IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51327 of 2016

CNR No. BRHC010868202016

Arising Out of PS. Case No.-256 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

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1. Abbott Healthcare Private Limited, Son of Sri Kasisnath Panigrahy
2. Sudarshan Jain, Son of Dr. Kailash Chandra Jain Managing Director, Abbott Healthcare Private Limited, Ist Floor, D Mart Building, Mulun-Goregaon Link Road, MulundWest, Mumbai - 400 080

... ... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Labour Resources Department, Vikas Bhawan, New
2. The Labour Superintendent-cum-Inspector, Patna Under the Sales Promotion Employees Conditions of S

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rajeev Kumar Singh, Sr. Advocate
Mr. Alok Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Ram Sevak Choudhary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
Date : 27-10-2026

Assailing the order dated 02.08.2016 passed by learned Chief Judicial Magistrate, Patna in Complaint Case No. 256(C-2) of 2016 whereby finding *prima facie* case under Section 9 of the Sales Promotion Employees (Condition of Service) Act, 1976 (hereinafter referred to as "*the S.P.E. Act* "), processes were issued against the petitioners for their appearance to face trial; the instant application, invoking jurisdiction of the Court under Section 482 of the Code of

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Criminal Procedure (*in short* ***Cr.P.C.***), has been preferred.

2. On 27.06.2016, the complainant filed a complaint petition arraying the petitioners as accused, in the Court of learned Chief Judicial Magistrate, Patna, which was registered as Complaint Case No. 256(C-2) of 2016.

3. The prosecution case, as disclosed from the complaint petition, is that the complainant, an employee of the petitioner-company, alleged violation of the provisions of the S.P.E. Act, 1976 and the rules framed thereunder by the accused persons.

4. It is alleged that the complainant had earlier approached the employer in respect of his service-related grievances and had also submitted a complaint/representation dated 29.09.2015. The employer, through its Zonal Business Manager, submitted a reply dated 02.11.2015. According to the complainant, the grievances raised by him were not properly redressed.

5. It is further alleged that the accused persons had contravened the provisions contained in Sections 4 and 5 of the S.P.E. Act, read with the relevant rules framed thereunder. Section 4 relates to leave entitlement of a sales promotion employee, whereas, Section 5 concerns the issuance of an

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appointment letter to such employee, thus the accused persons have committed an offence punishable under Section 9 of the S.P.E. Act.

6. On the basis of the complaint, the learned Chief Judicial Magistrate, Patna finding *prima facie* case under Section 9 of the S.P.E. Act, issued processes against the petitioner vide order dated 02.08.2016 in Complaint Case No. 256(C-2) of 2016.

7. Mr. Rajeev Kumar Singh, the learned Senior Advocate appearing on behalf of the petitioners, submits that the impugned order dated 02.08.2016, whereby cognizance has been taken by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 256(C-2) of 2016, is wholly illegal, mechanical and unsustainable in the eyes of the law. It is submitted that the complaint has been filed after an inordinate delay and is barred by limitation.

8. He submits that the allegations contained in the complaint do not disclose any *prima-facie* violation of Sections 4 and 5 of the S.P.E. Act, 1976 or the rules framed thereunder. According to the learned counsel, the provisions relied upon by the complainant have wrongly been invoked and the complaint does not contain the necessary factual foundation for

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constituting the alleged offence punishable under Section 9 of the Act.

9. The learned counsel further point out that the complainant had issued a letter dated 29.09.2015 to the employer, to which a reply dated 02.11.2015 was duly furnished by the Zonal Business Manager of the petitioner-company. The complainant, however, without properly considering the said reply and without there being any subsequent material demonstrating commission of an offence, proceeded to institute the complaint. The cognizance order, therefore, has been passed mechanically and without proper application of judicial mind.

10. He contends that petitioner No. 2, being the Managing Director of the company, has unnecessarily been arrayed as an accused. There is no specific averment in the complaint that petitioner No. 2 was, at the relevant time, in charge of and responsible for the day-to-day conduct of the business of the company or that he had any specific role in the alleged violation. Mere designation as Managing Director, in the absence of necessary foundational facts, cannot by itself make him criminally liable.

11. He asserts that the complaint is, otherwise, vague and does not attribute any specific overt act to petitioner No. 2.

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In absence of such an allegation, continuation of the criminal proceeding against him would amount to an abuse of the process of the Court.

12. The complaint itself, as submitted, relates essentially to an alleged service dispute concerning leave and appointment letter and as such the necessary ingredients of the penal provision have not been specifically pleaded. The learned Magistrate, therefore, ought to have examined whether the allegations, even if accepted in its entirety, constituted an offence before taking cognizance.

