

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23894 of 2015

Arising Out of PS. Case No.-24 Year-2013 Thana- GOVERNMENT OFFICIAL COMP.
District- Gopalganj

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1. P.R.S. Panicker, son of Late Raghav Panicker, General Manager, M/s. Vishnu Sugar Mills Limited, P.O. Harakhua, P.S. Vishnu Sugar Mills, District Gopalganj
2. B.K. Duvedi, son of Sri Madhusudan Duvedi, Manager, M/s Vishnu Sugar Mills, District Gopalganj
3. A.N. Ojha @ N.N. Ojha, Son of Late M.N. Ojha, Additional Case Manager, M/s Vishnu Sugar Mills, District Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Cane Office er, Gopalganj, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Opposite Party/s : Mr. S.Dayal (App)

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 11-04-2018

Challenging the prosecution initiated against the petitioners by the learned Chief Judicial Magistrate, Gopalganj in G.C. Case No.24 of 2013, Trial No.1124/2014 vide order dated 15.12.2013 for offences under Section 13(8) and (9) of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, this application has been filed by the four applicants who are officers of M/s. Vishnu Sugar Mill Pvt. Ltd., a Company registered under the Companies Act, 1956. Challenge to the said prosecution is made primarily on two counts. It is pointed out that the



prosecution is launched on account of the fact that in accordance to certain guidelines issued, price and variety of the sugarcane is not mentioned in the receipt issued to the sugarcane growers. This amounts to violation of Section 13(8) and (9) of the Act and, therefore, the prosecution has been lodged. However, while doing so, Mr. Giri argues that two statutory provisions have been violated. The offence, if any, has been committed by the Company through its officers, who are the applicants and, therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of Sharad Kumar Sanghi Versus Sangita Rane, (2015) 12 SCC 781, any prosecution without impleading the Company, a juristic person, is not maintainable. The second ground canvassed is that before granting approval for prosecution, the statutory authority, namely the Cane Commissioner, has not passed a speaking order sanctioning the prosecution. Inviting my attention to page 2 of the complaint and para 8 thereof, it is stated that only the following words are mentioned before according sanction "Prosecution is hereby sanctioned". It is stated that in view of the well settled principle of law this is not permissible. A sanction to be granted under Section 53 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 has to be by a speaking order and as a speaking order has not been passed in the present case, the



prosecution is unsustainable and in support thereof my attention is invited to a judgment of this Court in the case of Md. Iqbal Ahmad & Ors. Vs. The State of Bihar, 1988 B.B.C.J. 611, followed by another Bench of this Court in the case of Vishnu Kumar Surekha @ B.K. Surekha & Ors. Vs. The State of Bihar & Ors., 2017 (3) P.L.J.R. 958. Accordingly, contending that on both these counts the prosecution is unsustainable under law and the same is sufficient ground for exercising the jurisdiction available to this Court under Section 482 of Cr.P.C., learned Counsel prays for indulgence of this Court into the matter.

Refuting the aforesaid contention, learned Counsel for the State invites my attention to the counter affidavit, photo copy of the receipt issued by the Sugar Company available at Annexure A and the fact that neither the price of the sugarcane nor the variety of the sugarcane has been mentioned. This amounts to violation of the Circulars issued in this regard, being Circular No.27 dated 27.1.2013 and, therefore, the ingredients necessary for constituting an offence under Section 13 (8) and (9) of the Act is made out and at this stage exercising jurisdiction in a proceeding under Section 482 of Cr.P.C. indulgence into the matter is not called for.



As far as the sanction of prosecution is concerned, learned Counsel argues that sanction accorded in Column 8, Annexure 2 is sufficient sanction meeting the requirements of law.

I have heard learned counsel for the parties and propose to consider ground No.2 first. The Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 and Section 13 (8) and (9) thereof contemplate a provision for following the guidelines and instructions issued by the competent authority from time to time and it is the case of the prosecution that in spite of issuance of guidelines and instructions for mentioning the price and variety of the sugarcane, the same are not indicated in the receipt. However, for proceeding to register an offence and prosecution under Section 13 (8) and (9) of the Act, sanction as contemplated under Section 53 by the competent authority is to be accorded and it is an admitted position that the competent authority to accord sanction is the Cane Commissioner for the State of Bihar. The sanction accorded by the Cane Commissioner on 16.5.2013, which is available at Column 8 of the complaint as Annexure 2 is to the effect that "Prosecution is hereby sanctioned". The question as to how and in what manner the sanction for prosecution has to be accorded meeting the requirements of Section 53 of the Act was subject-matter of consideration by a Co-ordinate Bench of this



Court in the case of Md. Iqbal Ahmad (supra) wherein, after considering the provisions of Section 53, it has been held in the aforesaid case that sanction has to be accorded by a speaking order showing application of mind and if the sanction is accorded simply by mentioning the words "Sanction approved", the same does not meet the requirement of law. This judgment in the case of Md. Iqbal (supra) is again followed in the case of Vishnu Kumar (supra) and in para Nos.7 and 8, the legal principle has been crystallized by the Bench in the following terms:

"7. In an identically similar circumstances, 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 indicts 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.”

From the aforesaid, it is clear that approval for prosecution to be granted by the Cane Commissioner must be a speaking order and in the case of Md. Iqbal (supra) and Vishnu Kumar (supra) so also in the case of Ganga Prasad Dhurke Vs. State of Bihar, Cr. Misc. No.8177 of 1991, decided vide order dated 26.11.1996, it has been held that the Cane Commissioner merely by putting his signature on the bottom of the report and making an endorsement that prosecution is sanctioned, does not meet the requirement of Section 53 of the Act and prosecution based on such sanction have been quashed in these cases. In the present case also, identical factual situation exists and if the law laid down in the cases referred to hereinabove are applied, I have



no iota of doubt or hesitation in holding that sanction for prosecution in the present case has not been granted by a speaking order and, therefore, following the principle laid down in the cases referred to hereinabove, I have no option but to allow this application and quash the prosecution against the present petitioners in G.C. Case No.24 of 2013, Trial No.1124/2014 vide order dated 15.12.2013.

Having answered the second question in favour of the petitioners, it is not necessary to go into the first one and prosecution of the petitioner for the offence under Section 13 (8) and (9) of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 in G.C. Case No.24 of 2013, Trial No.1124/2014 vide order dated 15.12.2013 stands quashed.

The application is allowed and disposed of.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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