
(2019) 07 PAT CK 0276

In the Patna High Court

Case No : Criminal Miscellaneous No. 20827 Of 2015

M/S Vishnu Sugar Mills Limited And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Bihar Sugarcane (Regulation Of Supply And Purchase) Act, 1981 — Section 52, 53

Citation : (2019) 3 PLJR 848

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Y.V. Giri, Ashish Giri, Rajat Kumar Tiwary, S. Dayal

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.
2. The petitioners have challenged the order of cognizance dated 06.08.2014 passed, in Government Complaint Case No. 19 of 2014 corresponding to Trial No. 1462 of 2014, by the learned Chief Judicial Magistrate, Gopalganj whereby the learned court below has asked the petitioners to face the trial for offences under Sections 53 and 52 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as the "Act").
3. Petitioners are M/s Vishnu Sugar Mills Limited and its office-bearers. Allegation in the complaint petition is that for the season 2013-14, the mill purchased cane to the quantum of 50.36 lacs quintal from the cane growers and the cost of the same was Rs.12200.75/- lacs but the petitioners made payment to the cane growers only to the tune of Rs.6997.32/- lacs and did not make payment of the remaining amount of Rs.5203.43/- lacs as on 15.06.2014. As such, the complaint petition was filed by the Cane Officer with prior approval of the Cane Commissioner.
4. The petitioners have challenged the complaint case on two grounds. First that the complainant is not a competent person to file complaint petition. Only the

Cane Commissioner is an officer authorized in this behalf by the State Government to file complaint. However, the Cane Commissioner may by speaking order authorized/grant sanction for prosecution. In this case, the sanction for prosecution has been granted in a mechanical manner against the mandate of law.

5. Second contention is that the Magistrate is required to apply its mind before issuing summons because it has been held in catena of decisions that the exercise of summoning is a serious matter in criminal law. Hence, the same cannot be resorted to in a casual manner.

6. Learned counsel for the opposite parties filed a counter affidavit denying the assertion of the petitioners and stating the fact that the learned Chief Judicial Magistrate, Gopalganj after properly considering the matter has rightly taken the cognizance in this case. The opposite parties have highlighted the plight of the poor cane growers that they have been thrown in misery as the petitioners' Sugar Mill did not make payment to them. Hence, the act of the petitioners should not be taken lightly for technical reasons.

7. Section 53 of the Act aforesaid is not an offence, rather it reads as follows:-

"No prosecution under this Act shall be instituted except upon a complaint made in writing by an officer authorised in this behalf by the State Government".

8. Without looking into the requirement of Section 53 of the Act, cognizance has been taken by the Magistrate in a mechanical manner. In the case of PEPSI FOODS LTD. AND ANOTHER Versus SPECIAL JUDICIAL MAGISTRATE AND OTHERS reported in 1998(5) SCC 749, the Hon'ble Supreme Court held as follows:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused".

9. In the case in hand, the impugned order reflects that the Magistrate has not even examined the requirement of constitution of the offences for which cognizance has been taken. Section 53 of the Act is not an offence. However,

cognizance has been taken for that also. Therefore, impugned order suffers from non-application of judicial mind.

10. At Annexure-3 is the order passed by the Commissioner of Cane, Bihar, Patna addressed to the Cane Officer, Gopalganj, who is complainant of this case. The order reads as follows:-

"In respect of the above subjects vide your letter no. 257, dated 21.06.2014 for prior permission under Section 52 of the Act to initiate prosecution, the prior permission is granted and the proposal is returned back."

11. It does not appear that the Cane Commissioner had gone into the allegation and material brought before the Cane Commissioner to substantiate the allegation. In *Md. Iqbal Ahmad & Ors. Vs. The State of Bihar* reported in 1988 B.B.C.J. 611, a Bench of this Court observed as follows:-

"It is expected that the Cane Commissioner will go through the proposal for the prosecution and will exercise his discretion in the matter. If after going through the proposal he feels that the prosecution should be launched he should pass a speaking order approving the proposal of the Cane Officer for filing the complaint petition."

12. The aforesaid view was followed by another Bench in *Vishnu Kumar Surekha @ B.K. Surekha & Ors. Vs. The State of Bihar & Ors.* reported in 2017(3) P.L.J.R. 958.

13. The order of the Commissioner at Annexure-3 does not reveal that the same was passed after application of mind on the facts and allegations made against the petitioners. There is no reference at all as to what was the allegation against the petitioners and what was the material to substantiate the same. Hence, the Cane Commissioner granted sanction in a mechanical manner and for that reason only the whole criminal prosecution against the petitioners stands vitiated in law.

14. Hence, the impugned order as well as entire criminal proceeding arising out of the impugned order against the petitioners stands hereby quashed and this application stands allowed.