

(2022) 03 GAU CK 0001
In the Gauhati High Court
Case No : Criminal Petition No. 350 Of 2021

M/S Maruti Quality Products Pvt. Ltd

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 397, 401, 438, 482
Indian Penal Code, 1860 — Section 120B, 379, 406, 411
Essential Commodities Act, 1955 — Section 7, 14

Citation : (2022) 03 GAU CK 0001

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : J I Borbhuiya

Final Decision : Dismissed

Judgement

1. This petition, under section 482 read with sections 397/401 of the Code of Criminal Procedure, 1973, has been preferred by the petitioners, namely, (i) M/S Maruti Quality Products Pvt. Ltd., represented by its Commercial Manager of Assam, Shri Parag Lohia, and (ii) M/S Continental Milkose India Ltd., represented by its authorized signatory, Shri Vivek Singh, for quashing and setting aside the F.I.R. of Boko P.S. Case No. 457/2021, dated 03.06.2021, registered under Sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act.

2. It is to be mentioned here that the Boko P.S. Case No. 457/2021, under Sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act, has been registered on the basis of one F.I.R. lodged by S.I. Amir Hussain of Boko P.S. on 03.06.2021.

3. The factual background leading to filing of the present petition is adumbrated here in below:-

"On 03.06.2021, local public of Nadiapara, Agachia under Boko Plice Station have detained one Truck, bearing Registration No. NL 07 AA/0493, of M/S Maruti Quality Products and reported the same to Boko Police Station. Then S.I. Amir Hussain of Boko P.S., on inspection of the said Truck, found 800 bags of polished rice (each bag containing 50 kg) marked as 'East Sunrise' along with marking of 'for Assam rifles only' MKD by 'Continental Milkose (India) Ltd', Khearmal, Notun Bosti, Dimapur, Nagaland. Then the S.I. seized the same preparing seizure list. As per statement of the driver of the Truck, it has been learnt that the said rice bags were loaded at Maruti Quality Products Pvt. Ltd. Chatabri Industrial Estate, under Boko P.S. Thereafter, the O/C Boko P.S. along with staff visited the godown of M/S Maruti Quality Products Pvt. Ltd. Chatabri and found unaccounted numbers of PDS/FSA/FCI rice, packed in jute bags and also found 325 numbers of bags of polished rice marked as 'East Sunrise' along with markings on the bags, and then seized the same along with the above mentioned Truck. The seized rice bags are suspected to be hoarded for unfair means. One machine for polishing rice was also found there. Further, 11 nos. of loaded Trucks containing FCI rice, one empty Truck which had just unloaded FCI rice, was also found inside the campus and another empty Truck was also found outside the factory. And no valid documents could be furnished regarding the rice, and therefore, it was suspected that the owner, business partner, Manager and others of M/S Maruti Quality Products had entered into a criminal conspiracy to pilferage and misappropriate rice from Govt./FCI facilities and used to sell the same in the black market at high rates/profit thereby depriving the genuine beneficiaries as the PDS/FSA/FCI rice is meant for distribution amongst the BPL/poorer sections of the society. Thereafter, S.I. Amir Hussain has lodged one FIR on 03.06.2021, upon which Boko P.S. Case No. 457/2021, under Sections 120(B)/406/ 379/411 of the Indian Penal Code read with Section 7 of the E.C. Act, has been registered and investigation is being carried out. During the course of investigation, the representative of the petitioner Nos. 1 & 2 and its Directors appeared before the I.O. and their statements were recorded and the I.O. also enquired about the source of the aforesaid seized rice and obtained opinion from the experts. The investigation is still going on."

4. Pending investigation, the petitioners approached this Court for quashing the aforesaid F.I.R. on the following grounds:

(i) That, no preliminary enquiry was conducted before registering the F.I.R, dated 03.06.2021 and the authority had acted beyond jurisdiction;

(ii) That, no ingredients of the offence under Section 120 (B)/406/379/411 of the Indian Penal Code and Section 7 of the E.C. Act are made out and none of the sections are attracted here in this case as the seized rice bags were the genuine product meant for a part of Mid Day Meal, which was procured by the petitioner No. 2 and that the petitioner No. 1 has only rented out some of the parts of its godown as a temporary arrangement to the petitioner No. 2;

(iii) That, the petitioner No. 2 had entered into an agreement with the Social

Welfare Department, Government of Meghalaya, under the Wheat Based Nutrition Program (in short 'WBNP') as well as the National Food Security Act, 2013 of the Social Welfare Department of the Government of Meghalaya, Shillong for supply of Rice and Pulse based Micronutrient Fortified Energy Dense Food and agreement with the Assam Rifles for supply of rice under the brand name and style "East Sunrise" and supplies the same to Assam Rifles;

