

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48723 of 2021

Arising Out of PS. Case No.-8 Year-2014 Thana- GOVERNMENT OFFICIAL COMP.
District- West Champaran

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LALIT KUMAR KOTHARI Son of Late Mathura Das Kothari Resident of 9B/3, Satyam Towers, 3, Alipore Road, P.S.- Alipore, Kolkata- 700027, State- West Bengal, India and one of the partners of M/s. Perfecto Electricals, A registered partnership firm having office at Trust House (4th Floor), 32A, Chittaranjan Avenue, Kolkata- 700012, State- West Bengal, India.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bipin Kumar
For the Opposite Party/s : Mr.Abhay Kumar Roy

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 22-06-2023 Heard learned counsel for the parties.

This application has been filed for quashing the order dated 27.11.2020 in Cr. Rev. No. 17 of 2019, passed by learned Sessions Judge, West Champaran, Bettiah arising out of order dated 20.11.2014 in Complaint Case No. 08-C of 2014, passed by learned Judicial Magistrate (Railway), Bettiah by which learned Magistrate has taken cognizance under Section 22A of the Minimum Wages Act.

The prosecution story in short is that the complainant filed a complaint through registry and alleging therein that the petitioner was carrying out contract work which is schedule employment under Minimum Wages Act, 1948 and



in respect of which minimum wages having fixed in the Notification No. 1285(E) dated 20.05.2009 of Government of India. It is further alleged that the complainant inspected the contract work/establishment of the accused persons (Petitioner) under the aforesaid act and Rules and found certain irregularities as mentioned in the complaint petition and further allegation against the petitioner is that a show cause notice was served upon the petitioner through registered post but the petitioner did not submit his reply, hence, the present case has been lodged.

Learned counsel for the petitioner has submitted that this case is fully covered by the judgment of this Court in Cr. Misc. No. 2772 of 2003, allowed on 6th September of 2010. In this case the complaint was filed on 20.08.2014.

It has been submitted by the learned counsel for the petitioner that the date of occurrence is 29.01.2014 and the prosecution report has been filed on 22.08.2014 i.e. after more than 6 months of the occurrence and the same is barred under Section 22B(2)(b) of the Minimum Wages Act.

This Court in the case of ***Sachin Kumar Tulsiyan Vs. State of Bihar 2010 SCC Online Pat 1095*** in Cr. Misc. No. 2772 of 2003 in paragraph 6 as held as follows:-

Besides hearing learned counsel for the Parties, I



have also perused the materials available on record. There is no dispute that as per the provision contained in Section 22B(2)(b) of the Minimum Wages Act, no court is entitled to take cognizance under Section 22A of the Minimum Wages Act if the prosecution report is filed beyond the period of six months from the date of occurrence. So far as the stand taken by Opp. Party no.2 in its counter affidavit that the date of occurrence will be considered as the date on which the petitioner failed to rectify the defect is concerned, the Court is of the opinion that the said stand is not in accordance with law. In the present case, when inspection was done i.e. on 25.9.2001, it was noticed that the petitioner had violated the statutory provisions of the Minimum Wages Act and, as such, the Court is of the opinion that the date of occurrence would be considered as the date on which the offence was noticed on inspection by the complainant. Accordingly, in the present case, the prosecution report was filed beyond the statutory period as prescribed under Section 22B(2)(b) of the Minimum Wages Act. The Court has got no option but to quash the order of cognizance.

In view of the above, this application is allowed.

(Sandeep Kumar, J)

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