

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44411 of 2014

Arising Out of PS.Case No. -5 Year- 2011 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

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1. A.P.S. Chaddha (M.D.) Son of Sri Sadar Singh Chadha Resident of Jaya Plaza Clear View Building, C-1/B, Old D.L.F. Colony, Gurgaon, Haryana, At Present Residing at 4410, D.L.F. Phase-IV, Near Galleria Market, P.O. - Galleria Market, D.L.F. Police Station, D.L.F. Phase-IX, Distt. - Gurgaon, Haryana.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Adv. Mr. Anil Kumar Singh, Adv. Mr. Girish Pandey, Adv.
For Opposite Party No.2 :		Mr. Awadhesh Kumar Pandey, SCCG Mr. Ravinder Kumar Sharma, CGC
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-06-2015

In the present application filed under section 482 of the Code of Criminal Procedure (for short 'the Code'), the petitioner seeks quashing of the order dated 28.04.2011 passed by the learned Chief Judicial Magistrate, Sitamarhi in Complaint Case No.C-11/5/11 corresponding to Trial No. 2561 of 2011, by which finding a prima facie case to be made out under section 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act') against the petitioner and another, he has summoned them to face trial.

2. The complainant Abhijit Kumar, Labour Enforcement



Officer (Central), Patna filed a written complaint before the learned Chief Judicial Magistrate, Sitamarhi against the petitioner and another on 28.04.2011 alleging therein that he came to know on 24.01.2011 that the accused persons were responsible for non-issuing of employment cards to the workers within three days of their employment. The Registers of wages and Muster Roll were also not properly maintained. Latrine, Urinals and Washing facilities had not been properly provided as per specification laid down under the Rules and as such the accused persons had violated the provisions of the Act, which were punishable under section 24 of the Act.

3. Learned counsel for the petitioner has contended that although the alleged commission of offence came to the knowledge of the complainant on 24.01.2011 at 2.00 p.m., which is evident from the complaint itself, but the complaint was filed on 28.04.2011 i.e. after more than three months, whereas Section 27 of the Act envisages that “No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector”.

4. It has been contended that the order dated 28.04.2011 passed by the learned Chief Judicial Magistrate, Sitamarhi is bad in law as the same has been passed contrary to the mandate of Section

27 of the Act.

5. Per contra, learned counsel for the Union of India has submitted that the complaint was filed within the statutory period prescribed under the Act, but the cognizance was taken after four days of filing of complaint on 28th April, 2011. Hence, the order passed by the learned Chief Judicial Magistrate, Sitamarhi does not suffer from any illegality.

6. I have heard the respective counsel for the parties and perused the record. I find that though at the top of the complaint petition the date has been mentioned as 23.04.2011 but the same was filed before the court on 28th April, 2011. It would further appear from the record that an information was sought by an advocate under the Right to Information Act regarding the date of filing of the complaint in question. The Information Officer of the civil court, Sitamarhi has furnished the information on 08.09.2014 in which he has stated that the complaint in question was filed before the court on 28.04.2011 and on the same day it was registered. I also find that the learned Chief Judicial Magistrate, Sitamarhi has also put his signature over the complaint on 28.04.2011. In view of the aforesaid facts, it would be evident that the complaint in question was filed by the complainant after more than three months from the date of knowledge.



7. A similar issue had arisen before this Court in the matter of M/s Sintra Limited & Ors. Vs. State of Bihar & Anr. [1998(2) PLJR 681]. In that case too, the complaint petition was filed after expiry of three months from the date on which the alleged commission of offence came to the knowledge of the Inspector. In the said case, a Division Bench of this Court in paragraph 21 held as under :-

“21. Apart from the aforesaid, with regard to Cr. Misc. No. 16033 of 1995, it was further contended that the impugned order of the Magistrate taking cognizance was also barred by limitation in term of the provisions of [S.27](#) of the Act. Because from a bare reference to the complaint, it would appear that Labour Enforcement Officer (Central) got knowledge of the alleged violation on 30.9.1994 but the complaint was filed on 20.4.1995. As per [S. 27](#) no court shall take cognizance of any offence punishable under the Act, unless a complaint is made within three months from the date on which alleged commission of the offence came to the knowledge of the Inspector. In my view, there appears substance in such a submission as well. Because in absence of any other material contrary to what has been alleged above, there appears no dispute that the impugned order of the Magistrate was illegal and without jurisdiction since the complaint itself was barred by limitation, as it was filed after expiry of the statutory period.”

8. Keeping in mind the statutory provision prescribed under section 27 of the Act and the law laid down by a Division Bench of this Court in M/s Sintra Limited & Ors. (Supra), when I look to the facts of the present complaint, I find merit in the contention of

learned counsel for the petitioner. Apparently, the complaint was barred by limitation as it was filed after expiry of the statutory period prescribed under section 27 of the Act. In that view of the matter, the impugned order taking cognizance of the offence and summoning the petitioner to face trial passed by the learned Chief Judicial Magistrate was illegal and without jurisdiction.

9. Accordingly, the application is allowed and the impugned order dated 28.04.2011 passed by the learned Chief Judicial Magistrate, Sitamarhi in Complaint Case No. C-11/5/11 corresponding to Trial No. 2561 of 2011 is hereby set aside.

(Ashwani Kumar Singh, J)

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