

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.32728 of 2011**

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1. Diebold System Pvt. Ltd. represented by Shri Naresh Hosangady, Managing Director, 4<sup>th</sup> Floor, 'C' Wing, Trade Star Building, Andheri Kurla Road, Andheri (East), Mumbai-400059.
  2. Sri Naresh Hosangady, Managing Director, Diebold System Pvt. Ltd. 4th Floor, 'C' Wing, Trade Star Building, Andheri Kurla Road, Andheri (East), Mumbai 400059.

... .. Petitioners

Versus

1. The State of Bihar
2. Shri Niranjana Kumar, Son of not known, Labour Enforcement Officer, Patna-11.
3. Union of India, through Labour Enforcement Officer (Central), Office of the Regional Labour Commissioner, Room No.16 and 17, A Block, Maurya Lok Complex, Patna.

... .. Opposite Parties

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**Appearance :**

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| For the Petitioners    | : | Mr. Sandeep Kumar, Advocate<br>Mr. Sajid Salim Khan, Advocate<br>Mr. R.P.N. Tiwary, Advocate |
| For the Union of India | : | Mr. Ravindra Kumar Sharma, C.G.C.                                                            |
| For the State          | : | Mr. Jharkhandi Upadhyay, APP                                                                 |

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**  
**ORAL JUDGMENT**

**Date : 16-08-2018**

Heard learned counsel for the parties.

2. The petitioners seek quashing of the cognizance order dated 24.12.2010 passed in Case. No. 1341 (C-2) of 2010 whereby the learned Chief Judicial Magistrate, Patna has taken cognizance of the offence under Section 22-A of the Minimum Wages Act, 1948 and consequently issued summons to petitioners to secure the appearance for putting them on trial.



3. The facts of the case lying in brief compass is that on 12.06.2010 the Labour Enforcement Officer (Central), Patna-II made inspection of Diebold System Pvt. Ltd. and finding certain irregularities filed a government complaint against the Diebold System Pvt Ltd of which Naresh Hosangady, petitioner no.2, is the Managing Director. The complaint is with regard to finding of certain irregularities being committed by the Company mentioned hereinbelow:-

(I) Notices showing, Abstract from the Act & Rules made thereunder has not been displayed in English & Hindi at the main entrance of the establishment. Breach of Rule, 22.

(II) Muster Roll is not kept at the workspot in Form-V Breach of Rules 26(5).

(III) Register of wages is not kept at the workspot in Form-X Breach of Rule 26(1).

(IV) Register of fine is not kept at the workspot in Form-I Breach of Rule 21(4).

(V) Register of overtime is not kept at the workspot in FormIV Breach of Rule 25(2).

(VI) Register of deductions for damage or loss is not kept of the workspot in Form-II Breach of Rule 21(4).

(VII) Wages Slips are not issued at all as per Rule, 26(2).



4. Learned counsel for the petitioners submits that such irregularities were found by the Labour Enforcement Officer (Central), Patna on 12.06.2010 but the complaint was filed after a lapse of six months and cognizance was taken thereon, so cognizance was definitely taken after lapse of six months and refers to the State amendment made by the State of Bihar relating to Section 22-B of the Act for taking cognizance of the offences under the Minimum Wages Act 1948.

5. Learned counsel for the State has also filed counter affidavit in the matter but concedes on the point of limitation relating to taking cognizance.

6. Having considered the submissions of learned counsel of both sides and provision of Section 22-B of the Act relating to cognizance of the offence as enumerated in the Minimum Wages Act 1948 and especially the State amendment made by the State of Bihar in context of Sub-Clause (2) of Section 22-B coming into effect since 19.02.1988, the court cannot take cognizance of offence under Section 22-A of the Act unless the complaint is made by the concerned authority within six months from commission of such alleged offence. Section 22-B of the Minimum Wages Act, 1948 reads as such:-



**“22-B. Cognizance of offences.-(1) No Court shall take cognizance of a complaint against any person for an offence-**

**(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint;**

**(b) under clause (b) of section 22 or under section 22-A, except on a complaint made by, or with the sanction of, an Inspector.**

**(2) No court shall take cognizance of an offence-**

**(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;**

**(b) under section 22-A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.”**

7. Now let us look at the State Amendment.

“State Amendments-[Bihar].-In its application to the State of Bihar, in S. 22-B,-

(1) sub-S. (1), for Cl. (a), substitute the following clause, namely:-

“(a) under clause (a) of section 22 unless the State Government or an officer authorised by it in this behalf has sanctioned the making of the complaint.”-Bihar Act 5 of 1983, S. 7 (w.e.f. 30-1-1983).

(2) Sub-S. (2), for Cl. (b), insert the following proviso, namely:-

“provided that the Court, if it is satisfied that the State Government or any officer authorised by it in this behalf was prevented by sufficient cause from sanctioning the making of the complaint within the period specified in sub-section (2), shall condone the delay and allow the



complaint to be made even after the expiry of the said period.” -Bihar Act 9 of 1988, S. 4 (w.e.f. 19-2-1988)”

8. In the context of the present case the impugned order does not reflect that the delay in taking cognizance after expiry of six months has been condoned after considering any sufficient cause explained to his satisfaction for filing the complaint after lapse of statutory period of six months. The order taking cognizance after lapse of six months without condoning the delay in view of the State amendment is hit by sub-clause (b) of Section 22-B of the Act as it is mandatory to take cognizance within six months otherwise cognizance cannot be taken, it becomes barred by limitation. Hence, the impugned order dated 24.12.2010 passed in Case. No. 1341 (C-2) of 2010 by learned Chief Judicial Magistrate, Patna is set aside for the aforesaid reasons.

9. The application stands allowed.

**(Arun Kumar, J)**

S.KUMAR/-

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