

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.495 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

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1. Dr. D.B. Gupta son of Late Peareylal Gupta, Chairman, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 2. Mr. K.K. Sharma, son of Late Shivdutt Sharma, Managing Director, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 3. Mr. S.P. Chakraborty, son of Late Tajananda Chakraborty, Group President, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 4. Mr. Abir Chaudhuri, son of Samrendra Nath Chaudhuri, Vice President, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 5. Mr. Rakesh Gupta, son of P.C. Gupta, Senior General Manager, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 6. Mr. Sumit Saluja, son of Ram Prakash Saluja, General Manager-Human Resources, M/s. Lupin Limited, Lakshmi Tower, C Wing, Fourth Floor, Bandra Kurla Complex, Mumbai- 400 051
 7. Mr. Rajeev Singh, son of R.P. Singh, Regional Sales Manager, M/S. Lupin Limited, 202, Dukkhan Ram Plaza, Exhibition Road, Patna

.... Petitioners

Versus

1. The State of Bihar
2. Mr. Ramashish Kumar, C/o Keshri Medical Agency, Bari Durga Mandir Road, Saharsa, Bihar- 852 201

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Jitendra Singh, Senior Advocate Mr. Alok Kumar Sinha, Advocate Mr. Indrajeet Bhushan, Advocate
For the State	:	Mr. Kumar Alok, S. C. 7 Mr. Neeraj Kumar, AC to SC 7
For resp. no. 2	:	Mr. Rajesh Kumar Singh, Advocate Mr. Pradeep Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL



Date: 30-11-2016

This is an application, filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), seeking quashing of the First Information Report, bearing Saharsa Police Station Case No. 177 of 2016, registered on the basis of an order, dated 04.02.2016, passed by the learned Chief Judicial Magistrate, Saharsa, in exercise of power under Section 156 (3) of the Code. The First Information Report has been registered disclosing commission of offence punishable under Sections 420, 466, 467, 468, 120B read with Section 34 of the Indian Penal Code and Section 22A read with Section 22B of the Minimum Wages Act, 1948.

2. The order, dated 04.02.2016, passed by the learned Chief Judicial Magistrate, Saharsa, in Complaint Case No. 01(C) of 2016, has been specifically challenged on the ground of lack of jurisdiction, for the reason that the learned Chief Judicial Magistrate, Saharsa, did not have the competence to take cognizance on the basis of the complaint case filed by respondent no. 2 and, therefore, to exercise his jurisdiction under Section 156(3) of the Code.

3. I have heard Mr. Jitendra Singh learned Senior Counsel, appearing on behalf of the petitioners, Mr. Kumar Alok learned Standing Counsel No.7 appearing on behalf of the



State and Mr. Rajesh Kumar Singh, learned Counsel for the respondent no. 2.

4. At the very outset, it is to be pointed out that there is no dispute between the parties that even if the allegations made in the complaint petition are treated to be true, no offence under various sections of the Indian Penal Code, as mentioned above, which have been mentioned in the complaint petition and the First Information Report, is made out.

5. In view of the above admitted position, a question has arisen as to whether the learned Chief Judicial Magistrate could have exercised his power vested under Section 156 (3) of the Code of Criminal Procedure, 1973, by ordering an investigation by the police, the offence being non-cognizable.

6. Widening the ambit of challenge to the criminal prosecution, the learned Senior Counsel appearing on behalf of the petitioners has termed lodging of the complaint case by respondent no. 2 to be a gross abuse of the process of law and Court and an act of *mala fide* on the part of respondent no. 2.

7. Learned Counsel for the respondent no. 2, on the other hand, has developed his case by submitting that offence under certain provisions of the Indian Penal Code are made out on the basis of what has been alleged in the



complaint petition, some of which are cognizable and, therefore, order of the learned Chief Judicial Magistrate, Saharsa, dated 04.02.2016, making over the complaint case to the police for investigation cannot be said to be beyond his jurisdiction.

8. Before coming to the statutory provisions involved in the present proceeding, I must take note of the contents of the complaint petition, which is the basis for registration of the First Information Report and certain other admitted facts which are integrally connected to the allegations made in the complaint petition.

(i) The petitioners have been made accused in the complaint petition and the First Information Report. They are said to be the senior officials/executives, employed with M/s Lupin Limited, which is a pharmaceutical company, engaged in the business of manufacturing and sale of pharmaceutical products. The respondent no. 2 was a medical representative, employed with the said M/s Lupin Limited, at Saharsa.

