(2016) 03 CAL CK 0070

In the Calcutta High Court

Case No : CRR Nos. 895 of 2014 and 4137 of 2013

Kishori Lal Saha — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), Section 156(1), Section 161, Section 164, Section 239, Section 401, Section 482
Delhi Special Police Establishment Act, 1946 — Section 3
Essential Commodities Act, 1955 — Section 3

Citation : (2016) 03 CAL CK 0070

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Subhomoy Bhattacharya, Arkajyoti Das and Shankar Mukherjee, for the Appellant; Asraf Ali, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—1. The petitioner Kishori Lal Saha has preferred revision under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding in connection with Special Case No. 18 of 1996 arising out of RC 6/SCD/93-CAL under Section 120B read with Sections 420/467/468/471 of the Indian Penal Code and under Section 7(1) (a) (ii) of the Essential Commodities Act pending before the Court of Learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas, which is registered as CRR 895 of 2014. The petitioner Parthasarathy Biswas has also preferred revision under Section 401 read with Section 482 of the Code of Criminal Procedure challenging the order dated September 3, 2013 passed by Learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas in Special Case No. 18 of 1996 and for quashing of the said criminal proceeding arising out of RC 6/SCD/93-CAL under Section 120B read with Sections 420/467/468/471 of the Indian Penal Code and under Section 7(1) (a) (ii) of the Essential Commodities Act, which is registered as CRR No. 4137 of 2013. Both the criminal revisions arise out of the same criminal case and as such both the revisions are disposed of by this common judgment.

2. The petitioner Kishori Lal Saha is the proprietor of M/s. Happy Home, Indane LPG Distributor, Lake Town, North 24-Parganas. The petitioner Parthasarathy Biswas is an employee of Indian Oil Corporation, who was working as Area Manager-Sales Officer of Indian Oil Corporation during 1985-1987. One R.P. Bose, Inspector of Police, Central Bureau of Investigation, SCB, Calcutta filed a written complaint on the basis of which RC 6/SCD/93-CAL dated August 30, 1993 was registered. It is alleged in the said written complaint that both the petitioners entered into a criminal conspiracy to deceive genuine customers of Indian Oil Corporation and in furtherance of the said conspiracy the petitioner Kishori Lal Saha adopted malpractice and forged documents for supplying LPG connection to new customers depriving the genuine customers who were registered and enrolled prior to the new customers and thereby harm was caused to the reputation of Indian Oil Corporation. The CBI investigated the said criminal case and submitted chargesheet against both the petitioners for the offence under Sections 120B/420/467/468/471 of the Indian Penal Code and under Section 7 (1) (a) (ii) of the Essential Commodities Act before the Court of Learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas. The petitioner Parthasarathy Biswas filed an application before the Court of Learned Magistrate praying for discharge under Section 239 of the Code of Criminal Procedure. On September 3, 2013 Learned Magistrate rejected the said application of the petitioner Parthasarathy Biswas and posted the case for framing of charge. Both the petitioners have prayed for quashing of the criminal proceeding.

3. Mr. Subhamoy Bhattacharya, Learned Counsel appearing for both the petitioners contends that CBI has no authority to investigate the offence under Section 7(1) (a) (ii) of the Essential Commodities Act. He submits that no complaint is made by any customer that he has not received LPG connection from the petitioner Kishori Lal Saha. He further submits that no allegation is made by anyone that the petitioners have received bribe or any illegal gratification for providing LPG connection. Mr. Bhattacharya argues that no customer has made any allegation that the petitioner Kishori Lal Saha has shown any undue favour to anyone for providing LPG connection. He further argues that no disciplinary action is taken by the Indian Oil Corporation against the petitioner Parthasarathy Biswas who is alleged to have caused harm to the reputation of the Indian Oil Corporation by revalidating SL-69 for providing LPG connection through M/s. Happy Home. He has urged this Court to consider that there is no existence of Gas Control Order 1986 for whose violation the petitioners are being prosecuted under Section 7(1) (a) (ii) of the Essential Commodities Act. The last submission of Mr. Bhattacharya is that there is delay of more than three years in reporting the incident of cheating and giving undue preference to some of the customers by M/s. Happy Home and such delay is fatal without having any explanation for the said delay.

4. Mr. Asraf Ali, Learned Counsel for the opposite party/Central Bureau of Investigation has produced Notification No. 228/8/89-AVD-II dated September 7, 1989 issued by Ministry of Personnel, Public Grievances and Pension, Government of India to impress upon the Court that the Central Bureau of Investigation is authorised to conduct investigation in connection with the offences punishable under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955. Mr. Ali submits that the instant case is started on the basis of source information which is privileged communication under Section 125 of the Indian Evidence Act. By referring to the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure in general and the statement of Sibul Kanti Chowdhury recorded under Section 164 of the Code of Criminal Procedure and the statement of Shymal Roy, Swaraj Mukherjee and Prabodh Chandra Banjadeo recorded under Section 161 of the Code of Criminal Procedure in particular, Mr. Ali submits that there is prima facie evidence to indicate that the petitioner Kishori Lal Saha forged the documents with the help of his employees for supplying LPG connection in favour of the customers who never enrolled and registered their names with M/s. Happy Home and the petitioner Parthasarathy Biswas validated the cancelled SL-69 in order to facilitate supply of LPG connection to new customers by passing the customers who are in the wait list and thereby cheated the genuine customers of Indian Oil Corporation and caused harm to the reputation of Indian Oil Corporation. He specifically submits that the present criminal proceeding is not barred by limitation and the delay if any will be explained during the trial of the case. The gist of submission of Mr. Ali is that both the petitioners are liable to be prosecuted for the offence punishable under Sections 420/467/468/471/120B of the Indian Penal Code and under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955.

