IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20953 of 1996

Arising Out of Complaint Case No. 1155(M) Year-1996 District- PATNA

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1. Shree Prakash Singh, son of late Rameshwar Singh, carrying on business and in the name and style of M/S Patliputra Cands as its sole Proprietor thereof and residing at Kishore Bhawan, Nawal Kishore Road, Police- Station- Kadamkuan, in the town and District- Patna : 800003.
2. Shyam Sunder Prasad @ Shyam Sundar Prasad Agarwal, son of late Thakur Prasad, working as Clerk in the office of Patliputra Cands at New Sandalpur Road, North of Kumrahar Gumti, Post office- Mahendru, Patna- 800006.
3. Sri Kanta Seth @ Sri Kanta Seth Son of Late Sasthi Pada Seth working as Administration Executive, Nestle India Limited 7, Hare Street, Calcutta:700001 and residing at P 45/3 C.I.T. Road, Entally Calcutta : 700014
4. D. E. Ardeshir @ D. E. A. Presher son of Major General EAR Ardeshir, Working as Managing Director, Nestle India Limited, D.L.F. Centre, Sansad Marg, New Delhi : 110001.

.... Petitioners

Versus

1. The State of Bihar
2. Agricultural Produce Markets Committee, Mussalahpur through its Secretary, Complainant

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Subhro Sanyal, Advocate.
Mr. Jayant Roy Chaudhary, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V. JUDGMENT

Date: 17-10-2017

This application under Section 482 of the Code of

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Criminal Procedure has been filed by the petitioners with a prayer for quashing the order dated 21.09.1996 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 1155 (M)/1996 by which after taking cognizance of an offence under Section 48 of the Bihar Agricultural Produce Markets Act, 1960 (for short 'the Act'), the petitioners have been summoned to face trial.

2. On 21.09.1996, the complainant, namely, the Secretary, Agriculture Produce Markets Committee, Mussalahpur filed a complaint bearing Complaint Case No. 1155 (M)/1996 in the court of Chief Judicial Magistrate, Patna alleging violation of the provisions of the Act punishable under Section 48 of the Act.

3. Though, the complaint runs into several pages, the gist of the complaint is that the petitioner no. 1 Prakash Singh is carrying on business in the name and style of M/S Patliputra Cands and is a clearing and sales agent of Nestle India Limited, which is engaged in the business of manufacturing and selling diverse food products under different brand names. Each of these products was manufactured with very sophisticated machinery and with the latest food processing technology. The different products of Nestle India Limited were introduced in the markets on various dates as mentioned in the complaint. Petitioner no. 2 Shyam Sundar Prasad

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@ Shyam Sundar Agarwal is a staff of petitioner no. 1, petitioner no. 3 Kanta Seth and petitioner no. 4 D. E. Ardeshir @ D.E.A. Presher are working as Administration Executive and Managing Director of the Nestle India Limited. Being a licensee, it is obligatory duty of the accused petitioners to collect the market fee from the unlicensed buyers and to deposit the same with the Market Committee. It is alleged that as the accused have not followed the direction of the Market Committee, the same amounts to violation of the provisions of the Act and Rules. The representatives of the complainant inspected the business premises of M/S Patliputra Cands and seized the books of accounts pertaining to the period between September, 1985 and May, 1986 whereafter the complainant asked the petitioner no. 1 to pay the market fee to the tune of Rs.2,37,917.66/- on all the products sold by them for the period September, 1985 to May, 1986. It is alleged that vide letter dated 11.08.1986 (Annexure-7), the complainant asked the petitioner no. 1 to pay market fees on following products: Milk Maid, Lactogen, Cerelac, Nestum Baby Cereal, Nespray Milk Powder, Lactogen Infant Formula, Milk Powder, Tomato Ketchup, Hot and Sweet, but instead of paying market fee he filed several writ petitions before the High Court details of which is given in the complaint in order to escape the purview of the Act and the Rules

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made thereunder with the purpose to defraud the Market Committee causing wrongful loss to it.

4. The learned Chief Judicial Magistrate took cognizance of the complaint on the date of its filing under Section 48 of the Act against all the accused persons named in the complaint and summoned them to face trial vide order dated 21.09.1996.

