IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27876 of 2011

Arising Out of PS.Case No. -12 Year-2010 Thana –Government Complaint District- GOPALGANJ

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Bishnu Kumar Sureka Son of Sri Babu Lal Sureka, Executive President, Bharat Sugar Mills Ltd., At, P.O. & P.S. Sidhwalia, District - Gopalganj

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

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Appearance:

For the Petitioner : Mr. Ashish Giri, Advocate

For the Opposite Party : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-04-2017

Heard learned counsel for the petitioner and learned APP for the State.

2. The present application has been filed for quashing the order dated 07.12.2010 passed by the learned Chief Judicial Magistrate, Gopalganj taking cognizance against the petitioner in G.C. Case No. 12 of 2010 under Section 22(a) and 22(A) of the Minimum Wages Act, 1948 (hereinafter referred to as 'the Act') for the alleged violation of Section 12(1) and Section 18 of the said Act. The allegation against the petitioner is of not making the minimum wage payment to the employees of M/s Bharat Sugar Mills Ltd., Sidhwalia.

3. Mr. Ashish Giri, learned counsel appearing for the petitioner refers to the complaint filed by the Labour Enforcement Officer, Barauli, Incharge, Sidhwalia dated 07.12.2010. It was found in course of inspection carried out on 07.12.2010 that the petitioner being the Executive President of M/s Bharat Sugar Mills Ltd., Sidhwalia had been

making payment below the minimum wages and proper registers were not maintained and for payment of short wages, claim letter had been filed on 24.05.2010 before the Circle Officer, Sidhwalia. It is therefore, alleged in the complaint that default under Section 12 (1) and Section 18 of the Act had been committed by the petitioner.

4. Learned counsel for the petitioners submits that continuance of the criminal prosecution would amount to abuse of process of the Court and the same is liable to be quashed. Payment of minimum rates of wages under Section 12 of the Act is attracted only in respect of scheduled employment in respect of which a notification under Section 5 is in force. The term "scheduled employment" is defined under Section 2(g) to mean an employment specified in the Schedule, or any process or branch of work forming part of such employment. Section 5(1) of the Act provides for fixing and revising minimum rates of wages in respect of any "scheduled employment". The term "employer" is defined under Section 2(e) of the Act to mean any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

5. It is submitted that the present case does not involve a "scheduled employment". M/s Bharat Sugar Mills Ltd., of which the petitioner is the Executive President, is a Sugar Mill and is not covered under any of the entries in the Schedule to the Act and hence the

provisions of Section 12 of the Act in terms would not apply. Moreover, Section 5(1) of the Act also contemplates a Notification fixing minimum rates of wages in respect of any "scheduled employment", but no such Notification has been issued. In this regard, learned counsel relies on the decision reported in Reliance Telecom Ltd. vs State of Bihar & Anr, 2010(4) PLJR 542. It is further submitted that Section 18 is also not applicable, being relatable to "scheduled employment" only.

8. Learned APP on behalf of the State appears and opposes the petition.

9. Having heard the parties and on consideration of the materials on record, this Court finds considerable merit in the application. The first and foremost requirement of Sections 12 and 18 of the Act which are alleged to have been violated by the petitioner, is that payment must have been made by an employer of a "scheduled employment". Learned APP appearing for the State has not been able to point out any specific entry in the Schedule which covers M/s Bharat Sugar Mills Ltd., or the petitioner, in order to treat them as an employer within the meaning of the Act. The question of fixation of minimum wages in terms of Section 5 of the Act therefore cannot arise as such fixation can only be made with respect to any 'scheduled employment". In absence of these fundamental requisites, Sections 12 and 18 of the Act are on the face of it not applicable to the case of the petitioner and it therefore, cannot be said that any offence under these provisions is made out even if the allegations at their face value are accepted. In

such circumstances, continuance of the criminal prosecution of the petitioner would clearly amount to abuse of process of the Court. Accordingly, the impugned order of cognizance dated 07.12.2010 in G.C. Case No. 12 of 2010 is hereby quashed and the application is allowed.

10. It is made clear that inasmuch as the application is being allowed on the ground of inapplicability of Sections 12 and 18 of the Act alleged to have been violated by the petitioner, this Court does not deem it necessary to go into the other pleas raised by the petitioner such as, the impugned proceedings being barred by limitation; invalidity of the proceedings in absence of the Company, M/s Bharat Sugar Mills Ltd., also being made an accused; and the petitioner being the Executive President of the Company could not be held vicariously liable as he was not a nominated Director in terms of the provisions of the Bihar Sugarcane (Regulation of Purchase and Supply) Act, 1981, invalidity of the complaint filed by the Labour Enforcement Officer in absence of sanction under Section 20 of the Act.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
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