
(2009) 07 CAL CK 0113
In the Calcutta High Court
Case No : C.R.R. No. 4022 of 2008

Bibek Karan

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7, 7(1)(a)(ii)

Citation : (2009) 07 CAL CK 0113

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Girija Ranjan Saha, Mr. S.S. Manna, Mr. Amitabha Karmakar and Mr. Subhasis Saha, for the Appellant; Tirthankar Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—The present petitioner Bibek Karan has been arraigned as an accused in connection with Contai Police Station Case No. 212/07 relating to the offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act, on the basis of a suo motu FIR lodged by one Inspector, Food and Supply, Contai-I.

The police after completion of investigation submitted charge-sheet against the petitioner for the self-same offence. Now invoking section 482 of the Code of Criminal Procedure the petitioner moved this Court for quashing of the said charge-sheet.

2. Mr. Girija Ranjan Saha, the learned advocate, appearing on behalf of the petitioner prayed for quashing of the charge-sheet on the following grounds;

(a) An offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act can said to have been committed when any provision of any Control Order made u/s 3 of the Said Act is violated.

(b) In the impugned charge-sheet u/s 7(1)(a)(ii) of the Essential Commodities Act nothing has been mentioned which particular Control Order has been violated.

(c) The evidentiary material collected during the investigation and the allegations made in the FIR at its face value do not make out commission of the alleged offence.

(d) The West Bengal Wheat (Storage by Wholesaler and Retailer) Control Order, 1977 being repealed by virtue of a gazette notification issued on December 22, 2003 there is no restriction as far as the storage of wheat is concerned. Neither any license nor any authority is required for storing wheat.

3. According to Mr. Saha the seized essential commodities are not meant for public distribution system, in fact the petitioners have purchased those rice and wheat from the open market against valuable consideration as well as used gunny bags with the marks of FCI and NAFED printed thereon which are freely available in the market and then those rice and wheat loaded in said gunny bags were stored at his godown. He further submitted since there is no restriction in either dealing with rice and wheat or storing of the same there cannot be any violation of any Control Order and as such the impugned prosecution of the petitioner u/s 7(1)(a)(ii) of the Essential Commodities Act is wholly illegal and without jurisdiction. Mr. Saha produced a copy of the gazette notification dated December 31, 2003 showing that both the West Bengal Rice and Paddy Control Order, 1977 and West Bengal Wheat (Storage by Wholesaler and Retailer) Control Order, 1997 and the West Bengal Prevention of Hoarding of Essential Food Staff Order, 1972 have been repealed from that day.

4. Mr. Tirthankar Ghosh, the learned counsel, appearing on behalf of the State strongly disputed the contention of Mr. Saha. Mr. Ghosh produced a notification issued by the Department of Food and Supply and submitted on the basis of such notification the validity of West Bengal Wheat (Storage by Wholesaler and Retailer) Control Order, 1997 has been extended for a period of six months on and from 24th of October, 2007 and on the day when the alleged raid was conducted and huge quantity of wheat and rice loaded in gunny bags with the marks of FCI and NAFED printed thereon were recovered from the godown of the petitioner on October 28, 2007 the said Control Order was very much operative. He also draws the attention of this Court to the Public Distribution System Control Order, 2001. Mr. Ghosh produced the Case Diary and submitted that the seized essential commodities were meant for public distribution system and for the ration card-holder below the poverty line. He further submitted the present petitioner clandestinely procured the said essential commodities not for public sale and stored the same for disposal in the market for huge wrongful gain. He submitted that sufficient materials have been collected justifying submission of the charge-sheet u/s 7 (1)(a)(ii) of the Essential Commodities Act against the present petitioner.

5. Heard the learned advocates appearing on behalf of the parties. Considered their respective submissions as well as the materials available from the Case Diary.

6. The case against the present petitioner in a nutshell is as follows;

Acting on a source information that the petitioner was clandestinely dealing with essential commodities meant for public distribution system and for the ration cardholder below the poverty line and has stored huge quantity of such essential commodities at his godown situated at Kumarpur Super Market, the police and the officers of the Food and Supply held a joint raid at his said godown at about 10 A.M. in the morning on October 28, 2007. As the petitioner was not available at the godown in presence of the S.D.O., Contai the godown was opened and on search total 728 bags of wheat and 5 bags of rice loaded in gunny bags with FCI marks and 27 bags of wheat and one bag of rice were found there. In spite of giving opportunity to the petitioner he was not being able to produce any valid documents in support of licit possession thereof.

7. There is no dispute that West Bengal Wheat (Storage by Wholesaler and Retailer) Control Order, 1997 has been repealed with effect from December 22, 2003 and West Bengal Wheat and Wheat Products (Licensing, Control and Prohibition of Certain Classes of Commercial Transactions) Order, 1973 has also been repealed with effect from October 14, 1986. Thus, there is no scope to extend the validity of those Control Order after its repeal. Therefore, the submission of Mr. Ghosh that by virtue of a gazette notification issued on October 24, 2007 the validity of the West Bengal Wheat (Storage by Wholesaler and Retailer) Control Order, 1997 has been extended for a further period of six months merits no consideration. However, this Court cannot overlook the provisions of Public Distribution System (Control) Order, 2001 made u/s 3 of the Essential Commodities Act, 1955 which is still in force. According to the provisions of the said Control Order willful indulging in substitution or adulteration or diversion or theft of stocks of essential commodities under public distribution system from central godown to fair price shop premises or at the premises of fair price shop is forbidden and any contravention thereof is punishable u/s 7 of the Essential Commodities Act. In such view of the matter when there are prima facie materials gathered by the prosecution during the investigation of the case that huge quantity of wheat and rice loaded in gunny bags with FCI marks were stored at the godown of the petitioner which is neither the central godown nor the premises of fair price shop and when the petitioner has not been able to produce any document in support of lawful possession of those essential commodities, it cannot be said no prima facie case u/s 7(1)(a)(ii) of the Essential Commodities Act has been made out.

8. Mere non-mentioning of the Control Order the alleged violation whereof the charge-sheet has been submitted u/s 7(1)(a)(ii) of the Essential Commodities Act, may at best be an irregularity but that cannot be a ground for quashing of the charge-sheet. All that is essential for a lawful charge-sheet, is this, that there must be sufficient materials collected by the Investigating Agency constituting commission of any cognizable offence. In the instant case I find from the chargesheet that sufficient materials have been gathered by the police during

investigation which constitute a cognizable offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act, thus non-mentioning of the Control Order contravened would be of no consequence. Till date no charge has been framed, as such there cannot be any question of prejudice said to have been suffered by the accused persons for no mentioning of the particular Control Order which has been violated.

9. The submission of Mr. Saha that the seized essential commodities are not meant for public distribution system and the petitioners are the bona fide owner of the same is purely the matter of facts and defence. The same cannot be taken into consideration at this present stage that too for consideration of the question of quashing of a charge-sheet.

10. This criminal revision has no merit and is accordingly dismissed.

11. It goes without saying that this Court gone into the merits of the case and only considered whether on the evidentiary materials collected by the police during investigation a prima facie case u/s 7(1)(a)(ii) of the Essential Commodities Act has been made out or not.

Criminal section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.