

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 18848 of 2017

Arising Out of PS. Case No.-2377 Year-2015 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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1. Kulvinder Singh @ Arvinder Singh S/o Sh. Gurdev Singh, Partner M/s G.G. Industries India, 5/01, Kirti Nagar Industries Area, P.S. Kirti Nagar, Dist- West New Delhi-110015.
 2. Parmender Singh @ Maninder Singh, S/o Sh. Gurdev Singh, Partner M/s G.G. Industries India, 5/01, Kirti Nagar Industries Area, P.S. Kirti Nagar, Dist- West New Delhi-110015

... .. Petitioners

Versus

1. State Of Bihar
2. Smt. Alka Ghosh W/o Sh. Niranjana Kumar Singh Proprietor of M/s Sai Poly Product Industrial Area, 9-C, Biyada, Barari, P.S. Barari, District Bhagalpur, Bihar-812003

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Pranav Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. A.B. Ojha, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 07-07-2025 Heard learned counsel for the petitioners, learned

APP for the State and learned counsel for the opposite party

no.2.

2. This petition has been filed for quashing of

the order dated 08.12.2016 passed by A.C.J.M.-X, Bhagalpur in

Complaint Case No.2377 of 2015, whereby the learned

Magistrate has summoned the petitioners to face trial for the

offence punishable under sections 406 and 420 of the Indian

Penal Code.



3. The complainant-opposite party no.2 had preferred a complainant alleging inter alia that the accused persons who are the proprietor of M/s G.G. Industries India and the aforesaid company had submitted a quotation on 24.05.2012 for supplying sheet and vacuum framing plant, a copy of which was annexed with the complaint petition. The complainant had taken a loan under the scheme of *Pradhanmantri Swarojgar Yojna* and subsequent thereto the complainant gave Rs. 6,51,500/- through Demand Draft bearing No.465036 dated 12.06.12 and Rs. 9,77,400/- through another Demand Draft No. 467828 dated 15.04.2013 which were issued from UCO Bank, Tilkamanjhi Branch, District Bhagalpur for purchasing the machine from the petitioners to manufacture disposable cups and plates. The complainant then states that the aforesaid company thereafter supplied the machine to her. It is next submitted in the complaint that the said machine was installed by the aforesaid company in the establishment of the complainant, for which she had also paid the transporting cost. However, due to the machine being out of order, the expected production could not be achieved owing to some technical fault in the machine and consequently the production work of the complainant could not start. The complainant duly informed the accused in this regard,



whereafter the company had sent one Baldev Prasad Yadav to inspect the machine. Thereafter, the inspection team upon inspecting the machine accepted that there was a technical fault/issue in the blower and expander of the machine from the beginning due to which the machine was not working properly and consequently these items would have to be repaired or replaced.

4. On 04.12.2014, both the aforesaid defective items/parts were taken to Delhi on the assurance of the company to repair or provide a substitute part/item or replacement machine. The complainant alleges that despite repeated requests the machine was not replied/replaced due to which the work of the complainant was brought to a halt, however in the meantime the loan of the complainant was continuously mounting. The learned Magistrate, based on the aforesaid complaint and the supporting statements of the witnesses, found the case to be *prima facie* true and vide impugned order dated 08.12.2016 summoned the petitioner to face trial.

5. The learned counsel for the petitioners has submitted that in the complaint petition the complainant had wrongly mentioned the names of the petitioners and the trial Court has completely failed to appreciate the fact that the



complainant had intentionally and deliberately mentioned the names of the petitioners as proprietors of M/s G.G. Industries India whereas the petitioners are the partners of the aforesaid firm. It has also been submitted that the learned trial Court while passing the impugned order has not appreciated the fact that the quotation dated 24.05.2012 issued by the petitioners to the complainant for the machine required by her contained certain terms and conditions including the warranty clause. It is the admitted case of the complainant that the machine in question was purchased by her and installed at her premises by the petitioners on 29.07.2013. No complaint, whatsoever, regarding any defect in the operation of the said machine was ever made by the complainant either within the warranty period or even till date. Therefore, the complaint ought to have been dismissed by the learned trial court at the threshold since on this score alone the allegations made in the complaint petition were neither sustainable nor tenable.

6. Learned counsel for the petitioners has further submitted that the learned trial court has also completely failed to appreciate the fact that from the complaint petition and from the documents relied by the complainant in support of her case, no criminal offence is made out against the petitioners as



from the date of purchase of the machine in question and till installation of the same by the petitioners at the premises of the complainant, there was no complaint whatsoever by her either to the petitioners or to any authority/police regarding non-performance of their part of obligation by the petitioners under the quotation dated 24.05.2012. He has further submitted that the sole purpose of the opposite party No. 2 behind filing of the said complaint case against the petitioners is to extort money from the petitioners by misusing the process of law.