13. On these grounds, learned counsel appearing on behalf of the petitioners urges that the impugned order dated 02.08.2016 and the entire consequential criminal proceeding arising out of Complaint Case No. 256(C-2) of 2016 are fit to be quashed in exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

14. None appeared on behalf of O.P. No. 2/complainant at the time of hearing. However, a counter-affidavit had already been filed on behalf of O.P. No. 2/complainant, wherein the allegations and grounds taken by the petitioners have been controverted and the prayer for quashing of the impugned order and the consequential criminal

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proceeding has been opposed.

15. In counter-affidavit, it has been stated that the present application filed by the petitioners for quashing of the cognizance order is wholly misconceived and is liable to be dismissed. The learned Chief Judicial Magistrate, Patna after considering the complaint and the materials available on record, has rightly taken cognizance under Section 9 of the S.P.E. Act, 1976.

16. It states that on 25.08.2015, an inspection was conducted by the competent authority in respect of the concerned establishment, during which the petitioners were found to have contravened Sections 4 and 5 of the S.P.E. Act, 1976 and Rule 22(1) of the rules framed thereunder. Thereafter, a letter bearing no. 2597 dated 29.09.2015 was issued to the employer requiring compliance with the statutory provisions.

17. In pursuance thereof the Zonal Business Manager of the petitioner-company, namely, Mr. Rakesh Kumar Singh, appeared before the competent authority on several dates but, failed to furnish any satisfactory reply or to ensure compliance.

18. From the averments made in the complaint constitute a clear *prima-facie* case against the accused persons. At the stage of cognizance, the learned Magistrate is not

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required to conduct a detailed appreciation of evidence or to adjudicate upon the defence of the accused. The material on record was sufficient for taking cognizance and, therefore, there is no illegality in the impugned order.

19. Further the contention of the petitioners regarding limitation is wholly misconceived. The alleged violation of the provisions of the S.P.E. Act is not such as can be used to defeat the prosecution at the threshold, particularly when the statutory non-compliance continued and the complaint was filed pursuant to the inspection and subsequent proceedings before the competent authority. The objection regarding limitation, therefore, raises no ground for quashing the cognizance order at this stage.

20. The S.P.E. Act is a beneficial legislation enacted for protecting the service conditions of sales promotion employees. The petitioners, instead of complying with the statutory requirements, have attempted to evade the provisions of the Act by raising technical objections and by filing the present quashing application. The counter-affidavit specifically asserts that the present proceeding has been instituted only to delay the matter and to harass the complainant.

21. It has also been stated that the objection raised on

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behalf of petitioner No. 2 regarding his position in the company cannot be conclusively adjudicated upon in a proceeding under Section 482 of the Cr.P.C.. At this stage, the Court is required only to examine whether the complaint and the materials accompanying it disclose a *prima-facie* case. The question as to the actual role and responsibility of the accused, is a matter which may be considered during the course of the trial proceeding, on the basis of evidence.

22. There appears to be no perversity, illegality or jurisdictional error in the order dated 02.08.2016 passed by the learned Chief Judicial Magistrate, Patna, in Complaint Case No. 256(C-2) of 2016. The petitioners have failed to make out any exceptional circumstance warranting exercise of the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

23. Accordingly, the counter-affidavit filed by O.P. No. 2/complainant suggests that the present application being devoid of merit, is fit to be dismissed, and the criminal proceeding arising out of Complaint Case No. 256(C-2) of 2016 be permitted to proceed in accordance with law.

24. Mr. Ram Sevak Singh, the learned Additional Public Prosecutor appearing on behalf of the State submits that the learned Court below has rightly taken cognizance of the

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offence under Section 9 of the S.P.E. Act, 1976 on the basis of the complaint and the materials available on record. He states that the complaint discloses a *prima-facie* case of violation of the provisions of Sections 4 and 5 of the Act and the rules framed thereunder. At the stage of cognizance, the defence of the petitioners and disputed questions of fact cannot be examined in detail. Accordingly, no ground for interference under Section 482 of the Cr.P.C. is made out and the present application is liable to be dismissed.

25. Heard rival submissions advanced on behalf of respective parties and perused the petition, counter-affidavit as well as the documents brought on record for proper appreciation of the issue raised in the instant application.

26. The first and foremost issue which crops up for consideration is:-

> *"Whether the connected complaint case lodged by opposite party No. 2 namely the Labour Superintendent-cum-Inspector, Patna under the S.P.E. Act, 1976 is barred by limitation."*

This is the solidarity ground taken by the learned counsel appearing on behalf of the petitioner to assail the order impugned.

