

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15505 of 2016

Arising Out of PS. Case No.-1159 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Arvind Sah , Son of Late Bhabutmalji,
 2. Anand Sah, Son of Shri Arvind Sah, Both resident of C/o Arbind Remedies Ltd. No. 38, 39 and 40, STD Co. Industrial Estate, Kakkalur, Thiruvallu.

... .. Petitioner/s

Versus

1. State Of Bihar
2. M/S K.B.M. Enterprises Pvt. Ltd. Having its registered Office at Rahman Commercial Complex, Computer zone campus Exhibition Road, P.S Gandhi Maidan, Patna through its director Mr. Shyam sundar Maskara, S/o of Late Hira Lal Maskara.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amrit Abhijat, Adv.
For the State	:	Mrs. Veena Rani Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 16-02-2026 At the outset, learned counsel appearing for the petitioners is permitted to make necessary correction in paragraph no. 1 of the petition with regard to details of the sections in which cognizance of the alleged offences has been taken in course of the day.

2. The instant application has been preferred under Section 482 of the Code of Criminal Procedure (in short 'Cr.PC') with a prayer to quash the order dated 28.08.2015 passed in complaint case no. 1159(C) of 2015 by the court of learned Judicial Magistrate 1st Class, Patna whereby and



whereunder cognizance has been taken under Sections 406 & 417 of the Indian Penal Code (in short 'IPC') and the petitioners have been summoned for the said offences.

3. While referring to the relevant paragraphs of the complaint filed by the O.P. No. 2, Mr. Amrit Abhijat, learned counsel appearing for the petitioners submits that no offence under Sections 406 and 417 of the IPC is made out even prima facie as in between the petitioners and O.P. No. 2, there was business transaction.

4. Learned counsel further submits that the petitioner no. 1 was the Managing Director of M/s Arvind Remedies Limited (hereinafter referred to as the 'Company') and petitioner no. 2 was the Vice President of the said Company during the relevant period of time and as per the allegation, the complainant/O.P. No. 2 was appointed by the petitioners as C&F agent of their Company mainly for the purpose of selling medicines of their Company and the dispute raised by the O.P. No. 2 in his complaint mainly relates to non-payment of interest amounting to Rs. 2, 47,166/- accrued on the security deposit of Rs. 15,00000/- made by O.P. No. 2, with the Company of the petitioners and further relates to non-payment of the commission, reimbursable expenses, VAT and telephone



charges, etc. For these issues raised by the O.P. No. 2, the best remedy available to the O.P. No. 2 is before the civil court by way of civil litigation but the same has not been availed by him till date and from the narration of the allegations, one thing is quite clear that the petitioners had no dishonest intention from the inception of the business transaction between the petitioners and O.P. No. 2 as admittedly, considerable part of the interest amount had already been paid by the petitioners' Company to the O.P. No. 2 and further, the petitioners were Managing Director and Vice President of the Company and even if the entire allegations made in the complaint by the O.P. No. 2 are accepted even then no offence under Section 417 of the IPC is made out and the main ingredients of Section 406 of the IPC are also not even prima facie attracted in this matter and the learned Judicial Magistrate has taken cognizance of alleged offences in mechanical manner without applying judicial mind.

5. In support of the above submissions, learned counsel for the petitioners has placed reliance upon the following two judgments of the Hon'ble Apex Court:-

(i) Criminal Appeal No. 488 of 2013 (GHCL Employees Stock Option Trust Vs. India Infoline Ltd.)

(ii) Criminal Appeal No. 317 of 2008 (S.K. Alagh Vs.



State of U.P. and Ors.

6. No one appears on behalf of the O.P. No.2.

7. Learned APP appearing for the State though opposes this application but fairly accepts that there was business transaction in between the Company of the petitioners and O.P. No.2.

8. Heard both the sides and perused the impugned order as well as other relevant materials.

9. From the averments made in the complaint of the O.P. No.2, it is an admitted position that there was a business transaction in between the petitioners' Company and the O.P. No.2 during the relevant period of time and in respect of security deposit of Rs. 15,00,000/- made by the O.P. No.2 in the Company of the petitioners, considerable part of the interest had already been paid to the O.P. No.2 which is not under dispute. Though, the rest part of the interest was not paid and further, commission and other reimbursable expenses were also not paid by the petitioners' Company but initial payment made by the Company of the petitioners to the O.P. No.2 does not show the dishonest intention on the part of the petitioners' Company from the very beginning of the dispute relating to the petitioners and O.P. No.2 and further, non-payment of the alleged amount



which is said to be due on the part of the petitioners' Company, the best remedy available to the O.P. No.2 is before Civil Court by way of civil litigation and it appears that the O.P. No. 2 filed the complaint with the sole purpose of settling the dispute with the petitioners' Company by initiating the criminal prosecution which is not permissible in the eyes of law. As such, it appears that the learned Magistrate has taken cognizance of the alleged offences in mechanical manner without appreciating the aforesaid relevant facts and the same is not sustainable in the eyes of law, hence, the order impugned taking cognizance of the alleged offences and subsequent criminal proceedings having arisen against the petitioners in the light of the impugned order are hereby set aside/quashed and the instant application stands allowed.

(Shailendra Singh, J)

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