7. It has been argued by learned counsel for the petitioners that even if the allegations made in the complaint case are taken to be true, then also no criminal offence is made out and at best it appears to be a civil dispute between the parties.

8. It has also been argued by learned counsel for the petitioners that the opposite party no.2 in her pre-summoning evidence, has also deposed that she has also filed a complaint case before District Consumer Forum against the petitioners for supplying defective machine and therefore, the learned trial court ought to have dismissed/rejected the complaint of the opposite party no.2 holding that the dispute raised by the opposite party no.2 against the petitioners was



purely civil in nature and there was no criminal angle to it and the present complaint case has been filed by the opposite party no.2 only with a view to harass the petitioners. However, the learned trial court has completely overlooked this fact and proceeded mechanically in the present case.

9. This Court vide order dated 21.09.2017 had stayed the further proceedings of the court below in connection with present complaint case. The opposite party no.2 preferred Interlocutory Application No.01 of 2025 seeking vacation of stay granted by this Court. In the interlocutory application, it has been stated that the complainant/ opposite party no.2 is the promoter of a proposed plan for manufacturing plastic products and she had applied for sanctioned of PMGP loan for an amount of Rs.25,00,000/- which was sponsored by the DIC, Bhagalpur. It is emphasised by the opposite party no.2 that the petitioners had been selected by the officers of the UCO Bank against the threat of denial of loan if the supplies are not obtained through the petitioners. Therefore, the opposite party no.2 was compelled to purchase the machine from the petitioners itself, which turned out to be defective machine. It has also been stated that when the machine could not function properly the representatives of the aforesaid company took the defective



parts on the assurance of repair/replacement but till date the replacement/ repaid was never carried out, which constrained the opposite party no.2 to lodge the complaint case.

10. The learned Senior counsel for the opposite party no.2 has submitted that criminal liability and deficiency in services are two different aspects. The complainant-opposite party no.2 is pursuing the remedy under the Consumer Protection Act. It is emphasised by the learned Senior Counsel that the rights under the Consumer Protection Act are not in derogation to the other remedies as provided under the law. The learned Consumer Court has to see deficiency and compensation whereas the Court of criminal jurisdiction would see the criminal liability and punishment under the penal laws.

11. Learned Senior Counsel for the opposite party no.2 has submitted that due of the conduct of the petitioners, the opposite party no.2 had landed in serious trouble as the UCO Bank initiated a proceeding against the opposite party no.2 before the Debts Recovery Tribunal viz. OA No. 120/2015 which had been decided *ex parte* creating a liability of Rs.19, 38,578.76/- with interest against the opposite party no.2 and the aforesaid order of the DRT is under challenge before this Court in C.W.J.C. No. 2311 of 2024.



12. I have heard and considered the submissions of the parties.

13. In the case of ***State of Haryana Vs. Bhajan Lal*** reported in **1992 (Supp) 1 SCC 335**, the Hon'ble Supreme Court has delineated the circumstances where the Court can exercise powers under inherent jurisdiction for quashing which are as follows:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no



investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. From the submissions of the learned senior counsel for the opposite party no.2, it appears that a *prima facie* case is made out against the petitioners. Further, merely because the opposite party no.2 has preferred to avail remedy under the



Consumer Protection Act would not ipso facto render the criminal proceeding unsustainable. Moreover, the machine in question was supplied to the opposite party no.2 on 29.07.2013 and the same was taken back on the pretext of repair/replacement on 04.12.2014 however, till date neither the defective parts were repaired nor the new machine was provided to the opposite party no.2.

15. So far as the contention of the learned counsel for the petitioner is that from perusal of the materials available on record, a civil dispute is made out against the petitioners and therefore no criminal case could proceed is concerned, the Hon'ble Supreme Court in the case of ***Kathyayini vs. Sidharth P.S. Reddy & Ors.*** reported as **2025 SCC OnLine SC 1428** has held that the pendency of the civil proceeding on the same subject matter involving the same parties is no justification to quash the criminal proceeding if a prima facie case exists against the accused persons. In the present case, the learned Magistrate vide impugned order has summoned the petitioners to face trial after finding the case to be prima facie true based on the materials on record.

16. In view of the discussions made above, I do not find any error in the impugned order of the learned



Magistrate by which the petitioners have been summoned to face trial and further no case for interference in the impugned order is made out.

17. Accordingly, this application is dismissed. Pending interlocutory application is also disposed of. The stay granted vide order dated 21.09.2017 is hereby vacated.

(Sandeep Kumar, J)

anand/-

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