

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32781 of 2014

Arising Out of PS. Case No.-233 Year-2012 Thana- KUDHNI District- Muzaffarpur

1. Ghyasuddin Ansari and Anr. Son of Md. Yunus Ansari, Resident of village - Chhajan Harishankar, P.S. Kudhani, District - Muzaffarpur
2. Pintu Sah Son of Nathuni Sah Resident of village - Kalwani Chandban P.S. Kanti, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Secretary Food and Civil Supply Corporation Limited, Bihar, Patna
3. The Bihar State Food and Civil Supply Corporation Limited, Patna
4. The Managing Director, Bihar State Food and Civil Supply Corporation Limited, Patna
5. The District Manager, Bihar State Food and Civil Supply Corporation Limited, Muzaffarpur null null
6. The District Magistrate, Muzaffarpur
7. Economic Offence Unit, Govt. of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uday Prakash Sharma, Adv. Mr.S. Jamil Akhtar, Adv. Sanjay Kumar, Adv.
For the Opposite Party/ BSFC:		Mr.Shailendra Singh, Adv. Mr. Vijay Anand, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 30-05-2019

The present petition has been filed for quashing the order taking cognizance dated 24.08.2013 passed by the learned S.D.J.M. (West), Muzaffarpur in Kudhani (Turki O.P.) P.S. Case No. 233 of 2013 (Trial No. 2940 of 2013) whereby and whereunder the learned S.D.J.M. has taken cognizance under Section 409/34 of the Indian Penal Code against the petitioner herein and has issued summons.



2. The brief facts of the case, according to the petitioners, are that the petitioners are one of the six proprietors of Modern Rice Mill and the petitioner no.1 was authorized by the other partners to enter into an agreement with Bihar State Food and Civil Supplies Corporation Ltd. (herein after referred to as “BSFC”), whereupon an agreement was entered into with the BSFC dated 16/1/2012 with regard to lifting of paddy and delivery of rice against the paddy lying in the godowns/ procurement Centers under District Office of BSFC, Muzaffarpur and the out turn ratio for par boiled rice was fixed as 68% and for raw rice was fixed as 67% on “As is where is” basis. Thus, in nutshell, the miller i.e. the petitioners herein were required to lift the paddy of the corporation and return proportionate rice to the extent of 67% of the total quantity of paddy to the Food Corporation of India.

3. It appears that the Senior Deputy Collector had conducted an inspection at the rice mill of the petitioner no.1 i.e. M/S Muzaffarpur Modern Rice Mill, Turki (Kudhani), Muzaffarpur, however, on account of the stacked paddy and the ready rice being kept in dis-arranged manner, the quantity of paddy and rice available in the godown could not be counted. In such view of the matter, according to the directions of the District Magistrate, the said Senior Deputy Collector, Muzaffarpur had



written to the petitioner no.1 to stack the balance amount of paddy, yet to be milled, within three days apart from arranging CMR in closed pack as well as arranging the entire stack so that the quantity of paddy and rice could be measured. It is apparent that no inspection was held on 24.09.2012, however, three days' time was granted to the petitioner no.1 to arrange the stack of paddy and rice so that measurement could be carried out. Nonetheless, the District Magistrate, Muzaffarpur vide letter dated 26.09.2012 wrote to the District Manager, Bihar State Food Corporation, Muzaffarpur stating therein that 23146.86 metric tons of paddy was required to be milled by the petitioners according to the agreement and Modern Rice Mill, Turki (Kudhani) has already been handed over various quantity of paddy from the Procurement Centers and the Miller was required to supply CMR @ 67% of the paddy made available, however, the said miller has only supplied 3240.00 Metric ton of CMR to the Indian Food Corporation. In the said letter it was further stated that in view of the directions of the Principal Secretary, Food and Consumer Protection, Bihar, Patna, dated 24.9.2012, legal action is to be taken in case shortage is found in between the quantity of paddy given for milling and the amount of CMR supplied as also the balance paddy, hence, the physical verification was conducted by Shri Ajay Kumar, Sr.



Deputy Collector, Muzaffarpur in the premises of Modern Rice Mill on 25.09.2012 and the said Sr. Deputy Collector, Muzaffarpur vide letter no. 2154 dated 25.09.2012 has informed the District Magistrate that during the course of physical verification, shortage of 11142.30 metric ton of paddy was found. In such view of the matter, the District Magistrate, by his said letter dated 26.09.2012 had directed the District Manager, BSFC, Muzaffarpur, to take legal action against the miller and inform him, accordingly.