(ii) The respondent no. 2 has alleged in the complaint petition that he had filed claim in Form-6 of Minimum Wages Act in the Court of the Assistant Labour Commissioner, Saharsa, on 29.08.2012, which was registered as M.W. Case No. 10 of 2013. The Court of Assistant Labour Commissioner, Saharsa, had issued notice on 13.04.2013, to



the petitioners, asking their appearance and filing their show cause replies on 08.05.2013. It was mentioned in the show cause notice, in terms of Section 20 (4-A) of the Minimum Wages Act, 1948 (Bihar Amendment), that the service condition of respondent no. 2 shall not be altered and status quo shall be maintained till the said case was pending in his Court.

(iii) In collusion with each other, the petitioners, after having received the show cause notices from the Court of the Assistant Labour Commissioner, Saharsa, terminated the service of respondent no. 2 on 27.04.2013 despite the fact that the said notices were received by them, between 20.04.2013 and 24.04.2013. The complainant alleged that by terminating his service, the accused persons committed acts of dishonesty, cheating and giving false evidence to the Court. The complainant further alleged that on 11.06.2015, the Tribunal at Saharsa had passed an order that accused no. 1, Labour Superintendent, Saharsa, should file prosecution against other accused persons (the present petitioners) under Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment) for violation of Section 20 (4-A) of the Minimum Wages Act, 1948 (Bihar Amendment).

(iv) The complainant, thereafter, visited the Court several times for filing of the complaint case, but the accused



no. 1 maintained prevaricating attitude, which compelled him to file the complaint petition. The complaint petition was filed on 05.02.2016.

9. The gist of what has been alleged in the complaint petition is that on an application filed by respondent no. 2, making a claim for compensation under the Minimum Wages Act, 1948, notices were issued to the officials of M/s Lupin Limited by the Court of the Assistant Labour Commissioner, Saharsa, with a direction not to alter the service condition of the respondent no. 2 and despite that the petitioners got the services of the respondent no. 2 terminated and they, thereby, committed offence under Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment). The Labour Superintendent, Saharsa (accused no. 1), was directed to file a complaint case, which he did not do and, therefore, he has also been arrayed as accused.

10. Learned Counsel, appearing on behalf of respondent no. 2, has fairly conceded that no offence under Sections 420, 466, 467, 468, 120B read with Section 34 of the Indian Penal Code is made out even if the contents of the complaint petition are treated to be true. He has, however, submitted that the said allegation do constitute offence punishable under Sections 119, 166, 175, 217 and 218 of the Indian Penal Code.



11. At this juncture, it would be apt to briefly refer the case of respondent no. 2 in his case before the Assistant Labour Commission, Saharsa, in M.W. Case No. 10 of 2013 and developments subsequent thereto. The respondent no. 2/ complainant, by way of compensation, raised claim for payment of a sum of Rs. 55,550/- in his application filed in Form-6 before the Assistant Labour Commissioner, Saharsa. The said amount of Rs. 55,550/- was indisputably paid to the respondent no. 2 on 23.02.2013, much before issuance of notice by the Assistant Labour Commissioner, Saharsa, to these petitioners on 13.04.2013.

12. What final order came to be passed, I will refer later. This is not in dispute that before filing of his claim on 29.08.2012, a disciplinary proceeding was initiated against respondent no. 2 with the issuance of charge sheet on 21.02.2012. The Enquiry Officer found him guilty of the charge of misconduct for false reporting, in his report, dated 26.02.2013. Based on the said report, by an order, dated 27.04.2013, he was dismissed from service. It is the case of respondent no. 2 that order of dismissal was passed after the petitioners had received the show cause notices from the Court of the Assistant Labour Commissioner, Saharsa, and, therefore, they are liable for prosecution under Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment).



13. It is the case of the petitioners, on the other hand, that order of dismissal of respondent no. 2 was passed before they had received the notices.

14. In any view of the matter, the fact remains that the purpose for which the claim, in Form-6, was filed by respondent no. 2 before the Assistant Labour Commissioner, Saharsa, stood fulfilled on 23.02.2013, with the payment of the said compensation amount of Rs. 55,550/-. However, on the allegation that the claim case was technically pending, when the order of dismissal was passed, the respondent no. 2 filed the complaint case for launching prosecution against the present petitioners for the offence punishable under various sections of the Indian Penal Code and Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment).

15. Now, to the final order, which came to be passed by the Assistant Labour Commissioner, Saharsa, in the said M. W. Case No. 10 of 2013 needs to be noticed. The Assistant Labour Commissioner, Saharsa, recorded, in his order, that since the respondent no. 2 had received the amount of Rs. 55,550/-, he was not entitled for any compensation by way of relief. However, considering the fact that despite the order of status quo, the petitioners dismissed the respondent no. 2 from service, he directed the Labour Superintendent, Saharsa, to file a complaint case in the Court



of the learned Chief Judicial Magistrate, Saharsa, for the offence punishable under Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment).

