

(1997) 01 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 1726 of 1992

Prithvi Chand Khandelia and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 13(8), 13(9), 26, 31, 32

Citation : (1997) 1 PLJR 793

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Y.V. Giri and Barmeshwar Tiwary, for the Appellant; Lala Lailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—This is an application to quash the order dated 25.10.1984 by which the learned Chief Judicial Magistrate, Motihari has taken cognizance for an offence punishable u/s 52 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 and transferred the case for trial to Anr. magistrate.

2. The first Petitioner is the occupier of M/s Bharat Sugar Mills Ltd., the second Petitioner is the General Secretary of Sidhwalia Sugar Mills and the third Petitioner is the Manager of Sidhwalia Sugar Mills.

3. Opposite party No. 2, who is a Cane Officer, filed a complaint on 5.1.1984 alleging therein that Bararia tola Rajapur Road purchasing centre falls within the free area Sidhwalia Sugar Mills since so many years used to purchase sugarcane from the said centre. For the crushing season 1982-83 in exercise of power u/s 13(8) of the Act the Cane officer vide his memo No. 183, dated 19.4.1983, had directed the Mill to purchase 80,000 quintals of sugarcane from the said purchase centre, in anticipation that by purchase of 80,000 quintals of sugarcane all the available sugarcane of the purchasing centre will be disposed of. The allegation is that Sidhwalia Sugar Mills purchased only 70,000 quintals of

sugarcane leaving the remaining sugarcane in the area. Under Sub-section (8) of Section 13 of the Act, the Cane Officer is empowered to issue instruction for equitable purchase of cane as he deems necessary and such instructions has to be complied with immediately. There is proviso to this Sub-section with which we have no concern.

4. Sub-section (9) of Section 13 enjoins upon the occupier of a factory, the owner of an unit, persons acting on their behalf, every sugarcane grower or cane-grower or other person or a co-operative society to comply with any order, direction or instruction issued under this section. For disobedience of direction of the Cane Officer, punishment is provided u/s 26 of the Act.

5. Section 43 of the Act provides that 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. It appears that by a notification S.O. 1139 dated 16th September, 1985 the Governor of Bihar in exercise of its power u/s 53 of the Act authorised all Cane Officers of Bihar to file complaint, subject to approval of the Cane Commissioner, Bihar. The proviso to the notification referred to above was the subject matter of interpretation by this Court in *Md. Iqbal Ahmad and Ors. v. State of Bihar* 1988 BBCJ 611 : 1988 PLJR 958. In that case a complaint was filed by the Cane Officer. In the complaint petition there was endorsement of the Cane Commissioner "approved". The authorisation by simply writing "approved" was attacked on the ground that prior approval of the Cane Commissioner must be by a speaking order. This contention found favour by the learned single judge who held as follows:

It is expected the Cane Commissioner will go through the proposal for the prosecution and will exercise his direction 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. In the present case this does not appear to have been done. As such I find that the prosecution of the Petitioners suffers from this infirmity and therefore, the cognizance taken against them has to be quashed. This petition is, accordingly, allowed and the cognizance against the Petitioner is hereby quashed.

6. Here the Cane Commissioner has merely written Swikriti. It is indeed regrettable that even after the decision referred to above the same mistake has been committed in the case in hand. The decision of the learned single judge in 1988 BBCJ 611 has been followed in Cr. Misc. No. 2549/84 disposed of on 22nd March, 1990 and Cr. Misc. No. 1740/84 disposed of on 21.12.90.

7. The prosecution of the Petitioner is therefore invalid for non-compliance of Section 53 of the Act. Before parting with this case I must record that Mr. Y.V. Giri has raised very interesting point with reference to Sections 31 and 32 of the Act. The submission is that the direction of the Cane Officer in this case was ultra vires because declaration of reserved area is exclusively vested in the Cane Commissioner u/s 32 of the Act. The Cane Commissioner may by order notified

in the official gazette, fix with respect to any specified sugarcane-grower or sugarcane-growers generally the quantity or proportion of sugarcane grown in the reserved area by the sugarcane-grower or sugarcane-growers concerned, as the case may be, which each sugarcane-grower by himself shall supply to the factory concerned. Sub-section (2) Section 32 provides that every sugarcane grower or occupier of the factory concerned shall be bound to apply or purchase, as the case may be, the quantity or proportion of sugarcane fixed under Sub-section (2) by entering into agreement in the manner specified in Sub-sections (3) and (4) and any wilful failure on the part of any such person to do shall constitute a breach of the provisions of this Act. Secondly, according to the complainant himself the selling centre Govindganj was a free area and not reserved area Hence the Cane Officer had no authority to issue direction, the failure of which has led to the prosecution.

8. However, it is not necessary to decide, this question in this case. The Petitioner has succeeded in the first point raised by Mr. Y.V. Giri.

9. In the result, this application is allowed and the order dated 25.10.1984 passed by the learned Chief Judicial Magistrate, Motihari, is hereby quashed.

10. Let a copy of this judgment be handed over to Mr. Lala Kailash Bihari Prasad, A.P.P.