

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42087 of 2015

Arising Out of PS. Case No.-1676 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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P.K. Saxena S/o Shri Chand Narayan Saxena Marketing Manager, M/s Saboo Sodium Chloro Limited, Surya House, LB-5, B-IIInd, Krishna Marg, C Scheme, P.S. Ashok Nagar, Jaipur, Rajasthan.

... .. Petitioner

Versus

1. State of Bihar
2. Anup Kumar Keshari S/o Shri Raja Babu Keshari Resident of Ajit Kirana Stor, Sampatchak, P.S. Gopalpur, District Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Hitendra Singh, Advocate Mr. Pramod Kumar, Advocate
For the State	:	Mr. M.Haque, APP
For the O.P. No.2	:	None.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

12 17-01-2025 The present petition has been preferred under Section 482 Cr.PC for impugning the order dated 26.06.2014 passed by learned Judicial Magistrate, First Class, Patna in Complaint Case No. 1676 (c) of 2013, titled Anup Kumar Keshri Vs. M/s Sabu Sodium Chloro Ltd whereby cognizance of offence punishable under Section 420 IPC has been taken against the Petitioner and co-accused Binod Kumar as well as M/s Sabu Sodium Chloro Ltd.

2. The prosecution case as emerging from the criminal complaint is that the Petitioner as well as one Binod Kumar Singh, Area Marketing Manager and owner of M/s Sabu Sodium



Chloro Ltd., Nandlal came to the house/shop of the informant at Sampatchak, Gopalpur, Patna and stated to him to sell salt produced by their company by taking distributorship by paying Rs. 1,00,000/- in advance. On such representation, Rs. 50,000/- was paid to the accused persons including the Petitioner, who visited his shop and the rest Rs. 50,000/- was deposited in the account of the company and despite such payment of the money, no salt was sent to the Complainant. Even legal notice dated 07.03.2013 was sent by the complainant through his advocate whereby the company as well as the Petitioner and the other co-accused were called upon to pay the amount back or send the salt, failing which the complainant may initiate criminal as well as civil proceeding against the Petitioner and the other co-accused, but no reply has been received. Hence, the present complaint has been filed.

3. After filing of the complaint, the complainant and his father were examined during the inquiry under Section 200 Cr.PC. During the inquiry, they have supported the allegation as made in the complaint against the Petitioner and the other co-accused. Hence, learned Trial Court had taken cognizance of the offence under Section 420 IPC against the Petitioner and other co-accused.



4. I heard learned counsel for the Petitioner as well as learned APP for the State. However, nobody is present on behalf of the Opposite Party No.2/Complainant.

5. Learned counsel for the Petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. He further submits that he was just an employee in the company but never visited to the shop of the Complainant. Hence, he is no way involved in the alleged offence.

6. He further submits that even as per the allegation, no *prima facie* case is made out against the Petitioner or the co-accused including the company, because the alleged facts and circumstances at most constitute a dispute of civil nature and hence, the impugned order is liable to be quashed and set aside under Section 482 Cr.PC to prevent the abuse of the process of the Court and meet the ends of justice.

7. However, learned APP for the State defends the impugned order submitting that from the alleged facts and circumstances, it clearly transpires that the Petitioner and the other co-accused had made false representation to the Complainant inducing him to part with Rs. 1,00,000/-, out of which Rs. 50,000/- was deposited in the account of the company and the rest amount was paid to the Petitioner and other co-



accused who had visited his shop at Patna. But, despite such payment, no salt was sent to the Complainant, nor any reply was given by the company to the legal notice, which shows that since inception, the accused/persons including the Petitioner had *mensrea* to cheat the complainant, because no step at all was taken to perform the part of obligation as per the contract between the Complainant and the Company and its officers including the Petitioner. It is not a case of the Complainant that on account of any intervening circumstances, the contract could not be performed on the part of the accused including the Petitioner and the company. It clearly shows that *mensrea* was present right from the inception and the whole misrepresentation was made by the accused persons to the Complainant with intent to cheat him. As such, there is no illegality or impropriety in the impugned order.

8. I considered the submissions advanced by both the parties and perused the material on record. I find that as per uncontroverted alleged facts and circumstances, the Petitioner and the co-accused had made the representation regarding distributorship and for payment of Rs. 1,00,000/- in advance for supplying salt produced by the accused/company. I further find that in persuance to the representation of the petitioner and other



co-accused, the Complainant paid Rs. 50,000/- to the petitioner and co-accused and Rs. 50,000/- was paid in the account of the company. But no step whatsoever was taken by the Accused/Petitioner to perform their part of the contract. It shows prima facie mensrea on the part of the petitioner to cheat the Complainant. Moreover, plea of Defence cannot be taken into consideration by this Court at this stage. As such, a *prima facie* case is made out against the petitioner. Hence, the Court is of the considered opinion that there is no illegality or impropriety in the impugned order.

9. Hence, the present petition is dismissed.

10. The Petitioner is at liberty to raise his pleas of defence during the trial.

(Jitendra Kumar, J.)

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