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**(2014) 06 CAL CK 0080**

**In the Calcutta High Court**

**Case No :** G.A. No. 273 of 2014 and W.P. No. 5089 of 1988

Binoy Ranjan Chowdhary

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision :** 17-06-2014

**Acts Referred:**

**Citation :** (2014) 06 CAL CK 0080

**Hon'ble Judges :** Arindam Sinha, J

**Bench :** Single Bench

**Advocate :** Malay Bose, Sr. Advocate and Mr. Shyam Sundar Manna, Advocate for the Appellant; Chaina Mukherjee and Mr. Subir Pal, Advocate for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Arindam Sinha, J.—A modified ration distributor is the writ petitioner. Mr. Basu, learned Senior Advocate appeared on behalf of the writ petitioner and submitted that treating memo dated 7th November, 1988, a copy of which annexure-C to the petition, as the FIR, Dinhata Police Station started case no. 12 of 1988 dated 9th November, 1988, quashing of which has been prayed for by his client. A photocopy of the FIR was handed up and kept on record.

2. Mr. Basu submitted that the said memo which became the FIR does not disclose any offence. He submitted the said memo relied on report dated 4th October, 1988 of the Assistant Director, Inspection and Quality Control, Department of Food and Supplies, Government of West Bengal. It appears from the said report itself that it is not conclusive. Though in the enclosure to the report the percentage of broken grains was mentioned but it was iterated therein that the quantities of samples were not sufficient for carrying out analysis. In spite thereof, by the said memo the CISF, Dinhata alleged it was evident the writ petitioner had replaced some bags of rice of FCI by inferior quality of rice at his godown with a view to get illegal profit and had thus violated the provisions of Section 8 the Anti-Profiteering Act, 1988 and was liable to be prosecuted u/s 8

thereof.

3. Mr. Basu drew the attention of the court to the provisions of Section 8 of the said Act. Sections 6, 7 and 8 of the said Act have been reproduced in paragraph 36 of the writ petition. Mr. Basu submitted that none of the provisions contained therein can be said to have been violated and as such the said memo having been treated as the FIR does not disclose an offence. According to him his client's case comes within the guidelines laid down in the decision of the Hon'ble Supreme Court reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, for the FIR to be set aside and quashed in writ jurisdiction.

4. Ms. Mukherjee, learned Advocate appeared on behalf of the respondents and submitted that Section 8 of the said Act as per the heading in the section related to penalty for contravention of Section 9 or Section 7 thereunder. Section 9 provided that all offences punishable under the said Act shall be cognizable. She submitted that the petitioner had committed an offence as has been stated in the FIR which was an offence under the Act and therefore it could not be said that the FIR did not disclose an offence.

5. It appears that the heading of Section 8 as contained in the said Act printed in the West Bengal Laws, 2nd edition carries a typographical error in referring to Section 9 since the section itself provides as follows:-

Any dealer who fails to comply with any of the provisions of Section 6 or with a requisition issued thereunder or obstructs any officer in the exercise of his powers u/s 7 shall be punishable with rigorous imprisonment which may extend to six months or with fine or with both.

6. Sections 6 and 7 of the said Act requires dealers to submit returns, maintain accounts, furnish information, etc. and provides for the power of any police officer not below the rank of Sub-Inspector of Police to enter and search any place where he has reasonable grounds for believing that there has been a contravention of any of the provisions of the said Act. That would mean that contravention of the provisions of Section 6 of the said Act would be an offence. However, the FIR does not disclose as to how any provision of Section 6 of the said Act had been contravened by the petitioner. The allegation of replacement of some bags of rice of FCI by inferior quality of rice by the petitioner at his godown to make illegal profit made on the basis of the said analytical report cannot be said to be a contravention either of the provisions of sub-section 1 or sub-section 2 of Section 6 of the said Act. The letter dated 4th October, 1988 of the Assistant Director, Inspection and Quality Control to which the said report was enclosed stated that quantities of all the samples were inadequate, particulars of stack number or other relevant information noted in the tally cards maintained at sources in particular from which the petitioner got supply were not mentioned and such type of analysis could be reliably got done from their Zonal Laboratory at Siliguri, which does not appear to have been done subsequently.

7. In view of the allegation in the FIR based on such analytical report coupled

with the submission made on behalf of the State that a fresh analysis is not possible, this court is compelled to hold that the impugned FIR does not disclose an offence.

8. For the reasons aforesaid the FIR dated 7th November, 1988 is found not to disclose any offence and therefore liable to be quashed under the guidelines laid down in Bhajan Lal's case. As a consequence Dinhata Police Case no. 12 of 1988 dated 9th November, 1988 started on the basis of the said FIR is quashed as prayed for by the petitioner.

9. The writ petition is allowed.

10. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.