

MHSN030000402021



**ORDER BELOW EXH. 1 IN CRI.M.A. No. 42/2021**

(Milind Khadilkar & Ors v. Datta India Pvt. Ltd)

1. Read protest petition at Exh. 8. Heard the arguments advanced by the learned advocate of complainants. It has been observed in the ordered below Exh. 1 dated 13/10/2022 that complainants to submit say with regard to the report of the officer in-charge of police station concerned or to file protest if any. It was further observed in the said order that, complainants failed to mention the amount of interest or fact of interest within the purport of Section 3A of the Sugarcane (Control) Order 1966. In the protest petition to the learned counsel of complainants submit that, the interest of 15% p.a ought to have been given to complainants because the delay has been caused the accused to provide the FRP amount within 15 days. The court shall take note of this fact. Similarly, it is necessary to have process to be issued under Section 3 and 7 of Essential Commodities Act (ECA) against accused, court can taken cognizance of this fact on its own motion without there being any explicit or implicit pleading in this regard.

2. On the other day, in the order dated 08/03/2023, it was observed that complainants must incorporate necessary excerpts regarding Section 3A of the Sugarcane (Control) Order and Section 3 and 7 of ECA. Thereafter, complainants through their learned advocate submitted application Exh. 21 for the amendment of the complaint which came to be allowed. The necessary amendment pertaining to the fact that accused did not pay the sugarcane season harvest amount within 14 days which is FRP amount. Therefore, they have flouted Section 3A of the Sugarcane Control Order, 1966.

3. Perused the report of the police officer under Section 202 of Cr. P.C. He mentioned the statement of complainant Milind Khadilkar,

witness Gopal Khadilkar, Makrand Khadilkar, Mahadev Kore, Sachin Kore. They all have stated that the 15% yearly interest is not paid by accused because the amount of FRP was not deposited within 14 days. According to the complainant, the sugarcane was sent to the Sugar Factory of accused from 21/11/2020 to 13/12/2020. The amount of FRP from such period was allegedly not paid. Necessary receipts/acknowledgment of ingress of sugarcane for galap (pulp) season are at serial No. 1 to 59 with the list of document at Exh. 3. The learned advocate of complainants issued notice to all accused concerning this. But accused shown a complete heedless. The learned advocate of complainants relied on the judgment of the Honourable Bombay High Court in ***Pawan Ramkisan Chandak v. State of Maharashtra***, Cri. W.P. No. 1293/2019, decided on 17/02/2020, wherein it was observed by their Lordships that, if the Sugarcane (Control) Order, 1966 is flouted by not paying FRP amount within 14 days, the offence under Section 3 and 7 of the ECA shall be registered.

4. The investigating officer submitted report with which the saving account extract of the complainant is submitted. It shows that, in A/C No. 00305110006355, on 20/01/2021, 28/06/2021, 04/10/2021, 03/01/2021, 25/01/2022 deposits are made in his account by Shri. Dutt India Pvt Ltd. Similarly, in the account of Khadilkar Gopal Devara and Khadilkar Vaishali Gopal, in A/C No.00305110009483 deposits are found on 13/01/2021, 28/06/2021, 04/10/2021 by Shri.Dutt India Pvt Ltd. Similarly, in the account of complainant No. 1 and 3 bearing A/C No. 06005110030971, deposits are found to have been made by Dutt India Pvt Ltd on 14/01/2021, 19/01/2021, 24/06/2021 and 07/10/2021. In the account of complainant No. 4 bearing A/C No. 06005110008220 deposits are found to have been made by Dutt India Pvt Ltd on 19/01/2021, 07/10/2021. In the account of Sachin Mahadev Kore i.e. complainant No. 4 bearing A/C No. 32432534547 deposits are found to have been made by Dutt India Pvt Ltd on 30/09/2021, 01/07/2021 and 16/01/2021. These statements are cross verified with the sugarcane bill extracts. The payment of sugarcane bill was done by cheque issued by letter of the said company. Cheque issued against the payment of sugarcane bill

for the period of 16/11/2020 to 30/11/2020, on 14/12/2020, for the period of 01/12/2020 to 15/12/2020, on 29/12/2020.

5. The letter for payment of cane bill for the period 08/11/2020 to 24/03/2021 was sent to the bank on 22/06/2021, the letter for payment of the period 08/11/2020 to 24/03/2021 was sent to the bank on 01/10/2021, the above two period bills are *prima facie* sent for clearing beyond 14 days. The code number of complainant i.e. 2992 and 2993 can be clearly gathered. The letter for payment of the cane bill of complainant No. 4 for the period 01/12/2020 to 15/12/2020 was sent to the bank on 16/12/2020. The letter for payment of bill of complainant No. 3, code No. 33242 for the period of 16/11/2020 to 30/11/2020 was sent to the bank on 12/01/2021 and of the period 01/12/2020 to 15/12/2020 was sent on 16/01/2021 at 03.10 pm. The statement of General Manager of the said Sugarcane Company is submitted on record. It *prima facie* shows that, the amount of FRP was paid beyond the period of 15 days. Therefore, *prima facie* it appears that, Section 3A of the Sugarcane (Control) Order is flouted by the said company. IO reported that, the amount of FRP is paid. Undoubtedly, it is paid but he did not formulate his opinion about delayed payment of FRP amount although he has sufficient material on record. He nipped the investigation in the bud and submitted the report of deficient material against accused. There is a *prima facie* material available on record. As per the rule of law of the Honourable Bombay High Court in the above judgment cited *supra* the offence under Section 3 read with Section 7 of ECA becomes feasible to be registered against accused. Section 3 (2) (f) of the ECA would provide necessary order requiring any person holding in stock or engaged in the production or in the business of buying or selling any essential commodity, (a).... and (b)....

6. Considering the above mandate the Sugarcane (Control) Order comes within the ambit of the above provision. Section 3(3) of the ECA requires payment of the commodity to be in accordance with the said order. Section 3 (4) of ECA would require the Central Government to pass order to regulate the supply of essential commodities. The Sugarcane

(Control) Order is a product of Central Government order. Therefore, having analyzed entire provision of Section 3 of ECA in comparison with the Sugarcane (Control) Order, it *prima facie* appears that accused have contravened Section 7(1) of the ECA. All accused are operators of the said company. Hence, process is required to be issued under Section 204 of Cr. P.C. Resultantly, I proceed to pass following order.

**ORDER**

1. Issue process against accused under Section 204 of Cr. P.c. for the contravention of Section 3A of Sugarcane (Control) Order 1966, for the offence punishable under Section 3 read Section 7 of ECA.
2. The complainant is directed to submit list of prosecution witness under Section 204(2) of Cr. P.C.

Date: 29.04.2023

(Wahab A. Syed)  
Judicial Magistrate, F. C.  
(Court No. 2), Sangli.

**CERTIFICATE**

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- A.P.Patil.  
Name of the Court :- 2<sup>nd</sup> J.M.F.C Court, Sangli.  
Date of decision :- 29.04.2023  
Order signed by P.O. on :- 29.04.2023  
Order uploaded on :- 29.04.2023