

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22904 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

=====

Pranay Kumar, son of Sri B. B. Sinha, presently resident of 140-B, Ashiana Nagar, P.S.-Rajiv Nagar, Town & District- Patna, presently posted as Senior Regional Manager, Retail, Hindustan Petroleum Corporation Limited, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dakbungalow, P.S.-Kotwali, Town & District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar &
2. The Labour Enforcement Officer (Central), Patna, situated at Maurya Lok Complex, 2nd Floor, A Block, room No.6 and 16, Town & District- Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Advocate with
Mr. Rajeev Prakash, Advocate

For the Opposite Party/s : Mr. Ajay Kumar Jha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 15-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 29.07.2008 passed by the Chief Judicial Magistrate, Patna, in Case No.1304 (C-2/08) by which the learned Magistrate has taken cognizance against the petitioner for the offence under Section(s) 23 and 24 of the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter to be referred as “Act”).

2. Heard Mr. Chittranjan Sinha, learned Sr. counsel for the petitioner and the learned APP for the State.

3. Learned counsel for the Petitioner has submitted that the petitioner was posted at the relevant time as Senior



Regional Manager, Retail, Hindustan Petroleum Corporation Limited. He was not the principal employer, rather, the contract labourers were hired by the Company from Contractor. He has further submitted that various irregularities, as mentioned in the Complaint Petition, have been rectified by the Company and with respect to payment of arrear wages of one Arjun Rai, one of the complaint was that the company paid less wages as per the complaint and the Company was ordered to pay difference of wages to the workman as per Section 21 of the Act.

4. Learned counsel for the petitioner has submitted that all wages and salary have been paid to the employee, Arjun Rai, and in support of such payment, Affidavit of Arjun Rai has been annexed as Annexure-9, wherein, he has mentioned that his wages and salaries have been paid up to date. One of the witnesses of the aforesaid affidavit is the informant of this case.

5. Learned counsel for the petitioner has further submitted that impugned order itself is bad in law as it has been passed without application of mind. He has further submitted that this petitioner is Senior Regional Manager, Retail, Hindustan Petroleum Corporation Limited and was not the principal employer and, therefore, he has not committed any breach of the provision of Section 23 and 24 of the Act because it was the responsibility of the



Contractor to make payment of due wages to the labourers, but even then this petitioner took steps and the entire due wages has been paid to the labourer, which will be apparent from Annexure-9 itself.

6. Learned counsel for the petitioner has relied on the decision of our own High Court in the case of *Aditya Puri Vs. State of Bihar* reported in *2007 (2) PLJR 91* in support of his submission that the petitioner being the Senior Regional Manager can hardly play any role directly in employment of contractual labourers in contravention of the Act and prays for quashing of entire criminal proceeding against the petitioner.

7. Learned counsel for the petitioner has also relied upon the decision of our own High Court in the case of *Dharmesh Pd. Verma Vs. The State of Bihar* reported in *2017(1) PLJR 401* and argued that this Court has deprecated the cognizance without application of mind and has quashed the criminal proceeding even on that score only.

8. Counsel for the State has submitted that there has been irregularity committed by the Company.

9. From Annexure-9, it is very much clear that entire dues have already been paid to the contract labourer in the year 2008 itself. In this respect, the contract labourer, Arjun Rai, himself



has filed an Affidavit in which the informant is one of the witness. Show cause was filed by the Company with respect to various irregularities, as shown in the Complaint Petition, stating that other defects have already been rectified.

10. From the impugned order, it appears that on filing of complaint, the Court below in mechanical manner without application of mind has taken cognizance on the same day for the offence under Section(s) 23 and 24 of the Contract Labour (Regulation & Abolition) Act, 1970.

11. Thus, relying on the judgment in the case of *Dharmesh Pd. Verma Vs. The State of Bihar* (supra), this Court is of the view that such cognizance taken mechanically without application of mind is wholly illegal. Moreover, as stated above, the petitioner being Senior Regional Manager was not directly at any stage responsible for engagement of contractual labourers. Therefore, he can not be held responsible for any of the breach of the Act directly.

12. Therefore, impugned order dated 29.07.2008 passed by the Chief Judicial Magistrate, Patna, in Case No.1304 (C-2/08) taking cognizance along with entire criminal proceeding against the petitioner for the offence under Section(s) 23 and 24 of the Contract Labour (Regulation & Abolition) Act, 1970, is hereby



quashed.

13. The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23-05-2017
Transmission Date	23-05-2017