4. It is thereafter that the District Manager, Bihar State Food Corporation, Muzaffarpur had filed a written complaint before the Officer-in-charge, Kudhani Police Station, Muzaffarpur dated 28.9.2012, inter alia alleging therein that an agreement was entered into between the BSFC, Muzaffarpur and M/S Muzaffarpur Modern Rice Mill, through its proprietor i.e. the petitioners herein and five others for the purposes of processing the paddy and thereafter supplying 67% of rice (CMR) to the BSFC, however, after the supply of paddy was made to the said miller, the proportionate CMR was not supplied and upon the District Magistrate, Muzaffarpur having got the physical inspection conducted through the Senior Deputy Collector of the said mill, a shortage of 11142.30 metric ton paddy was found, resulting in a revenue loss of Rs. 14,20,75,125.00. In the said letter



dated 28.9.2012 it was further stated that though the last date for supplying the rice for the said mill was 15.10.2012, however, the District Magistrate has directed for taking immediate action, hence, the complaint was being filed. On the basis of the said written complaint dated 28.9.2012, an FIR bearing Kudhani (Turki O.P.) P.S. Case No. 233 of 2012 was registered on 7.10.2012 for the offences punishable under Section 409/34 of the Indian Penal Code against the petitioners and others.

5. The learned counsel for the petitioners has further referred to a letter dated 11.4.2013 issued by the District Manager, BSFC, Muzaffarpur to the petitioner no.1 herein wherein it was stated that according to the agreement entered into with the BSFC for the Season 2011-12 (i.e. the one dated 16.1.2012, entered into between M/S Muzaffarpur Modern Rice Mill and the BSFC), the requisite quantity of CMR has not been handed over from time to time to the godowns of Food Corporation of India leading to the last date of supply of CMR/ rice being extended from 15.10.2012 to 28.2.2013, however, still the entire quantity of CMR is yet to be deposited with the Indian Food Corporation and till date 11254.151 metric ton of CMR is pending for supply which is major violation of the agreement, however, by way of final opportunity, the Indian Food Corporation has revised the last date



of receiving the CMR for the Seasons 2011-12 to 30.4.2013, hence, it is directed that the requisite quantity of CMR be positively deposited with the Indian Food Corporation by 30.4.2013. It is thus, the contention of the learned counsel for the petitioners that when the respondent BSFC itself had extended the time for delivery of CMR up to 30.4.2013, the complaint lodged by the District Manager, Food Corporation of India, Muzaffarpur dated 28.9.2012 resulting in registration of FIR dated 7.10.2012 could not have been lodged on the ground that there has been shortage of supply of rice resulting in financial loss to the Corporation inasmuch as on the date of registration of the FIR and the launching of the prosecution i.e. 7.10.2012, the petitioners still had time upto 30.04.2013 to make up the shortage especially when the District Magistrate, Muzaffarpur by his letter dated 11.4.2013 had extended the time for delivery of CMR up to 30.4.2013. The learned counsel for the petitioners has relied upon a judgment dated 20.2.2014 rendered by a co-ordinate Bench of this Court in Criminal Writ No. 460 of 2013 [**Manoj Kumar Sah vs. The State of Bihar & Ors.**] where in a similar situation, FIR has been quashed.

6. Per contra, the only argument raised by the respondents i.e. by the Economic Offence Unit, Government of



Bihar and the BSFC is that the present case involves disputed question of facts, which can only be adjudicated after a full-fledged trial is held and the first information report definitely discloses commission of cognizable offence as also makes out a clear cut case of embezzlement against the accused persons, hence the present case is not a case wherein the criminal prosecution is required to be quashed and interfered with.

7. It has been further submitted by the learned counsel appearing for the District Manager, State Food Corporation, Muzaffarpur that in reply to the query of this Court dated 12.7.2018, directing for production of the inquiry report said to have been submitted in between 24.9.2012 and 26.9.2012, an affidavit has been filed, annexing the letter of the Sr. Deputy Collector, Muzaffarpur dated 25.9.2012, written to the District Magistrate, Muzaffarpur wherein the said Senior Deputy Collector, Muzaffarpur has stated that on 24.9.2012 he had reached at the Muzaffarpur Modern Rice Mill, Turki (Kudhani) for physical verification of the ready rice and had got the ready rice sacks counted whereupon it has been estimated that for production of 1500 metric ton of rice, 2240 metric ton of paddy has been consumed and since the miller has supplied 3240 metric ton of rice (CMR), for which 4836 metric ton of paddy is estimated to have



been consumed, hence, 7584.36 metric ton of paddy is estimated to have been consumed, thus the balance quantity of paddy is estimated as 15539.74 metric ton, however, since the balance quantity of paddy available in the mill is 4697.30 metric ton, there is shortage of 10842.44 metric ton. It is submitted by the learned counsel that the said letter of the Senior Deputy Collector, Muzaffarpur dated 25.09.2012 is the inquiry report and, therefore, there is no doubt that shortage has been found causing revenue loss to the Corporation inasmuch as, the petitioners have failed to supply the requisite quantity of CMR.