27. In order to have proper appreciation of the case at

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hand *vis-a-vis* the allegations leveled against the petitioners with respect to issue framed herein above, certain statutory provisions as contained in the S.P.E. Act, 1976 assumes significance and accordingly those are quoted herein below:-

> *"Section 11 of the S.P.E. Act deals with cognizance of offences:-*
>
> *(1) Only the court of first class Magistrate or Metropolitan Magistrate shall try the offences punishable under this Act (supra).*
>
> *(2) No Court shall take cognizance of an offence under this Act, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.*

28. From plain reading of the Section 11 of the S.P.E. Act, certain facts becomes manifestly evident which are:-

> *(i) Only the Court of First Class Magistrate or Metropolitan Magistrate shall try the offences punisable under this Act (supra).*
>
> *(ii) The Court is precluded from taking cognizance any offence under this Act, if the same is made beyond the period of six months from the date on which the offence alleged to have been committed."*

29. The sub-section 2 of the Section 11 of the Act (*supra*) is in the form of negative command which restrains the Court from taking cognizance of any offence, if it is not filed

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within the period of limitation. In other words, the Court can take cognizance of only those acts for which complaints have been made within the six months from the date on which offence is said to have been committed. If the act alleged has not been reported within the period of six months, then it cannot be taken judicial notice by the learned Court.

30. Here, in the present case, the act of an offence alleged to have been committed on 25.08.2015 *i.e.*, the date on which private complaint was received by the opposite party No. 2 from one Sri Om Prakash. Having received the same the complaint case No. 91 of 2015 was registered in the office of Deputy Labour Commissioner, Patna and thereafter a notice was issued by the opposite party No. 2 to the petitioner company *vide* Memo No. 2797 dated 29.09.2015.

31. The aforesaid notice was duly responded by the Zonal Business Manager working in the company of petitioner No. 1 *vide* its letter dated 02.11.2015.

32. The instant case was filed thereafter in the Court of learned Chief Judicial Magistrate, Patna on 27.06.2016, which is evident from the first order dated 27.06.2016 passed by learned Chief Judicial Magistrate, Patna which is quoted hereunder:-

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Court No. 35
Court of C.J.M Patna

Case No. 256 (C-2) 2016

The State of Bihar through Sri Ranveer Ranjan, Labour Supritendant cum Inspection officer-------Complainant
Vs.
Abbott Healthcare Pvt. Ltd.----------Accused
U/S 09 of The Sales Promotion Employees (Condition of Services) Act 1976

27.6.2016. An official complaint has been filed by the State of Bihar through Sri Ranveer Ranjan Labour Supritendant cum Inspection officer against Abbott Healthcare pvt. Ltd and Sri Sudarshan Jain, Managing Director Abbott Healthcare Pvt. Ltd u/s 09 of the Sales Promotion Employees (Condition of Services) Act 1971. Seen. Register it and put up on 02.08.2016 for cognizance.

Dictated
sd/-
C.J.M. Patna

33. The aforesaid order dated 27.06.2016 passed by learned Chief Judicial Magistrate does not leave an iota of doubt with respect to the date of filing *i.e.*, 27.06.2016 and subsequent thereto *vide* order 02.08.2016 learned Chief Judicial Magistrate took cognizance on the official complaint filed by the opposite party No. 2 which is also evident from order dated 02.08.2016 by learned Chief Judicial Magistrate, Patna as the

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same is quoted hereunder:-

02.08.2016. Case put up today for hearing on cognizance. Heared the learned public prosecutor on point cognizance and perused the case record. It appears on perusal of records that a prima-facie case is made out u/s 09 of Sales and Promotion Employees (Condition of Servicess) Act 1971. Accordingly cognizance is taken u/s 09 of the Sales and Promotion Employees (Condition of Services) Act 1971 against the Abbott Healthcare Pvt. Ltd. And Sri Sudarshan Jain, Managing Director, Abbott Healthcare Pvt. Ltd. Office is directed to issue summons fixing 27.09.2016 02.08.2016. Case put up today for hearing on cognizance. Heared the learned public prosecutor on point cognizance and perused the case record. It appears on perusal of records that a prima-facie case is made out u/s 09 of Sales and Promotion Employees (Condition of Servicess) Act 1971. Accordingly cognizance is taken u/s 09 of the Sales and Promotion Employees (Condition of Services) Act 1971 against the Abbott Healthcare Pvt. Ltd. And Sri Sudarshan Jain, Managing Director, Abbott Healthcare Pvt. Ltd. Office is directed to issue summons fixing 27.09.2016 for appeaance.

The case is transferred to the court of Sri Madhvendra Singh J.M 1st Class Patna for trial and disposal.

Dictated

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Sd/-

C.J.M., Patna

34. From perusal of the aforesaid fact it becomes indisputably evident that the private complaint was initially filed in the office on opposite party No. 2 on 25.08.2015 upon which an official complaint was filed on 27.06.2016 and thereafter cognizance was taken on 02.08.2016 accordingly.

