IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39390 of 2013

Arising Out of PS. Case No. -14 Year- 2013 Thana -GOVERNMENT OFFICIAL COMP. District-GOPALGANJ

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1. Bishnu Kumar Surekha @ B.K. Surekha S/O Shri Babu Lal Surekha Executive President, Bharat Sugar Mill, Sidhwalia, District Gopalganj.
2. Shri Kant Mishra @ S.K. Mishra S/O Punayadeo Mishra, Manager, Bharat Sugar Mill, Sidhwalia, District Gopalganj.
3. Ramesh Prasad S/O Shayam Bahadur Prasad, Weight Clerk, Bharat Sugar Mill, Sidhwalia, District -Gopalganj.

.... Petitioners

Versus

1. The State of Bihar.
2. The Cane Officer, Shri Jai Prakash Narayan Singh, Gopalganj.
3. The Cane Commissioner, Bihar.

.... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 08-04-2017

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 04.07.2013 passed by the learned Chief Judicial Magistrate, Gopalganj in G.C. No.14 of 2013 corresponding to Trial No. 1353 of 2013 by which the cognizance has been taken against the petitioners under Section 52 of the Bihar Sugar Cane (Regulation of Supply & Purchase) Act, 1981 and summons have been issued for appearance on 14.10.2013.

2. The complaint has been filed by the opposite

party no.2 i.e. the Cane Officer, Gopalganj under Section 53 of the Bihar Sugar Cane (Regulation of Supply & Purchase) Act, 1981 (hereinafter referred to as the 'Cane Act') for institution of a case against the petitioners. It has been alleged that on 06.03.2013 at about 2:40 p.m., the Principal Secretary, Sugar Cane Department along with Assistant Cane Commissioner, Bihar, Patna made a general inspection of Purchase Cane Centre being operated by the Sidhwalia Sugar Mill. During the course of inspection, the weight was inspected in which the weight of the departmental car bearing registration no. BR 01 PD 8445 was taken to be 20.84 quintal whereas the weight of the same car taken earlier in the weight bridge located at the Sidhwalia Mill Gate was found to be 22.30 quintal. Thus, there a difference of 1.46 quintal was noticed causing loss to the farmer which was violative of Sections 28 and 39 of the Cane Act and the Rule 24(1)(i) of the Bihar Sugarcane (Regulation of Supply & Purchase) Rules, 1978 (hereinafter referred to as the 'Rules').

3. Pursuant to the aforesaid complaint, the learned Chief Judicial Magistrate, Gopalganj vide order dated 4th July, 2013 took cognizance of the offence under Section 42 of the Cane Act and summoned the petitioners to face trial.

4. It is submitted by the learned counsel for the

petitioners that no cognizance could have been taken in the present case on the basis of the report of the Cane Officer, which is in violation of Section 53 of the Cane Act which provides that no prosecution under this Act shall be instituted except upon a complaint made in writing by an officer authorized in this behalf by the State Government. He submitted that for effective compliance of Section 53 of the Cane Act, it was necessary to have a prior speaking order of the Cane Commissioner. The submission is that in the present case, the Commissioner has merely made endorsement of approval which cannot be said to be a speaking order and, thus, consequently, the order taking cognizance is bad in law. In support of his argument, learned counsel for the petitioner has placed reliance on a decision of this Court in **Md. Iqbal Ahmad & others** vs. t**he State of Bihar [1988 BBCJ 611]**, which has been followed with approval in several other cases.

5. Dr. Mayanand Jha appearing on behalf of the State submitted that the points raised by the petitioner can be looked into at the stage of trial and not at the stage of cognizance. He contended that the endorsement of approval by the Cane Commissioner on the prosecution report is sufficient compliance of the requirement of the Cane Act and the Rules.

6. I have heard learned counsel for the parties and

perused the record.

7. In an identically similar circumstance, in **Md. Iqbal Ahmad** (supra), this Court held that prior approval of the Cane Commissioner must be speaking one. It observed as under:-

> "It is expected that the cane commissioner will go through the proposal for the prosecution and will exercise his discretion in the matter. If after going through the proposal he feels that the prosecution should be launched he should pass a speaking order approving the proposal of the cane officer for filing the complaint petition."

8. In **Ganga Prasad Dhurke & Ors.** vs. **State of Bihar & Anr. [Cr. Misc. No.8177 of 1991]** vide order dated 26.11.1996, Hon'ble Justice B.N. Agrawal as he then was observed:-

> " … prosecution report indicates that the Cane Commissioner merely put his signature on the bottom of the report after endorsement that prosecution sanctioned. It is not clear from the prosecution report as to whether Cane Commissioner was authorized under Section 53 of the Act to launch prosecution. Learned counsel appearing on behalf of the petitioners has placed reliance upon earlier order of this Court by which in similar cases prosecution of the accused was

quashed. This being the position, I am of the view that prosecution of the petitioners is fit to be quashed."

9. Admittedly, in the present case, the observation given by this Court in **Md. Iqbal Ahmad** (supra) was not followed.

10. Regard being had to the facts of the present case and the ratio laid down by this Court in the decisions stated above, the impugned order whereby cognizance has been taken by the learned Chief Judicial Magistrate and summons have been issued against the petitioners cannot be sustained.

11. Accordingly, the impugned order dated 04.07.2013 passed by the learned Chief Judicial Magistrate, Gopalganj is hereby quashed. As a consequence of it, the complaint also stands quashed.

12. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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