

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19921 of 2016

Arising Out of PS.Case No. -21 Year- 2014 Thana -MADHUBANI TOWN District- MADHUBANI

- =====
1. Deepak Kumar Mishra, son of late Kaushal Kumar Mishra, resident of village -
Sagarpur via -Sakri, P.S.- Pandaul, District- Madhubani, Proprietor, M/s Sharda
Rice Mill, P.S. Industrial Area, (Pandaul), District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. Madan Kumar, son of Sri Ram Preet Rai, Manager, Bihar State Food and Civil
Supplies Corporation Ltd., Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. A. K. Thakur, Advocate
Mr. Nilesh Kumar, Advocate
Ms. Babita Kumari

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.03.2016 passed by the Chief Judicial Magistrate, Madhubani, in Madhubani Town P.S. Case No.21 of 2014 by which the learned Magistrate has taken cognizance against the petitioner for the offence under Section(s) 406, 420, 409 Indian Penal Code.

Counsel for the petitioner submits that it was the duty of the Bihar State Food Corporation to lift the CMR lying in the premises of the petitioner's mill or to arrange for transportation in order to supply the same but no steps were taken and thereafter the



petitioner and others were asked by the authority of the BSFC by letter dated 13.06.2012 to arrange the vehicle at their own costs for transportation of the CMR with an assurance that the authority of the BSFC will make payment of the transportation charge immediately. Xerox copy of the aforesaid letter is annexed as Annexure-3. The petitioner arranged trucks from open market and transported 9180 quintals of rice, which was received by the BSFC, but the truck remained lying in the campus of the BSFC for unloading for several days. Thereafter, rice was unloaded and Truck owner charged heavy penalty from the petitioner for detaining the truck in the premises of the BSFC. The chart of total paddy received by the petitioner along with rice lifted by BSFC as well as rice sent by the petitioner by arranging truck from the open market are annexed with the petition as Annexure-4 series. The authority of the BSFC did not make payment of the transportation charge of CMR including demurrage charge on account of detaining of truck for several days and, therefore, the petitioner had to pay the aforesaid amount from his own pocket. Thereafter, the petitioner refused to arrange the truck from open market for transporting rice to BSFC godown. Also, as per terms of the contract, it was the duty of the BSFC to get the rice lifted from rice mill of the petitioner to BSFC depot.

In the written report, which has been lodged by the



District Manager, Bihar State Food Corporation, Madhubani, it is alleged that petitioner, who was Proprietor of M/s Sharda Rice Mill, Pandaul, Madhubani, entered into an agreement on 03.01.2012 with Bihar State Food Corporation, Madhubani, for the purpose of milling the rice at the rate of 67% CMR and the same has to be given to BSFC within stipulated time as per terms and conditions. It is stated in the report that 47712.85.000 quintal rice was received against which 31968.40.871 quintal CMR rice has to be given to Bihar State Food Corporation, Madhubani, but only 17249.53.465 quintal rice was given. Rest 14718.87.406 quintal rice was due. At the rate fixed by the government, its price comes to Rs.2,80,11,930/- at the rate of Rs.1903.12 per quintal. It is further alleged that only Rs.49,75,000/- is given, whereas, rest Rs.2,30,36,930/- is still due to be paid by the petitioner-miller in spite of several reminders. Notice was also served to the petitioner on 08.05.2013 with regard to due money, but the same has not been complied. The petitioner has violated terms and conditions as contained in agreement entered into between both the parties and misappropriated the amount.

The police investigated the case on the basis of written report and submitted charge-sheet in the case. The Court below on the basis of charge-sheet and the materials available in the case diary took cognizance against the petitioner by the impugned order for the



offence under Section(s) 406, 409, 420 Indian Penal Code.

During course of argument, main contention raised by the counsel for the petitioner is that BSFC was required to take back the CMR to his depot from the rice mill after conversion of paddy into CMR. The miller will not be paid any transportation charge for the same. The same was to be done by the BSFC. The petitioner made several request to the BSFC to lift the CMR lying in the premises of petitioner's mill or to arrange for transportation in order to supply the same, but no steps were taken. Counsel for the petitioner submits that these facts are mentioned in Clause 8 of the agreement. Counsel for the petitioner has relied on the judgment of the Supreme Court in the case of *Kailash Verma Vs. Punjab State Civil Supplies Corporation and Ors.* reported in *(2005) 2 SCC 571*.

This Court finds that these are all defence of the petitioner, which can only be looked into at the time of trial. The Court below is only required to see *prima facie* case at the time of taking cognizance.

The learned Magistrate has taken cognizance against the petitioner on the basis of allegation made in the written report as well as charge-sheet submitted by the police and the materials available in the case diary.

Therefore, this Court does not find any illegality in the



impugned order passed by the learned Court below.

This application is, accordingly, **dismissed**.

The petitioner is given liberty to raise all the points, as raised in the present application, at the appropriate stage of trial including at the time of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28-08-2018
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