5. The criteria for quashing the criminal proceeding laid down by the Supreme Court in Paragraph 102 of "State of Haryana V. Bhajan Lal" reported in , 1992 SCC (Cri) 426, are as follows:

"102. .... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. By applying the above test laid down by the Supreme Court, I have to decide whether the materials collected by the Investigating Agency disclose commission of any offence for continuation of the criminal proceeding against the petitioners. It is true that there is no direct allegation that the petitioners have taken bribe or illegal gratification for providing LPG connection to the new customers by depriving the genuine customers who enrolled and registered their names with M/s. Happy Home about two to three years back. Nor is there any complaint made by any customer of Indian Oil Corporation alleging undue favour by M/s. Happy Home to the new customers by depriving the customers who enrolled and registered their names for obtaining LPG connection from M/s. Happy Home. It also appears from record that no disciplinary action is taken against the petitioner Parthasarathy Biswas by the disciplinary authority of Indian Oil Corporation for the role played by him in revalidating SL-69 for providing LPG connection to new customers by M/s. Happy Home. The absence of direct allegation of taking bribe or illegal gratification by the petitioner Kishori Lal Saha or the absence of any disciplinary action against the petitioner Parthasarathy Biswas cannot be a ground for quashing the criminal proceeding, if the offence is made out against the petitioners. Nor can I persuade myself to hold that the present criminal proceeding is barred by limitation.

7. It appears from Notification No. 228/8/89-AVD-XI dated September 7, 1989 issued by Ministry of Personnel, Public Grievances and Pension, Government of India that the Central Bureau of Investigation is authorised by way of Notification issued under Section 3 of the Delhi Special Police Establishment Act, 1946 to carry out investigation in connection with the offences punishable under the Essential Commodities Act, 1955. The question of violation of Control Order issued under Section 3 of the Essential Commodities Act is left open for decision by the trial court at the time of consideration of the charge. Since the Central Bureau of Investigation is authorised by the Central Government to carry out

investigation in connection with the offences punishable under Section 7(1) (a) (ii) of the Essential Commodities Act, I do not find any merit in the submission made by Learned Counsel for the petitioners.

8. It appears from the report of investigation submitted by the Investigating officer that Indian Oil Corporation has appointed the petitioner Kishori Lal Saha as distributor of LPG (Liquid Petroleum Gas) Cylinders among general public for their consumption. The petitioner Kishori Lal Saha is duty-bound to distribute LPG connection to the consumers as per norms and guidelines issued by Indian Oil Corporation. On consideration of statement of the witness - Sibul Kanti Chowdhury recorded both under Section 161 and under Section 164 of the Code of Criminal Procedure and statement of the witness -Swaraj Mukherjee and the witness - Prabodh Chandra Banjadeo recorded under Section 161 of the Code of Criminal Procedure, I find that for obtaining new LPG connection the customer will have to enrol his name by giving all particulars with the distributor namely M/s. Happy Home which will issue the registration slip under Form No. SL-69. This slip has two parts - one is given to the customer at the time of enrolment of his name and the other part is retained by the distributor namely M/s. Happy Home for record. It is evident from the statement of the above witnesses that the petitioner Kishori Lal Saha with the help of his employee Sibul Kanti Chowdhury cancelled counterpart of Form No. SL-69 and erased the name of the customer who enrolled his name and inserted the name of new customer and got the same revalidated by the petitioner Parthasarathy Biswas and issued LPG connection in favour of the new customer. Ten such instances have been identified and established from the materials available in the case diary. It is also evident from the statement of Swaraj Mukherjee and the statement of Prabodh Chandra Banjadeo that the petitioner Parthasarathy Biswas has no authority to revalidate the cancelled SL-69 as Area Manager-Sales Officer of Indian Oil Corporation during the period when LPG connection was given to various persons by depriving the wait list candidates by the petitioner Kishori Lal Saha as proprietor of M/s. Happy Home. The statement of the above witnesses goes to establish how forgery is done by the petitioner Kishori Lal Saha with the help of his employee and how revalidation of SL-69 in connection with the cancelled Forms is done by the petitioner Parthasarathy Biswas in violation of the guidelines issued by Indian Oil Corporation. The address of the persons whose names were enrolled and registered by M/s. Happy Home for supply of LPG connection are also found to be fake as per statement of the witnesses recorded during investigation. It is also evident from the statement of witnesses Shyamal Roy recorded under Section 161 of the Code of Criminal Procedure that the petitioner Kishori Lal Saha refused to provide LPG connection to him as he pleaded his financial inability to purchase gas oven at higher price from the said distributor. The acts done by both the petitioners for providing LPG connection to new customers without prior registration and enrolment of their names as wait listed candidates has definitely caused harm to the reputation of Indian Oil Corporation and the customers who enrolled and registered their names by filling up SL-69

for obtaining LPG Gas connection through M/s. Happy Home must have been deceived by both the petitioners for wrongful gain. On consideration of the entire materials available in the case diary I cannot persuade myself to hold that no offence is made out against the petitioners for quashing of the criminal proceeding as contended on behalf of the petitioners.

9. By applying the test laid down by the Supreme Court in "State of Haryana V. Bhajan Lal" (supra) in the facts of the present case, I am constrained to hold that this is not a fit case where the High Court can invoke inherent jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the criminal proceeding against both the petitioners. As a result, I do not find any merit in both the criminal revisions. Both the revisions are, thus, dismissed.

Let a copy of this order be sent down to the Learned Court below for favour of information and necessary action.

The urgent photostat certified copy of the judgement and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.