
(2007) 04 PAT CK 0125

In the Patna High Court

Case No : Criminal Miscellaneous No. 9995 of 2007

Santosh Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 48, 49(2)

Citation : (2007) 4 PLJR 102

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—These criminal miscellaneous applications relate to similar matter, though the different complaint petitions were filed. The petitioners of these applications have challenged the order of cognizance dated 13.4.2006 passed by the Additional Chief Judicial Magistrate, Barh, Patna in Complaint Case Nos. 55(G.C.) of 2006, 40(G.C.) of 2006, 34(G.C.) of 2006, 44(G.C.) of 2006, 22(G.C.) of 2006 and 52(G.C.) of 2006 thereby and thereunder the court below has taken cognizance u/s 48 of the Bihar Agricultural Produce Markets Board Act, 1960 against all the petitioners on the basis of complaint lodged by the then Secretary of Agriculture Market Committee, Sri Arya Jairaj Gupta. Heard learned counsel for the petitioners as well as the State.

2. It is submitted that the Bihar Agricultural Produce Markets Board has already been abolished. Therefore no notice is required to be issued to Opposite Party No. 2. No post of Secretary, Agriculture Market Committee is in existence. The learned counsel for the State represents the Secretary of Agriculture Market Committee.

3. The main contention of the learned counsel for the petitioners is that there is specific provision u/s 49(2) of the Bihar Agricultural Produce Markets Act, 1960 that no court shall take cognizance without prior sanction of the Market

Committee. However, in this case the Secretary of the Committee has lodged complaint case at his own initiative without obtaining sanction of the Market Committee. For this the learned counsel for the petitioners has relied on a decision of this court reported in 1986 PLJR (NOC) 77 (M/s Kailash Flour Mills and Others vs. The State of Bihar) as well as Secretary, Agricultural Produce Marketing Committee, D.K. District Vs. Varadaraya Shenoy and Another, .

4. Considered the submission of learned counsel for the petitioners. Perused the provision as contained in Section 49(2) of the Bihar Agricultural Produce Markets Act, 1960. In sub-clause (2) of Section 49 of the Act it has been clearly mentioned that no court shall take cognizance without prior sanction of the Market Committee.

5. On perusal of the complaint petition lodged by the Secretary of the Market Committee it appears that there is no such averment. Nowhere it has been mentioned that prosecution is launched after sanction u/s 49(2) of the Bihar Agricultural Produce Markets Act, 1960. The order of cognizance also does not disclose about sanction of the Committee.

6. The above two decisions are directly on this point. The Supreme Court decision is in respect of Karnataka Agricultural Produce Market Committee Act. However, provisions are almost identical. In para 11 of the decision it has been held that Secretary of the Committee is not competent to launch prosecution without authorisation of the Committee through a resolution. Thus, having regard to the facts and circumstances of the case as well as the settled principle of law it is quite deaf that the court below has taken cognizance in contravention of Section 49(2) of the Bihar Agricultural Markets Produce Board Act, 1960. Accordingly, these applications are allowed and the order of cognizance taken against the petitioners is quashed.