

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51000 of 2018

Arising Out of PS. Case No.-1 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Sitamarhi

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1. Om Prakash Dhanuka and Ors Son of Late Purshottam Lal Dhanuka, Chairman and Managing Director-cum-Occupier, Riga Sugar Co. Ltd Resident of Riga Sugar Co. Ltd., Riga, P.S.District- Sitamarhi.
 2. Sri Sukhbir Singh Mallik @ Sri Sukhvir Singh, Son of Shri Bijpal Singh, Chief General Manager, Riga Sugar Co. Ltd., Resident of Riga Sugar Co. Ltd., Riga, P.S.District- Sitamarhi.
 3. Dr. Vinay Kumar Dwivedi, Son of Late Madhusudan Dwivedi, General Manager (Cane), Riga Sugar Co. Ltd., Resident of Riga Sugar Co. Ltd., Riga, P.S.District- Sitamarhi.

... .. Petitioner/s

Versus

1. State Of Bihar
2. The Cane Officer, Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
For the Opposite Party/s	:	Mr. Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 26-06-2024

Heard learned Advocate for the petitioners as well as learned APP for the State.

2. The instant criminal case under Section 482 of the Cr.P.C. has been filed by the accused persons/petitioners praying



for quashing of Complaint Case No. C2-1/2018 pending before the learned Chief Judicial Magistrate, Sitamarhi and order dated 23rd May, 2018, passed against the petitioners, under Section 53 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter described as Cane Act for short).

3. The learned Advocate for the petitioners submits that the order of cognizance taken by the learned Chief Judicial Magistrate, Sitamarhi was complete abuse of the process of the Court because of the fact that the petitioners being the Managing Director and other Directors of Riga Sugar Company Limited can not be prosecuted for their act, purported to be done in course of day to day business of the Company without impleading the Company as one of the accused in the petition of complaint. Secondly, it is contended by the learned Advocate for the petitioners that the petition of complaint is barred under the law as no sanction order was obtained by the complainant before filing the complaint.

4. Case of the prosecution in brief is that for the crushing season 2017-18, the Riga Sugar Company Limited purchased 17,03,634.73 quintals of sugarcane at the consideration price of Rs. 46,38,45,475.00/- . The said amount was to be paid by 7th February, 2018. However, the Company paid an amount of Rs.



3,09,07,355.00/- up to 7th February, 2018 and remaining amount of Rs. 43,29,38,120.00/- remains due. In terms of Section 43-2(1) of the Cane Act, cane price is to be paid within 14 days of supply and for delayed payment interest is to be paid. Non payment of money, attracts offences under Section 52 of the Cane Act, 1981. Non payment of price of cane purchased by the Company attracted offence under Section 52 of the Cane Act. The Company and accused persons were repeatedly requested to make payment of the remaining money, but they have not paid the said money and committed offence in violation of Section 13 (8) and (9) of the Cane Act.

5. It is contended on behalf of the petitioners that the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors.*, reported in *1992 (Suppl.) 1 SCC 335* held that a prosecution is liable to be quashed:-

“where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.”

6. The learned Advocate on behalf of the petitioners refers to a decision passed by a Coordinate Bench on 1st March,



2024 in the case of ***C.L. Shukla Vrs. State of Bihar and Another,***
reported in ***2024 SCC OnLine Pat 856*** that the:-

“grant of sanction for prosecution of any public servant is a solemn and sacrosanct act. It is not intended to be empty and automatic formality. The Sanctioning Authority is required to pass sanction order with all sincerity keeping in mind the public interest and protection available to the public servants. The prosecution is required to provide all the relevant facts/material collected during investigation which constitute the alleged offence. Thereafter, the Sanctioning Authority is required to consider such facts/material to reach satisfaction whether the Accused has prima facie committed the alleged offence. The sanction order must ex facie reflect production of all relevant materials by the prosecution to the Sanctioning Authority and application of mind by the Sanctioning Authority to the facts and circumstances produced before him. The order must be speaking in nature. If it transpires from the sanction order that all the relevant facts/material was not produced before the Sanctioning Authority or the Sanctioning Authority has not applied his mind giving reason while passing the sanction order, the grant of sanction is ex facie or patently, illegal and invalid and non est in the eye of law and criminal proceeding is liable to be quashed on this ground.”



7. It is found from the record that the offence was committed by Riga Sugar Company Limited. The Company was not made an accused in the instant case without impleading the Company, the petitioners being the Managing Director and other Directors cannot be prosecuted because for the alleged Act Company is primarily liable and the liability of the Board of Directors was vicarious in nature.

8. It is found from the Copy of the prosecution attached with the instant application that in column no.-9 the Jute Commissioner being the sanctioning authority only wrote “Swikrit” meaning thereby Sanction. It is absolutely clear that there was no application of mind by the Cane Commissioner to the relevant facts and circumstances.

9. Same principle was laid down by this Court in an earlier Judgment dated 11th April, 2018, passed in ***Criminal Miscellaneous No. 23894 of 2015 (P.R.S. Panicker and Ors. Vrs. The State of Bihar and Another)***.

10. In the instant case, prosecution report indicates that the Cane Commissioner merely put his signature at the bottom of the report making an endorsement “Swikrit”. It is not clear from the prosecution report as to whether Cane Commissioner was authorized under Section 53 of the Act to launch prosecution.



11. On perusal of the prosecution report in connection with Complaint Case No. C2-1/2018, it is found that there is absolutely no material to show prima facie that the Cane Commissioner had run through the materials available against the accused persons and applied his mind before passing the order of sanction for prosecution. It is also clear from the record that the sanctioning authority did not apply his mind and mechanically put his signature on the complaint. Had he applied his mind, the prosecution could not have been filed against the Directors of the Company only.

12. For the reasons stated above, this Court is of the view that further continuation of the proceeding in Complaint Case No. C2-1/2018 will be abuse of the process of the Court and the order of cognizance passed by the learned Chief Judicial Magistrate, Sitamarhi on 23rd May, 2018 is also liable to be quashed.

13. Accordingly, the instant Criminal Miscellaneous is allowed.

14. Complaint Case No. C2-1/2018 and the order of cognizance dated 23rd May, 2018, passed by the learned Chief Judicial Magistrate, Sitamarhi is quashed and set aside.



15. This order, however, does not dis-entitle the complainant and appropriate authority under the Cane Act to take necessary steps for recovery of the amount due under the provision of Public Demands Recovery Act.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