(iv) That, the petitioners have been running their business following due procedure of law and that even if the allegations in the F.I.R. are taken at their face value, the same failed to disclose commission of a cognizable offence and in view of the judgment of the Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal, reported in AIR 1992 SC 604, the F.I.R. in question is not sustainable and the registration of F.I.R. is contrary to the principle of law; and

(v) That, the F.I.R. has been falsely lodged against the petitioners and the petitioners have been made victimize for no offence committed by them and that it was lodged with mala fide intention and personal grudge and that the respondents, in exercise of the power lodged the F.I.R. and that this is a fit case where this Court may exercise the inherent power under section 482 of the Cr.P.C. to quash the F.I.R. and that the registration of the F.I.R. against the petitioners are clear abuse of the process of law and, therefore, it is contented to quash the same.

5. The petitioners have also submitted one additional-affidavit bringing on record some more facts of the case in respect of one letter given by the Depot Manager, Food Corporation of India, to the I.O. of the case to the effect that the Government of India had allocated rice under WBNP Scheme for the Quarter during 2021-2022, and that the Social welfare Department, Government of Meghalaya, has ordered to hand over the WBNP rice to M/S Continental Milkose India Ltd. and the same were lifted by M/S Continental Milkose India Ltd. from the FCI, FAD Khanapara Depot on 31.05.2021, in 13 numbers of Trucks, mentioned in the Office Letter, and that the learned Judicial Magistrate First Class, Boko, Kamrup (M) has given the seized rice, along with the vehicles, in the custody of the petitioners vide order dated 12.07.2021 and therefore, it is contented to quash the whole criminal proceeding of Boko P.S. Case No. 457/2021, registered under Sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act.

6. Heard Mr. J. I. Borbhuiya, learned counsel for the petitioners. Also heard Mr. M. Phukan, learned Public Prosecutor for the State respondent.

7. Mr. J. I. Borbhuiya, learned counsel for the petitioners, submits that from a bare perusal of the F.I.R., upon which the Boko P.S. Case No. 457/2021, under Sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act, has been registered, it cannot be said that no offence under the aforesaid sections and that as required by the I.O., the petitioners have

submitted all the relevant documents in respect of the rice and in view of the Section 14 of the E.C. Act, the burden of the petitioners stands discharged and that no offence under Section 379 or section 411 of the Indian Penal Code are made out as no complaint has been received from any quarter and that the said rice bags were stocked there for supplying to the Assam Rifles at Silchar and also at Manipur. Mr. Borbhuyan further submits that the Directors of the petitioner Nos. 1 & 2 appeared before the I.O. and their statements were recorded and that the I.O. has visited the Depot and the Depot Manager reported that as per direction of the Social Welfare Department of the Government of Meghalaya, the same were released and as such, no offence, as alleged in the F.I.R., is made out and it is, therefore, contended to allow the petition.

8. On the other hand, Mr. M. Phukan, learned Public Prosecutor for the State of Assam, producing the Case Diary before this Court, submits that the petitioners have been indulging in illegal business of hoarding of rice under the banner of a legal business. Mr. Phukan further submits that one rice polishing machine has been seized from the godown of the petitioner No. 1 apart from the rice, which was being used for polishing the rice, and the petitioner No.1 no permission/licence to deal with the business of rice and that the I.O. has collected sufficient materials in the Case Diary in support of the allegation made in the F.I.R. and, therefore, Mr. Phukan, the learned Public Prosecutor, further submits that investigation is still going on and this is not a fit case as well as proper stage to quash the F.I.R. of Boko P.S. Case No. 457/2021, registered under Sections 120(B)/406/379 /411 of the Indian Penal Code read with Section 7 of the E.C. Act, and the investigating agency may be permitted to take the investigation to a logical conclusion and, therefore, Mr. Phukan has contended to dismiss the petition.

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also the Case Diary which the learned Public Prosecutor has produced before this Court.

10. Before directing a discussion into the points, so raised by the learned Advocates of both sides, it would be apposite to understand the law presently holding the field in respect of quashing of the F.I.R. in exercising the inherent power under Section 482 of the Cr.P.C.

11. The most referred case in this regard is State of Haryana Vs. Bhajan Lal reported in AIR 1992 SC 604, the Hon'ble Supreme Court has held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse

of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.”

12. In the case of M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.(Criminal Appeal No. 330 of 2021), Hon’ble Supreme Court has laid down following principles of law in respect of quashing the F.I.R.:-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an

investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the

court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section under Section 482 of the Code of Criminal Procedure, 1973 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

13. Again in the case of Priti Saraf & Anr. vs. State of NCT of Delhi & Anr., reported in 2021 SCC OnLine SC 206, Hon'ble Supreme Court, in paragraph 23 thereof, held as under:

"23. It being a settled principle of law that to exercise powers under Section 482 Cr.P.C., the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under the obligation to go into the matter or examine its

correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record."