16. This is the case of respondent no. 2 that the Labour Superintendent, Saharsa, acted in collusion with the present petitioners and did not file any complaint petition and, therefore, he (Respondent No.2) himself filed the complaint case.

17. This has to be kept in mind that the claim of the respondent no. 2, before the Assistant Labour Commissioner, Saharsa, was confined to payment of minimum wages. It appears that some other dispute was also sought to be raised under the provisions of the Industrial Dispute Act, 1947, and accordingly a reference was made under Clause (c) of sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, with the issuance of notification, dated 19.07.2013, by the Government of Bihar, to decide whether termination of respondent no. 2 was justified or not.

18. A preliminary objection raised by the Management over maintainability of the Reference on the ground that respondent no. 2 being a Medical Representative was not a 'Workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, was sustained by the Presiding Officer, Labour Court, Purnea, by an order/award, dated



12.02.2014, and, accordingly reference case stood rejected.

19. Having thus briefly narrated certain basic facts, I, now, turn to the relevant statutory provisions.

20. Section 22-A of the Minimum Wages Act, 1948, (Bihar Amendment) reads thus:-

“22-A. General provision for punishment of other offences.- Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided in this Act for such contravention, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

21. Reference of Section 22-B of the Minimum Wages Act, 1948 is also relevant for the present case, which states that no Court shall take cognizance on a complaint against any person for an offence punishable under Section 22-A of the Minimum Wages Act, 1948, except on a complaint made by, or with the sanction of, an Inspector.

22. Section 22-B (2) (b) of the Minimum Wages Act, 1948, prescribes limitation of six months from the date on which the offence is alleged to have been committed, within which a complaint alleging commission of offence under Section 22-A of the Minimum Wages Act, 1948 (Bihar



Amendment) can be filed.

23. On close and careful reading of Sections 22-A and 22-B of the Minimum Wages Act, 1948 (with Bihar Amendment), it is easily discernible that cognizance on a complaint can be taken by a Court only if it is filed by a competent person within the period prescribed under sub-Section (2) of Section 22-B of the Minimum Wages Act, 1948. The proviso to sub-Section (2) of Section 22-B of the Minimum Wages Act, 1948 (Bihar Amendment), however, enables the Court to condone the delay and allow the complaint to be made even after expiry of the said period provided it is satisfied that the State Government or any other Officer authorized by it in this behalf was prevented by sufficient cause from sanctioning the making of complaint within the period specified.

24. There is no gainsaying that respondent no. 2 was not competent to file the complaint petition for an offence under Section 22-A of the Minimum Wages Act, 1948. This is also not in controversy that the said offence under Section 22-A of the Minimum Wages Act, 1948, is non-cognizable.

25. The question, which has arisen here, is as to whether the Court of learned Chief Judicial Magistrate, Saharsa, could have, in such circumstance, exercised his power under Section 156 (3) of the Code of Criminal



Procedure, 1973, by making an order of investigation by Police.

26. Section 156 of the Code of Criminal Procedure, 1973, reads thus:

"156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

27. It is easily evincible on bare reading of Section 156 (3) of the Code of Criminal Procedure, that if a Magistrate is empowered to take cognizance under Section 190 of the Code then only he may make an order for investigation by Police under sub-Section (3) of Section 156 of the Code of Criminal Procedure, 1973.

28. Section 190 of the Code of Criminal Procedure, 1973, lays down the circumstances in which a Magistrate can take cognizance, which are as under:

"190. Cognizance of offences by Magistrates –



(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

(2) xx xx xx.”

29. Section 22-B of the Minimum Wages Act, 1948 (with Bihar Amendment) read with Section 190 of the Code of Criminal Procedure, 1973, leaves no scope for any doubt that the Magistrate could not have taken cognizance without receiving a complaint by a person authorized under the provisions of Section 22-B of the Minimum Wages Act, 1948 (with Bihar Amendment). This leads to one and only irresistible conclusion that he was not authorized to make an order under Section 156 (3) of the Code of Criminal Procedure, 1973, he having no authority to take cognizance on a complaint filed by the Opposite party No.2.

30. Secondly, the Magistrate can exercise power under Section 156 (3) of the Code of Criminal Procedure, only



if the offence is cognizable in nature. Reference can be made to Supreme Court decision, in the case of **Tilak Nagar Industry v. State of A. P. (AIR 2012 SC 521)**, wherein the Supreme Court held, in paragraph 14, as follows:

“..... However, power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence. Since in the instant case, the complaint does not do so, the order of the Magistrate, stated above, cannot be sustained in law and is accordingly quashed.”