35. These facts unequivocally evince that even the official complaint has been filed beyond the period of six months from the date of receipt of initial complaint and the cognizance has been taken after the lapse of almost a year and as such it is hit by sub-section 2 of Section 11 of the S.P.E. Act. This Court has no qualms in holding that the complaint was filed in August, 2015 by the one Sri Om Prakash in the office of opposite party No.2, upon which the complaint was instituted and notices were issued to petitioner No. 1 on 29.09.2015 and thereafter official complaint was filed in June, 2016 whereupon cognizance was taken on 02.08.2016.

36. Thus, in terms of the mandatory statutory provisions as contained in Section 11(2) of the S.P.E. Act which specifically and categorically lays down that unless the complaint of an act is made within six months from the date on which the offence is alleged to have been committed, the Court

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is restrained from taking cognizance. In the result thereof, the cognizance order passed by learned Chief Judicial Magistrate, Patna on 02.08.2016 is barred by limitation and as such a nullity in eyes of law because complaint has been made much beyond the period of six months from the date on which offence alleged to have been committed and these facts are glaringly apparent from the documents available on the records.

37. When an act lays down that a certain thing is to be done in the particular manner, then these are to be done in that manner only in order to have the valid legal sanction for the same and if the mandatory provisions of any act is contravened which renders the order passed in contravention thereof, not only *void ab initio,* but also makes the entire subsequent proceedings a nullity in the eyes of law.

38. It is the trite principle of law that when the statute clearly mandates a process to be followed, the same is required to be done in that particular manner or not done at all. The aforesaid principle was enunciated by Privy Council in the case of ***Nazir Ahmad Vs. The King-Emperor***, reported in ***1936 SCC Online PC 41***, wherein it has been held as follows:-

> *" That where a power is given to do a certain thing in a certain way, the thing must be done in that away or not at all. Other*

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methods of performance are necessarily forbidden."

This principle of law has been upheld by the Hon'ble Supreme Court in the case of ***Cherukuri Mani Vs. Chief Secretary, Government of Andhra Pradesh and Ors.,*** reported in ***2015 13 SCC 722,*** in the following terms:-

"Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure…."

39. As such, on this score also, this application succeeds.

40. One important issue emerges at this stage as to whether the delay in filing the complaint within six months from the date of the alleged act of occurrence could be condoned by the learned Court.

Admittedly, the case is registered under S.P.E. Act, 1976 and the mode of cognizance has already been provided therein the aforesaid Act itself and if the mode of cognizance has been prescribed in the Act itself then the Section 473 of the Cr.P.C. will have no application, at all, as held by Hon'ble Supreme Court on India in the case of ***P.P. Unnikrishnan v.***

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Puttiyottil Alikutty, reported in ***(2000) 8 SCC 131***, the paragraph 10 of which states:-

> *"10. The extension of period contemplated in the said section is only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code. Section 473 of the Code, therefore, cannot operate in respect of any period of limitation prescribed under any other enactment. Hence, we are unable to uphold the view adopted by the learned single Judge of the High Court that section 473 of the Code can appropriately be invoked by the complainant for circumventing the bar contained in section 64(3) of the K.P. Act."*

41. From perusal of the S.P.E. Act, it becomes clear that in the Act itself there is not provision for condonation of delay and the Act specifically prescribes the mode and manner in which cognizance could be taken of offence under this Act. In the case at hand, neither the application for condonation of delay has been filed, nor the Court has condoned such delay *suo motu*. On the contrary it has taken cognizance of the offences under the S.P.E. Act straightway. Moreover, this Act (supra) being the special one will have precedence over the general law since it has been enacted for the specific purpose and specific category of services and related offences.

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42. It is a well settled law that a special law prevails over the general law. This principle has been expressed in the maxim, "*Generalia Specialibus Non Derogant"*. In other words, the principle is, therefore, that where there are provisions in Special Act and in a General Act on the same subject, the special prevails over the general. In ***St. Stephen's College Vs. University of Delhi***, reported in ***(1992) 1 SCC 558,*** the Hon'ble Supreme Court has held as follows:-

> *"**140.** The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with the subject and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way, the result would be that the special provision would be wholly defeated".*

43. In the backdrop of the factual aspects and legal discussions, made hereinabove, to allow the present proceeding to continue further, will certainly amount to abuse of the process of law.

44. As such, the order dated 02.08.2016, passed by Chief Judicial Magistrate, Patna in connection with Complaint Case No. 256(C-2) of 2016, whereby cognizance of the offences under Section 9 of the S.P.E. Act has been taken, is, hereby,

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quashed and set aside, *qua* the petitioners as well as all the criminal proceedings emanating therefrom are also, hereby quashed and set aside, *qua* the petitioners.

45. In the result, this application succeeds and as such, is allowed in the aforesaid terms.

46. All pending interlocutory applications, if any, also stand disposed of.

(Rana Vikram Singh, J)

Smriti/Rakesh-

AFR/NAFR	AFR
CAV DATE	29.07.2026
Uploading Date	09.11.2026
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