14. Keeping in mind the aforesaid principles of law, while the facts and circumstances of the case in hand is examined, this Court left unimpressed by the submission made by Mr. J. I. Borbhuiya, the learned counsel for the petitioners. A cursory perusal of the F.I.R., based on which Boko P.S. Case No. 457/2021, under Sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act, by no stretch of imagination, it can be said that no offence under the aforesaid Section of law has been made out here in this case.

15. From the submissions made by Mr. M. Phukan, learned Public Prosecutor for the State respondent, and also from the investigation being carried out by the I.O. till date, as is apparent from the Case Diary which the learned P.P. has produced before the court, it is apparent that the I.O. has collected sufficient materials in support of the allegation made in the F.I.R., against the petitioners. It appears that the I.O., during the investigation, has ascertained that the rice seized by him from the godown of the petitioners is FCI rice allocated to the Social Welfare Department, Government of Meghalaya. But, the end use of the rice is not clear. The petitioner No. 2 has failed to provide any valid document regarding packaging of polished rice at M/S Maruti Quality Products Pvt. Ltd., Chatabri Industrial Estate under Boko P.S. with Brand 'East Sunrise' with marking 'for Assam rifles only' and it is strongly suspected that M/s Maruti Quality Products Pvt. Ltd. and M/s Continental Milkose India Ltd. used to collect FCI rice under various scheme of Government through Social Welfare Department, Government of Meghalaya, and repackage the said rice, after polishing the same in the mill found inside the godown of M/S Maruti Quality Products Pvt. Ltd., Chatabari, and supply to Assam Rifles and to other places in black market. It also appears that there is no permission for installation of rice polishing machine in the godown of M/S Maruti Quality Products Pvt. Ltd., Chatabari.

16. It also appears that the petitioners have failed to produce following documents/information as required by the I.O. during investigation:-

- (i) Registered Rent Agreement between the petitioner No. 1 and 2, of taking the godown of the petitioner No. 1 on rent @ Rs. 8 Lakhs per month;
- (ii) The petitioner No. 1 has failed to produce bank statement of received rent from petitioner No.2/M/s Continental Milkose India Ltd.;
- (iii) The petitioner No. 1 has failed to produce permission from District Industries Department for installation of machinery at UNIT-II (Maruti Quality products) Chatabari and details of Machinery installed therein;
- (iv) The petitioner No.2 has failed to produce details of Fortified Dense Energy Food manufactured at Unit-II(MQP) Chatabari since incorporation;

(v) The petitioner No.2 has failed to produce the list of employee details engaged during the manufactured of Fortified Energy Dense Food;

(vi) The petitioner No.2 has failed to produce details of security personnel employed at Unit-II(MQP) Chatabari since incorporation;

(vii) The petitioner No.1, though produced transaction details of Unit (Maruti Quality products) Chatabari, yet, the same were found to be not satisfactory and are insufficient and that it create suspicion that the Maruti Quality Product Unit-II premises was only used for storage and packaging of FCI rice, but not for production of fortified energy dense food as authorized from Industry Department.

(viii) The representative petitioner No. 2 could not be able to furnish original stock register required to be maintained to stock such huge quantities of rice at a rented godown;

(ix) The representative petitioner No. 2 also failed to furnish details of vehicles and the names of drivers, who have transported the rice bag from Chatabari Godown to Noida which goes to show that the rice procured from the quota of Social Welfare Department, Government of Meghalaya, was never transported to Noida as stated by him, instead the same were repackaged at the alleged rented Godown of Chatabari in the name of 'East Sunrise' brand and supplied to Assam Rifles.

17. Further, it appears that the investigation is still going on. In view of the aforesaid facts and circumstances this court is of the considered opinion that it cannot be said, rather it would be too premature to arrive at a finding that no offence under sections 120(B)/406/379/411 of the Indian Penal Code read with Section 7 of the E.C. Act, are made out against the petitioners at this stage. It would cause grave prejudice to the investigating agency if the contentions of the petitioners are accepted. This is not the proper stage and also a fit case where the F.I.R. can be quashed invoking Section 482 of the Cr.P.C. It is well settled that investigating agency is the master of investigation and it may be allowed to take the investigation to a logical conclusion. In arriving at such a conclusion, we derived authority from the ratios, so laid down by Hon'ble Supreme Court in the case of so laid down by the Hon'ble Supreme Court in the cases of Bhajan Lal (supra), M/s Neeharika Infrastructure Pvt. Ltd. (supra), and in the case of Priti Saraf (supra) as discussed hereinabove.

18. In the result, I find no merit in this petition and, accordingly, the same stands dismissed. The parties have to bear their own cost. The Case Diary be sent back.