

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2435 of 2013

Arising Out of PS.Case No. -72 Year- 2012 Thana -VAISALI COMPLAINT CASE District- VAISHALI
(HAJIPUR)

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1. Ajay Kumar S/o Shree Suresh Prasad Chaudhary, Director, M/s. Rakesh Eatables & General Products Pvt. Ltd., Resident of Flat No. C-503, Bandar Bagicha, Police Station-Kotwali, District-Patna-800001.
 2. Suresh Prasad Chaudhary, S/o Late Binda Prasad Chaudhary, resident of Flat No. C-503, Bandar Bagicha, Police Station-Kotwali, District-Patna-800001.
 3. Meera Devi W/o Shree Suresh Prasad Chaudhary, resident of Flat No. C-503, Bandar Bagicha, Police Station- Kotwali, District-Patna-800001.
 4. M/s. Rakesh Eatables & General Products Pvt. Ltd., B-4, Industrial Area, Hajipur, Police Station Industrial Area, Hajipur, District-Vaishali through its Director, Ajay Kumar S/o Shree Suresh Prasad Chaudhary.

.... Petitioners

Versus

1. The State of Bihar.
2. Vijay Kumar, Labour Superintendent-cum-Inspector, Vaishali, under Minimum Wages Act, office of the Deputy Labour Commissioner, Muzaffarpur, Labour Resources Department, Chahata Chowk, Muzaffarpur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
Mr. Manish Kumar, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-05-2015

The petitioners are aggrieved by the order dated 24.02.2012 passed in Complaint Case No. C2-72/2012 by which the learned Chief Judicial Magistrate, Vaishali at Hajipur has taken cognizance of the offence under Section 22 of the Minimum

Wages Act, 1948 (hereinafter for the brevity referred to as “M.W. Act”).

The prosecution case is based on a typed written complaint filed on 24.02.2012 by Shree Vijay Kumar (Opposite Party No. 2), Labour Superintendent-cum-Inspector, Vaishali before the learned Chief Judicial Magistrate, Vaishali at Hajipur. According to the complainant, the allegations against the petitioners are of not maintaining the records in proper manner as per the various provisions of the M.W. Act and of paying less wages than the prescribed minimum wage rate, which, as per the complainant, are offences punishable under Section 22 of the M.W. Act.

The petitioner nos. 1, 2 and 3 are Directors of M/s. Rakesh Eatable & General Products Pvt. Ltd. (for the sake of brevity hereinafter referred to as “the Company”) and the petitioner no. 4 is the company itself. The company is engaged in the business of manufacturing eatable masala.

It has been contended by Mr. Alok Kumar Sinha, learned counsel for the petitioners that from the reading of the complaint itself, it would appear that inspection was done on 16th July, 2011 at 2 p.m. in the premises of the company located at Industrial Area, Hajipur and on inspection, the few offences are

alleged to have been found. The offences alleged to have been committed are of not maintaining records in the proper form and manner as required by the various provisions of the M.W. Act.

He has submitted that except the alleged violation of the Section 12(1) of the M.W. Act, all other alleged violations are actually punishable under Section 22A of the M.W. Act and not under Section 22 of the M.W. Act. He contends that the cognizance taken by the learned Chief Judicial Magistrate of all the offences under Section 22 of the M.W. Act is illegal, improper and contrary to law.

He has further submitted that for the offences punishable under Section 22A of the M.W. Act, the complaint ought to have been mandatorily filed within six months from the date of committing the alleged offence i.e. 16th July, 2011 as per Section 22 B(ii)(b) of the M.W. Act, but manifestly the same was not done and from order taking cognizance, it would be manifest that the complaint was instituted on 24.02.2012, much after the lapse of the period of six months from 16th July, 2011.

He has further contended that for the offences alleged to be punishable under Section 22 of the M.W. Act, it is mandatory as per Section 22-B(ii)(a) of the M.W. Act to file complaint within one month of the grant of sanction, otherwise there is again a



statutory bar to taking cognizance. According to him, it would be apparent from the complaint that sanction was granted by the competent authority on 5.1.2012 whereas the complaint has admittedly been filed on 24.02.2012 much after the period of one month and, hence, the order taking cognizance even under Section 22 of the M.W. Act is illegal and without jurisdiction.

Lastly, he has submitted that Section 22-B (i)(a) further prescribes a bar to taking cognizance of offence punishable under Section 22 of the M.W. Act unless an application in respect of the facts consisting such offence has been earlier presented under Section 20 of the M.W. Act and the same has been granted wholly or in part, and the appropriate Government or an authorized officer of any region by it in this behalf has sanctioned the making of the complaint. It has been submitted that no such application has ever been filed under Section 20 of the M.W. Act and there is no averment to this effect in the complaint. Therefore, the order taking cognizance under Section 22 of the M.W. Act by the learned Chief Judicial Magistrate is illegal and without jurisdiction.