5. It is submitted by Mr. Chitranjan Sinha, learned Senior Advocate for the petitioners that so far as the petitioner no. 2 is concerned, he was working as a clerk in the office of M/S Patliputra Cands whereas the petitioners no. 3 and 4 are not in any way connected with day-to-day business affairs of the firm M/S Patliputra Cands. They are the Administrative Executive and the Managing Director respectively of Nestle India Limited. He contended that there is absolutely no averment in the complaint against these three petitioners and, thus, they cannot be held vicariously liable for any act of omission or commission on the part of petitioner no. 1, who is proprietor of the firm M/S Patliputra Cands. He further contended that prior to 12.04.2001, the aforesaid nine items for which the demand was made by the complainant from petitioner no. 1 were not in the Schedule of the Act and, hence, the Act had no application to the products marketed by the petitioner no. 1. He contended that the aforesaid stand of the

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petitioners also gets support from the ratio laid down by the Supreme Court in **Belsund Sugar Co. Ltd. vs. State of Bihar & Ors. [AIR 1999 SC 3125]** and **Edward Keventer Pvt. Ltd. Vs. Bihar Agriculture Marketing Board [AIR 2000 SC 1796].**

6. *Per contra*, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State submitted that the defence of the petitioners can be looked into at the stage of trial and not before that. He submitted that the allegations made in the complaint do attract the ingredients of the offence under Section 48 of the Act and the order of cognizance does not suffer from any illegality.

7. I have heard learned counsel for the parties and perused the record.

8. The order dated 18.02.1997 by which this application was admitted and further proceedings in the complaint case was stayed reads as follows :-

> *"Let this case be put up for admission along with C.W.J.C. No. 8670 of 1996.*
>
> *Till then, the further proceedings in Complaint Case No. 1155(M) of 1996 pending in the court of C.J.M., Patna is stayed..."*

9. The Legislature had enacted the Act with object to

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provide better regulation of buying and selling of agricultural produce and the arrangement of market for agricultural produce in the State of Bihar.

10. Under Section 27 of the Act, the Market Committee has been authorized to levy and collect market fee at the rate of 1 % on the sale/purchase of the notified agricultural produce. Sub-section (2) of this Section provides that the market fee shall be payable by the purchaser in the manner prescribed under Rule 82 of the 1975 Rules.

11. The English reproduction of Section 27 of the Act reads as under :-

> ***"27. Power to levy fees -*** *(1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs.100 worth of agricultural produce.*
>
> ***Illustration .-*** *Paddy sold in the market area as well as rice produced from such paddy, shall both be leviable.*
>
> ***Explanation.-*** *All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been brought or sold in such area provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not*

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processed or exported therefrom as the case may be, or any such produce processed in the market area is not exported therefrom within twenty one days from the date of its arrival therein it shall until the contrary is proved, be presumed to have, been bought or sold in the market area, and shall be liable for the levy of less under this section, as if, it had been so brought or sold.

(2) The market fee chargeable under sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified Market Area."

12. Section 2(l)(a) of the Act defines the term "agricultural produce", which reads as under:

*"**2(1)(a)-** 'Agricultural produce' means all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule."*

13. From the admitted facts of the case, it would transpire that the petitioner no. 1 had filed a writ petition bearing C.W.J.C.

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No. 8670 of 1996 on 27.08.1996 in which the Secretary, Agriculture Produce Markets Committee, Mussalahpur and Agriculture Produce Markets Committee, Patna City were made respondents with a prayer to direct the respondents not to collect market fee on the products marketed by M/S Patliputra Cands, as the same are not specified under the Schedule of the Act. The said C.W.J.C. No. 8670 of 1996 along with other writ petitions filed by the petitioners i.e. CWJC No. 5799 of 1988 and C.W.J.C. No. 3868 of 2000 were referred to the Full Bench of this Court, vide order dated 25.11.1997 for adjudication on the issues as to whether : (1) *"before an item can be brought within the scope of the Act as agricultural produce, it must be included in the Schedule to the Act" and (2) "if the provisions of the Act are to be attracted, it must be shown that the concern item is one of the items mentioned in the Schedule".*

14. During the pendency of the aforesaid referred writ petitions before the Full Bench, the Supreme Court rendered two decisions on the same subject matter in **Belsund Sugar Co. Ltd. vs. State of Bihar & Ors** (Supra) and **Edward Keventer Pvt. Ltd. Vs. Bihar Agriculture Marketing Board** (Supra)**.**

15. In **Belsund Sugar Co. Ltd. vs. State of Bihar & Ors.** (Supra), the Supreme Court held that the term "agricultural

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produce" as defined by section 2(1)(a) clearly indicates that the agricultural produce which is to be covered by the scope of the Act has to be one which should be specified in the Schedule of the Act.

16. In **Edward Keventer Pvt. Ltd. Vs. Bihar Agriculture Marketing Board** (Supra), the question before the Supreme Court was whether the products which are ready to serve beverages under the brand name Frooti and Appy fall within the description of mango and apple, specified in the Schedule of the Act. The contention of the appellant was that both the brands are not covered by the Schedule whereas the contention of the respondents was that the products being the mango and apple juices are covered under the item mango and apple, as specified in the Schedule and, thus, under Section 27 of the Act, the Market Committee set up under above Act has power to levy and collect market fee on the agricultural produce.

