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**(2018) 07 CAL CK 0035**  
**In the Calcutta High Court**  
**Case No : Writ Petition4881(W) of 2018**

Prodip Kumar Das

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

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**Date of Decision :** 06-07-2018

**Acts Referred:**

Code Of Criminal Procedure 1973 — Section 156(3), 173  
Constitution Of India, 1950 — Article 14, 166(3)

**Citation :** (2018) 07 CAL CK 0035

**Hon'ble Judges :** PROTIK PRAKASH BANERJEE, J

**Bench :** Single Bench

**Advocate :** Bikash Ranjan Bhattacharyya, Sudipta Dasgupta, Bikram Banerjee, Firdaus Samin, Subhobrata Datta, Banibrata Datta, Soumik Ganguly, Munmun Mukherjee

**Final Decision :** Disposed Of

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## Judgement

As shall appear from my earlier orders, this is a case where the writ petitioner, who does not have an excise licence, instituted the writ petition seeking independent investigation of certain criminal cases, one of which was initiated by him against the non-State respondents No.7 and 8 who do have such licence to run a bar (onshop) and a restaurant. This is important since the writ petitioner has made out a case that it financed or invested substantially in the business of the said respondents no.7 and 8, and under a deed of lease has actually been running and conducting the business of a bar-cum-restaurant at Siliguri, and then due to a dispute, the respondent no. 7 forced the writ petitioner to close the business on false pretenses but thereafter, on finding that the respondents no.7 and 8 were still running the business, he filed a complaint for cheating and criminal conspiracy, which was being investigated by the police officers of the Hare Street Police Station in Kolkata.

A case was started against the writ petitioner by the respondent no. 7 before the jurisdictional police station at Pradhannagar in Siliguri. During the search and seizure operations pursuant to the first information registered on the complaint of the writ petitioner, several articles were duly seized by the police with the help of the police officers of the Pradhannagar police station. The seized articles being voluminous in nature, were kept at the spot in a room on the 3rd floor of the Hotel concerned, but under lock and key with the key given to the Manager of the said bar-cum restaurant, under lawful zimmanama. A direction was given to the competent authority to ensure the safety and security of the goods concerned subject to further orders of the competent court. Apparently, thereafter, the writ petitioner obtained an order from the Learned Chief Metropolitan Magistrate, Kolkata directing the investigating officer to unlock/hand over the keys of the said locked premises to the writ petitioner upon executing a bond for Rs.10 lakhs.

There were other conditions.

Apparently, the writ petitioner, despite complying with the conditions in the order applicable to him, did not get the keys and could only get the keys on October 10, 2017, and that too after â??much persuasionâ? of the investigating agency. On such day, the Manager having zimma, was not traceable and therefore the â??locked and sealedâ? room was forced open only to find that the so called sealed room on the 3rd floor had a back door which was open. The writ petitioner apparently discovered that many of the articles which had been seized including the Central Processing Unit according to the seizure list, were missing and in case of the said CPU, had been replaced with an empty cabinet. The data in the hard drive of the CPU, naturally, is contended by the writ petitioner to have valuable evidence of his allegations.

In this situation I had directed that two reports be filed, one by the Secretary, Department of Home (Police) and one by the Inspectorin-Charge of the concerned Pradhannagar police station. I have perused the reports in the form of affidavits which have been filed today pursuant to my order dated June 12, 2018. They are taken on record. From the affidavit of the Secretary, Department of Home (Police), Government of West Bengal it appears that he is not in day to day control or management of his department but that the function of such high officers of the State is to deal with matters of

policy and not its implementation.

Apparently according to the Rules of Business made under Article 166(3) of the Constitution of India that is all that he can do; whereas the day to day

activities of the police directorate or individual acts of commission or omission on the part of the police officers are dealt with by other officers

including the Director General and Inspector General of Police. Apparently as appears from paragraph 3 of the affidavit filed by the said

Secretary, request has already been made to the Director General of Police and the Inspector General of police to take immediate action for

compliance of my earlier order as above.

The affidavit of the concerned Inspector in Charge is not satisfactory. It makes excuses why the report in final form under Section 173 of the Code of

Criminal Procedure could not be filed; the police officer apparently is waiting for chance witnesses and presumably if such fortuitous witnesses do not

appear then this case shall also join the orphans of law enforcement since apparently there is no god father to please with fast action.

The said report of the Inspector in Charge is conspicuously silent about how the back door of the third floor of the bar cum restaurant in question

could have been open when the entire third floor of the said bar cum restaurant was sealed. I am not happy either with the writ petitioner's

conduct in having in effect financed a bar and operated it without an excise license through the instrumentality of a manager and a business man who

actually had the excise license when the writ petitioner did not have the excise license. This amounts to be a fraud on the statute.