8. Per contra, the learned counsel for the petitioners has submitted in reply that the stand of the respondents is not only shocking but also ingenious and axiomatic inasmuch as on the one hand the Senior Deputy Collector, Muzaffarpur is said to have made an inspection in the premises of the Muzaffarpur Modern Rice Mill, Turki, Kudhani on 24.9.2012 and had written a letter to the petitioner no.1 stating therein that the inspection and counting of the remaining balance quantity of paddy and rice could not be done on account of the paddy and ready rice having been kept in a disarranged manner in the mill for which he had given three days' time to arrange the same so that the quantity of paddy and rice can be measured, whereas on the other hand, the same Senior Deputy



Collector, Muzaffarpur has written to the District Magistrate, Muzaffarpur on 25.9.2012 that he had conducted the physical verification of the paddy/ rice in the Muzaffarpur Modern Rice Mill, Turki, Kudhani on 24.9.2012 and found a shortage of 10842.44 metric ton. It is thus, the submission of the learned counsel for the petitioners that it does not lie in the mouth of the State authority to mislead this Court by speaking a lie inasmuch as the petitioners were granted three days' time to arrange the stack of rice and paddy in their mill vide letter dated 24.9.2012, issued by the Senior Deputy Collector, Muzaffarpur and no physical verification of the quantity of paddy/rice was conducted, as is apparent from the letter of the Senior Deputy Collector, Muzaffarpur, dated 24.9.2012, thus there is no question of the Senior Deputy Collector, Muzaffarpur having submitted any physical verification report to the District Magistrate, Muzaffarpur on 25.9.2012, stating that he had inspected the said mill on 24.9.2012, which is not only contradictory but also malicious.

9. I have heard the learned counsel appearing for the parties and perused the materials on record and I find that though the petitioners as also their mills, namely, M/s Muzaffarpur Modern Rice Mill (Turki), Kudhani had been granted time up to 30.4.2013 for milling the quantity of paddy and depositing the



balance quantity of rice/ CMR by the District Manager, Bihar State Food & Civil Supplies Corporation, District Muzaffarpur vide letter dated 11.4.2013, nonetheless, the prosecution has been launched on 7.10.2012 itself on the ground that there has been shortage in supplying of the requisite quantity of rice/ CMR, even before expiry of the last date of depositing the rice/ CMR, which has definitely curtailed the opportunity to the petitioners to deliver the remaining quantity, as alleged, during the interregnum period, which on account of the petitioners having been made accused for cognizable offence, could not materialize, causing grave prejudice to the petitioners and resultantly shows that the criminal proceeding is manifestly attended with mala fide, hence, this Court is definitely entitled to exercise its inherent power under Section 482 of the Code of Criminal Procedure and quash the criminal prosecution in question, as launched against the petitioners herein. It would be apt to refer to the judgment reported in (1992) Supple 1 SCC 335 [**State of Haryana & Ors. Bhajan Lal & Ors.**] wherein the Hon'ble Apex Court has laid down the category of cases wherein the High Court is entitled to exercise its inherent power under Article 226 of the Constitution of India as well as section 482 of the Code of Criminal Procedure, to prevent abuse of



the process of any Court or otherwise to secure the ends of justice,
which are as follows:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code Except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an



ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

10. Having regard to the facts and circumstances of the case, this Court is of the view that the materials of the present case definitely bears it out that the conduct of the prosecution in the present case definitely falls under category no. (7) of the judgment rendered by the Hon’ble Apex Court in the case of **Bhajan Lal & Ors.** (supra), as reproduced herein above in the preceding paragraph. Apparently the criminal proceeding, in the present case, is manifestly attended with mala fide and has been initiated maliciously, hence, the same deserves to be quashed. This Court is further fortified by a judgment dated 20.2.2014 passed by a Co-ordinate Bench of this Court in Cr.W.J.C. No. 460 of 2013 where in identical situation and in a case of a proprietor of a rice mill, the criminal prosecution i.e. the FIR in question has been quashed on the ground that launching of prosecution prior to the extended time of delivery of the short of quantity of rice/ CMR falls under the category of mala fide prosecution, hence, is liable to be quashed. The respondents have not been able to show that either the said judgment dated 20.2.2014 has been challenged before the Hon’ble Apex Court or the same has been annulled by the Hon’ble Apex Court, hence, the same holds the field till date.



11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present petition is allowed and the order taking cognizance dated 24.8.2013 passed by the learned Sub Divisional Judicial Magistrate (West), Muzaffarpur in connection with Kudhani (Turki O.P.) P.S. Case No. 233 of 2013 as also the FIR bearing Kudhani (Turki O.P.) P.S. Case No. 233 of 2013 is hereby quashed, qua the petitioners herein.

12. There shall be no order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR	AFR
CAV DATE	08.01.2019
Uploading Date	
Transmission Date	