17. After elaborately dealing with the various provisions of the Act, the Supreme Court held that the product Frooti and Appy not being specified in the Schedule, the respondent had no authority to demand any fee from the appellant on marketing the said products. The judgment to the contrary passed by the High Court was set aside and the appeal was allowed.

18. The aforestated C.W.J.C. No. 8670 of 1996 along with

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other writ petitions were ultimately placed before the Full Bench of this Court and the Full Bench, vide order dated 04.08.2014, observed as follows:-

> *"The petitioners in this group of writ petitions are the manufacturers of baby food. The matter at issue is levy of market fee by the concerned Agriculture Produce Market Committees treating the product as agriculture produce.*
>
> *Under order dated 30th November 1998 made by a Division Bench of this Court, the petitions were ordered to be heard with C.W.J.C. No.5042 of 1986. Since the said C.W.J.C. No.5042 of 1986 had been referred to the Full Bench, the present petitions have been placed before us.*
>
> *The said C.W.J.C. No.5042 of 1986 (M/s. Lipton India Ltd. V. State of Bihar) has since been decided by the Full Bench of the Jharkhand High Court* ***{AIR 2004 Jharkhand 34 (FB)}****.*
>
> *Today, after twenty five years, learned advocate Mr. S. Sanyal appearing for the petitioners seeks adjournment to suit the convenience of the senior counsel. He claims that the cause of action still survives.*
>
> *The C.W.J.C. No.5042 of 1986 having been finally decided, we do not suppose these petitions are required to be further carried by the*

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Full Bench.

Let the petitions be notified before the learned single Judge according to roster."

19. Thereafter, the learned Single Judge vide judgment dated 18.02.2015 in C.W.J.C. No. 8670 of 1996 held as under :-

"Heard the parties.

In the present writ petitions petitioners have claimed that they are not liable to pay the market fee in terms of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as 'the Act').

The question has been raised that skimmed milk is not covered under the Market Act. The issue has already been decided in the case of ***Belsund Sugar Company Ltd. v. State of Bihar, reported in AIR 1999 SC 3125****. Again the matter came up for consideration before Full Bench of Jharkhand High Court and the same has been decided in the case of* **M/s. Lipton India Ltd. V. State of Bihar and others, reported in AIR 2004 Jharkhand 34***.*

In such view of the matter, these writ petitions do not survive. Accordingly the same are disposed of."

20. Having discussed the provisions of the Act and the relevant decisions of the Supreme Court, now the moot question that arises for consideration in this case is whether nine products

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for which market fee was being demanded by the Market Committee were specified in the Schedule as required by Section 2(1)(a) of the Act or not prior to institution of the complaint.

21. In this regard, I find that the petitioners have rightly contended that the nine products of Nestle India Limited, as mentioned in letter dated 11.08.1986 (Annexure-7), were not in the Schedule of the Act prior to 12.04.2001. The Agricultural Department, Government of Bihar, vide notification S.O. 39 dated 12th April, 2001, introduced specific entries, i.e. Lactogen, Milkmaid, Milk Powder, Baby Food, Amulspray, Milk Whitener, Skimmed Milk, Tomato Sauce, etc. in the Schedule of the Act, which conclusively proves that earlier these products were not in the Schedule.

22. As the products under the brand name Milk Maid, Lactogen, Cerelac, Nestum Baby Cereal, Nespray Milk Powder, Lactogen Infant Formula, Milk Powder, Tomato Ketchup, Hot and Sweet manufactured by Nestle India Limited and marketed through its agent in the State of Bihar were not in the Schedule of the Act prior to 12.04.2001, the Act had no application to the aforesaid products marketed by the petitioners. None of these products on which demand of fee was raised, as specified in notice dated 11.08.1986, was recognized as agricultural produce upon which the

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market fee could have been levied under the Act, as would be obvious from the Schedule of the Act prepared under Section 2(1)(a) enumerating the products, which are recorded as agricultural produce for the purpose of assessment of market fee.

23. In that view of the matter, in the opinion of this Court, by not paying the market fee on the aforesaid products, the petitioners cannot be said to have violated any provisions of the Act inviting penal action under Section 48 of the Act. Since no criminal case is made out and the ingredients essential to launch prosecution under Section 48 of the Act are missing, the prosecution of the petitioners under Section 48 of the Act is liable to be quashed.

24. Accordingly, the application is allowed. The proceedings of Complaint Case No. 1155 (M)/1996 as well as the impugned order dated 21.09.1996 passed by the learned Chief Judicial Magistrate, Patna are hereby quashed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	10.10.2017
Uploading Date	18.10.2017
Transmission Date	18.10.2017

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