(emphasis supplied)

31. As has been discussed hereinabove, since the complaint, in any view of the matter, does not disclose essential ingredients of an offence, the impugned order, passed by the learned Chief Judicial Magistrate, Saharsa, referring the complaint for registration of the First Information Report, under Section 156 (3) of the Code of Criminal Procedure, 1973, cannot be said to be competent and legally sustainable.

32. After having held so and quashing the order passed by the learned Chief Judicial Magistrate, Saharsa, dated 04.02.2016, normally I would have remanded the matter back to the Court below for passing an order afresh.



However, I am not doing so for two reasons. Firstly, as has been concluded above, the respondent no. 2 was not competent to lodge the complaint case for an offence under Section 22-A of the Minimum Wages Act, 1948 (Bihar Amendment). Secondly, the manner in which the respondent no. 2 has conducted himself, leading to lodging of the complaint case, I am of the considered view that the criminal proceeding launched by him is manifestly attended with mala fide with an ulterior motive for wreaking vengeance on the accused persons/petitioners. In my considered view, apart from the fact that the said complaint suffers from fundamental legal defects, as noted above, it is expedient in the interest of justice not to permit a prosecution of such nature to continue any further.

33. It has been noticed that filing of a claim by respondent no. 2 for minimum wages of total amount of Rs. 55,550/-, M. W. Case No. 10 of 2013, is the foundation for lodging of the complaint petition. The said amount was admittedly paid to the respondent no. 2 on 23.02.2013. It is not clear as to whether the Assistant Labour Commissioner, Saharsa, while issuing notice to the petitioners in the said M. W. Case No. 10 of 2013, was made aware of the fact or it was there in his mind that the amount, in question, was already paid to the claimant on 23.02.2013 itself. After the amount



already having been paid, the said M. W. Case No. 10 of 2013 had become infructuous for all practical purposes. The Assistant Labour Commissioner, Saharsa, while disposing of the said M. W. Case No. 10 of 2013, in his final order, recorded that since respondent no. 2 had received the said amount of Rs. 55,550/-, he was not entitled for any other compensation by way of relief. In that background, what made respondent no. 2 to file a complaint petition before the Court of the learned Chief Judicial Magistrate, Saharsa, is not apparent. It is evidently because he had personal grudge against the petitioners, who, according to respondent no. 2, were instrumental in his dismissal from service.

34. Learned Counsel appearing on behalf of the respondent no. 2 has attempted to persuade this Court that though no offence under various sections of the Indian Penal Code, as mentioned in the complaint case, was made out on the basis of allegation made in the complaint petition, but such allegation do constitute offence punishable under various sections of the Indian Penal Code, particularly, Sections 119, 166, 175, 217 and 218 of the Indian Penal Code. He has referred to various decision of the Supreme Court, which I need not deal with those submissions, in the present facts and circumstances and discussions as above. The petitioners are not public servants. The offence of the Indian Penal Code, as



being pointed out by learned Counsel appearing on behalf of respondent no. 2, were not mentioned in the complaint petition nor are made out against these petitioners.

35. Further, there is complete non-application of mind by the learned Chief Judicial Magistrate, Saharsa, while referring the case to the police for investigation in exercise of power under Section 156 (3) of the Code of Criminal Procedure, 1973.

36. It has been reiterated by the Supreme Court on several occasions that a Magistrate is required to apply his mind before referring the matter under Section 156(3) of the Code of Criminal Procedure, 1973 and mere statement that he had gone through the complaint, documents and heard the complainant, will not be sufficient to demonstrate application of mind. What made the Magistrate to order investigation under Section 156 (3) of the Code of Criminal Procedure, 1973, should be reflected in the order, though a detailed expression of his view is not warranted. (See, **Anil Kumar v. M. M. Aiyappa**, reported in **(2013) 10 SCC 705**).

37. In the case of **Ramdeo Food Products (P) Ltd. V. State of Gujarat**, reported in **(2015) 6 SCC 439**, the Supreme Court, again, reiterated that direction under Section 156 (3) of the Code of Criminal Procedure, 1973, is to be issued after application of mind by the Magistrate.



38. The view taken in the case of **Ramdeo Food Products (P(Ltd.** (supra) has been followed in a subsequent decision of the Supreme Court in the case of **Priyanka Srivastava v, State of U.P.**, reported in **(2015) 6 SCC 287**.

39. In the facts and circumstances of the case, I find it to be fit case for exercise of inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973, by quashing the entire prosecution arising out of Complaint Case No. 01 (C) of 2016, which, I accordingly do.

40. This application is accordingly allowed.

41. Before I part with, I must indicate that I had intended to impose exemplary cost on respondent no. 2, as in my view, lodging of the complaint case by him, in the facts and circumstances of the case, is complete abuse of the process of the Court and the law. However, I have refrained from doing so considering the fact that the respondent no. 2 is a dismissed employee.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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