(2009) 08 PAT CK 0023

In the Patna High Court

Case No : Cr. Misc. No. 33473 of 2004

Raj Kumar Chaddha. and Kripa Shankar Manager, H.M.P. Sugar Mills Ltd.	APPELLANT
Vs	
The State of Bihar and Rajesh Kumar Pandey	RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0023

Judgement

Abhijit Sinha, J.—The two petitioners, who along with another have been arrayed as accused in Complaint Case No. 355 of 2003, have prayed for the quashing of the order dated 9.7.2004 passed therein by Sri Ram Chandra Sahni, learned Sub Divisional Judicial Magistrate, Bagaha, whereby he has taken cognizance under Sections 406 and 120B I.P.C. and has issued summons for their appearance.

2. One Rajesh Kumar Pandey, the complainant, impleaded herein as Opp. Party No. 2, filed the aforesaid complaint on 22.5.2003 inter alia alleging criminal breach of trust against the petitioners in relation to payment of cane price for the sugarcanes said to have been supplied by him to M/s H.M.P. Sugars Ltd. (hereinafter referred to as "the Factory") of which the petitioners are high officials during the period 1999-2000 and 2000-2001 crushing seasons. The complainant claims himself to be a practicing lawyer in the district court. He also claims to have undertaken cane farming as another source of his livelihood and provides financial stability to his family. It is alleged that the complainant had cordial relationship with petitioner No. 1 since the past eight years. It is also alleged that since the arrangement in the Sugar Mills regarding payment of cane price had been very unsatisfactory since past few years, the complainant had decided not to supply his sugarcanes to the Sugar Mill. However, petitioner No. 1 on gathering information regarding the non-supply along with Cane Manager came to the residence of the complainant on 5.12.1999 at around 5.00 P.M. and requested him to supply his sugarcanes to the Sugar Mill with the assurance that the cane price would be cleared within 15 days of the supply. Assured thereby, the complainant started supply of his sugarcanes to the Sugar Mill during the

crushing season 1999-2000 but the petitioners did not make any payment which was up to the tune of Rs. 1,05,489/- and again on their assurance he supplied sugarcanes during the crushing season 2000-2001 and the total amount of Rs. 23,542/- for the same had not yet been paid by the petitioners. It is also alleged that notwithstanding repeated requests for clearing the dues, the petitioners always gave assurance and eventually on 20.5.2003 when the complainant requested petitioner No. 1, at his residence in the presence of other accused, all of them got angry with the complainant and petitioner No. 1 refused to make the payments. The apprehension in the mind of the complainant is that the petitioners have conjointly conspired to grab the amount of Rs. 1,29,031/- being the amount of cane price.

3. The matter now rests settled by two decisions of this Court, namely, Suman Prasad Srivastava @ Suman Prasad, Madan Prasad Srivastava @ Madan Mohan Prasad, Jayanti Lal Jain and Satya Narayan Poddar Vs. The State of Bihar and Dineshwar Prasad Ray, and order dated 2.3.2009 passed in Cr. Misc. No. 44208 of 2007 B.K. Sureka v. State of Bihar. In the case of Suman Prasad Srivastava (Supra), a similar situation had arisen where the cane grower had not received payment from the Sugar Mill. It was held that the Bihar Sugarcane (Regulation of Supply and Purchase) Act (hereinafter referred to as "the Act") is a self-contained Act and it has got all the provisions of settling all the disputes between the supplier of sugarcane and sugar factory and also regarding violation of any provisions by either of the parties for the purpose of penalty being imposed for the criminal prosecution.

4. As per the recital in the complaint petition, the grievance of the complainant is that he had not been supplied with proper accounts and settlement of accounts have not been made between the two. Such grievance of the complainant comes within the ambit of Section 46 of the Act. As such disputes can be referred to the authority prescribed under the Act and there is also appeal provisions regarding settlement of such disputes. It is submitted that the complainant without going for such settlement of disputes has come up with the instant criminal prosecution which is not maintainable. That apart, Sections 52 and 53 of the Act also provide for penalty regarding the offence being committed in violation of the different provisions of the Act to discharge all liabilities and responsibilities. It was also observed that when a self-contained Special Act is there along with its penal provisions there is no scope of attracting provisions of the Indian Penal Code and in this context reference was made to the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others,

5. Admittedly, the act itself as contemplated u/s 46 of the Act provides for the dispute to be redressed within the provisions of the Act itself. That being the position the criminal prosecution of the petitioners appears to be an abuse of the process of the court which no court of law would like to propagate.

6. Accordingly, the application succeeds and the impugned order in respect of the two petitioners is hereby quashed.