Mr. Bharat Bhushan, learned Additional Public Prosecutor for the State has contested the matter. He has submitted that the opposite party no. 2 inspected the premises of the company on 16th July, 2011 at 2 p.m. and detected so many violations; like



payment of less than minimum wages fixed by the Government and not maintaining prescribed records and register which were violative of the provisions as prescribed under Sections 12(1), 18(1), 18(3), 26(1), 26(2) and 26(5) of the M.W. Act. Thereafter, vide Letter No. 789 and 790 dated 28.07.2011, the Directors of the company were informed to produce the document before the authorities on 8.8.2011 at 11 a.m. The petitioners took several adjournments in the name of producing the relevant records but since the records were not presented by the petitioners on the dates so fixed in this regard, the opposite party no. 2 was left with no option but to lodge the complaint. He has submitted that the complaint was filed on 24.02.2012 after obtaining the sanction from the authority concerned. The sanction for filing prosecution by the competent authority was given on 05.01.2012 in respect of the violations detected during inspection carried out by the opposite party no. 2 on 16th July, 2011.

Mr. Bharat Bhushan has further submitted that in the sanction order dated 5.1.2012, the Assistant Labour Commissioner, Muzaffarpur had directed that before filing the prosecution case, the approval of the public prosecutor and the Additional Public Prosecutor must be taken. The approval of the public prosecutor was taken on 21.01.2012 and, thereafter, the case was filed on

24.02.2012. Thus, he has submitted that there was no delay on the part of the opposite party no. 2 in filing the complaint.

He has further submitted that the objective of the M.W. Act is to prevent exploitation of labourers. A little delay in filing the complaint would be of no consequence as the offence is serious in nature and in view of the State Amendment vide Bihar Act 9 of 1988 which came into effect from 19.2.1988, courts have given power to condone the delay caused in filing the complaint and allow the complaint to be made even after expiry of the said period. He has, thus, submitted that the learned Chief Judicial Magistrate has correctly condoned the delay, if any, caused in filing the complaint and took cognizance of the offence.

I have heard respective counsel for the parties and with their assistance gone through the records of the case.

From the facts above noted, it would be apparent that the opposite party no. 2 inspected the premises of the company in question on 16th July, 2011 at 2 p.m. and found certain irregularities for which cognizance has been taken on the date of filing of the complaint itself, i.e., 24.02.2012 by the learned Chief Judicial Magistrate, Vaishali at Hajipur. It is also an admitted fact that sanction for filing the prosecution by the competent authority was given on 5.1.2012 in respect of the allegations detected on 16th

July, 2011.

In the light of the aforementioned admitted facts, if I look to the legal provisions prescribed under the M.W. Act, I find that Section 22-B(i)(a) prescribes a bar to taking cognizance of the offence punishable under Section 22 of the M.W. Act unless an application in respect of the facts consisting such offence has been earlier presented under Section 20 of the M.W. Act and the same has been granted wholly or in part, and the appropriate Government or an authorized officer of any region by it in this behalf has sanctioned the making of the complaint. In the present case, no such application has been filed under Section 20 of the M.W. Act and there is no averment to this effect in the entire complaint petition.

I further find that the complaint has been filed much after the period of one month from the date of sanction for prosecution and, hence, the order taking cognizance of the offence would be bad in law in view of the statutory bar under Section 22-B(2)(a) of the M.W. Act.

I also find substance in the argument advance by the learned counsel for the petitioners that the complaint in question has been filed beyond the statutory period of six months from the date of committing of the offence and in view of the statutory bar

prescribed under Section 22-B(2)(b) of the M.W. Act, the learned Chief Judicial Magistrate could not have taken cognizance even for the offence punishable under Section 22-A of the Act.

Learned APP for the State has heavily relied on the State Amendment made in respect of Section 22-B of the M.W. Act vide Bihar Act 9 of 1988. In section 22-B (1) (b), the following proviso has been added by the aforementioned amendment “Provided that the Court, if it is satisfied that the State Government or any officer authorized by it in this behalf was prevented by sufficient cause from sanctioning the making of the complaint within the period specified in sub-section (2) shall condone the delay and allow the complaint to be made even after the expiry of the said period.”

A bare reading of the aforesaid amendment would make it clear that the power to condone the delay can be exercised by the Court only when the Court is satisfied that the State Government or any officer authorized by it in this behalf was prevented by sufficient cause from sanctioning the making of the complaint within the period specified in sub-section (ii). In the present case, the impugned order dated 24.02.2012 passed by the learned Chief Judicial Magistrate, Vaishali does not even refer to the provision prescribed under Section 22-B of the M.W. Act.

Further, there is nothing to show that the complainant had filed any application before the learned Chief Judicial Magistrate along with the complaint petition for condonation of the delay caused in filing the complaint petition. The impugned order would further reflect that the learned Chief Judicial Magistrate has not recorded his satisfaction for condoning the delay and allowing the complaint to be made even after expiry of the period of limitation prescribed under the M.W. Act. The complaint petition could not have been entertained by the learned Magistrate in view of the statutory bar enacted under the Act.

In view of the facts noted above, I am of the considered opinion that the aforementioned complaint is nothing but a sheer abuse of the process of court. Further, it is wholly illegal and in complete violation of the statutory bar prescribed by the different provisions of the M.W. Act as noted hereinabove.

Accordingly, the application is allowed. The impugned order dated 24.02.2012 passed in Complaint Case No. C2-72/2012 by the learned Chief Judicial Magistrate, Vaishali at Hajipur is set aside.

(Ashwani Kumar Singh, J.)

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