However, I have always thought that excepting for granting of an equitable relief, procedural safeguards should be available to both the good and the

bad-man alike. That is the basis of the right of equality guaranteed under Article 14 of the Constitution of India. Merely because the conduct of a writ

petitioner is bad, it cannot be a licence to the investigating agency to treat a lawful seizure and sealing of the room where the seized articles are lying

as a pretext to allow the seized goods to be stolen or replaced. The law "like the rains" falls as heavily on both the rich and the poor, the good

and the bad. This is the minimum guarantee which a country with a Rule of Law as opposed to the Rule of Man affords to every person.

The writ petitioner was entitled to have due process of law followed. Sealing of a

restaurant or a part of it ought to be without exception. It is impossible to say that part of the restaurant was sealed and the goods therein under the zimma of the manager are without scope of tampering if it is an admitted position that despite sealing the back door was open. The entire criminal process has become vitiated by such admitted lapse on the part of the Inspector of Charge of the Pradhannagar Police Station. While I have been told that the incumbent at present was not there at the time when this had happened, I have not been told that the police officer who was responsible for this negligence is no longer in service.

The affidavit of Inspector in Charge does not show that the investigation is being done in an appropriate manner. The earlier Inspector in Charge

allowed third floor of the restaurant to be used with impunity and kept its back door open though it was sealed by the order of the competent court.

The present Inspector in Charge has chosen not to deal with this aspect of the matter despite my specifically taking exception to such act by my order

dated June 12, 2018. It is possible that the entire investigation has become vitiated because of the Act of these officers. The evidentiary value of

whatever is discovered after such a flawed investigation would defeat rather than advance the cause of justice.

On thinking, at this stage, that it was a fit and proper case to direct that the Criminal Investigation Department or Detective Department of the police

should be vested with the duty of investigating the offence alleged I had proposed to change the investigating agency to Criminal Investigation

Department or the Detective Department, and pass consequential orders. However, it was borne upon me by the Learned Advocates for the

respondents No.7 and 8 that the prayers in the writ petition relate only to 4 out of the 10 pending cases (including civil suits) and one disposed of writ

petition. It was submitted on their behalf that unless all the criminal cases are before me, passing such an order would create jurisdictional anarchy

apart from causing difficulty in proceeding with the proper adjudication of the cases.

In view of the fact that records of the criminal cases are involved, let an order in the nature of certiorari be issued to ensure that the records of the

case as appearing in prayers â??aâ?? and â??bâ?? of the petition and the proceedings pending before the competent Courts, both civil and criminal,

details of which are mentioned below, are brought before this Court within seven days from the date of communication of this order. The writ

petitioner and the private respondents must communicate a website copy of this order to the competent civil and criminal courts as also to the Learned

Advocate for the State of West Bengal and the concerned police authorities such that the order calling for the records are complied with within the time mentioned below.

List of the cases.

1. Proceeding under Section 156(3) of the Code of Criminal Procedure pending before the Chief Judicial Magistrate at Siliguri being Misc. Case No. 121/2017 which is treated as Pradhan Nagar P.S. being No. 391/2017.
2. Pradhan Nagar P.S. case No. 724/2017.
3. Hare Street P. S. case No. 203/2017.
4. Pradhan Nagar FIR No. 66/2018.
5. Petition case No. 31/2018 Before the SDEM at Pradhan Nagar Dist-Darjeeling.
6. W.P. No. 25078(W) of 2017 (Disposed of).
7. Proceeding under Section 156(3) of the Code of Criminal Procedure pending before Additional Chief Judicial Magistrate at Siliguri. Misc. case No. 724/2017.
8. Before the Additional Chief Judicial Magistrate, Siliguri Misc. Case 10/2018.
9. Criminal Revision No. 63/2018 before the City Sessions Court at Calcutta.
10. Title Suit No. 258/2018 in the Court of Civil Judge, Junior Division at Siliguri.
11. Title Suit No. 68/2018 before the Civil Judge, Junior Division at Siliguri.

Since it is the case of the Inspector in Charge that the goods of the writ petitioner have been recovered as appears at paragraph 4 of the affidavit affirmed on June 25, 2018, inspection shall be given to the writ petitioner and the respondent Nos. 7 and 8 of the said goods for them to confirm or deny whether those were the goods alleged to have been stolen from the third floor of the said restaurant and replaced as alleged by the writ petitioner.

The matter shall appear on July 20, 2018 on which date the records of the case must be present before this Court. The observations made herein are

all tentative and subject to further consideration on the date fixed, on the basis

of the records aforesaid. Since formal Rule has not been issued but the authorities and the Learned Competent Courts (both civil and criminal) are being directed to transmit the records on the communication of this order, through the Learned Government Pleader/Junior Government Advocate, Mr. Subhabrata Dutta, no requisites are required to be put in in terms of the provisions of Appendix IV of the Appellate Side Rules including Rule 36 or any part of the Appellate Side Rules. The matter shall be treated as heard in part.