-ordinary power under Section 482 of the CrPC or under Article 226 of the Constitution. The relief available under Section 482 of the CrPC can also be claimed under Article 226 or 227 of the Constitution. Under Article 227 of the Constitution, the High Court has the power of superintendence over all Courts subordinate to it.

18. In the instant case, it is ascertained from the pleadings of the parties that petitioners were not in the picture while the accused no. 5 and 6 executed an agreement with the



complainant. It is vehemently urged by the learned advocate for the respondent no. 02 that the principle is lying for the act of the agent. The Fuel India and its proprietor are the agents of the petitioner no. 01 company. Therefore, they are liable for misappropriation of money.

19. I am not in a position to accept such contentions, advanced on behalf of the learned advocate for the respondents, because of the fact that the petitioner no. 01 company or its Directors and other office bearers were in no way connected in the agreement executed by and between the complainant and the accused no. 05 and 06. Moreover, the petitioners are always ready and willing to return Rs. 5,00,000/- to the complainant. In view of the above circumstances, this Court directs that the order of cognizance taken against the petitioners is bad in law, inoperative and liable to be quashed. The complainant failed to make out any case under Section 406/34 of the IPC against the petitioners.

20. However, since the petitioners are ready and willing to repay the said sum of Rs. 5,00,000/-, the aforesaid criminal proceeding in Complaint Case No. 5518 of 2019, be quashed as against the petitioners on petitioners' payment/deposition of Rs. 5,00,000/- (Five lakhs only) along with interest at the rate of 8%



per annum from the date of bank transfer till the date of repayment.

21. Since, accused no. 05 and 06 have not challenged the aforesaid criminal proceeding, this Court refrains from passing any order, in relation to accused no. 05 and 06.

22. Accordingly, this Cr. writ application is allowed on contest, subject to the terms and conditions enumerated above.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	22.02.2024
Uploading Date	06.03. 2024
Transmission Date	06.03. 2024

