(1982) 08 CAL CK 0028

In the Calcutta High Court

Ram Briksh Jadab APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 30-08-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167
Essential Commodities Act, 1955 — Section 10, 7

Citation : (1983) CriLJ 39

Hon'ble Judges : Amitabha Dutta, J

Bench : Single Bench

Judgement

Amitabha Dutta, J.—This revisional application is directed against an order dated 25-1- 1982 passed by the learned Addl. Chief Judicial Magistrate, Sealdah rejecting the petitioner''s plea that the proceeding in case EB. GR 69 of 1981, Section N/E. B-264 dated 21-7-1981 u/s 7(1)(a)(i) of the Essential Commodities Act is not maintainable.

2. It appears that the police of Enforcement Branch searched the godown of M/s. Mitra Trading Co., which is a partnership firm and a wholesale dealer in cement on 21-7-1981 and found that discrepancy between the actual stock of cement and the stock shown in the stock register, amounting to 636 baas short. So the police seized the aforesaid bags of cement and arrested the petitioner who was the godown-keeper of the said go-down and produced him before the learned Magistrate on the next day. The police continued investigation of the case and ultimately submitted challans u/s 7(1)(a)(i) of the Essential Commodities Act against the petitioner and the pro forma opposite party Nos. 2 to 4, of whom opposite party Nos. 2 and 3 are partners of the said firm on 25-1-1982 i. e., 186 days after the date of commencement of the investigation.

3. Three points have been raised by the learned Advocates appearing for the petitioner and the pro forma opposite party Nos. 2 to 4. It is submitted that as there was no compliance of Section 167(5) of the Code, the continuation of investigation beyond the period of six month was not permissible in this case

triable as a summons case and the learned Magistrate had no jurisdiction to take cognizance of the offence on a challan submitted after such unauthorised investigation. In support of this submission the decision reported in the case of Ram Kumar Keshori Vs. The State, has been cited in which a Division Bench of this Court has held that the power given to the Magistrate u/s 167(5) has to be exercised before the expiry of six months and any direction for continuation of the investigation given u/s 167(5) after the statutory period will be without jurisdiction, and no cognisance can be legally taken on the result of such investigation. The next point raised is that as the godown belongs to a partnership firm in connection with its wholesale business in cement and as the partnership firm which is to be treated as a company u/s 10 of the Essential Commodities Act has not been made a party in the proceeding or has not been proceeded against the petitioner who is an employee of the company and its two partners and the opposite party No. 4 who is a holder of a power of attorney are not liable to be proceeded against in law for, vicarious liability and therefore, the proceeding against them should be quashed. The third contention raised, on behalf of the petitioner is that the allegations made in the F.I.R. do not constitute an offence under para. 3(7) of the West Bengal Cement Licensing and Control Order, 1979. On these grounds the entire proceeding pending before the learned Magistrate is sought to be quashed. On behalf of the petitioner it is submitted by the learned Advocate appearing for the State that in this case the investigating officer submitted a petition before the learned Magistrate on 6-1-1982, stating that the investigation of the case was not completed till then and praying for remand of the accused persons who were on bail till 20-1-1982 for further investigation of the case. On such petition the learned Magistrate by his order dated 6-1-1982 adjourned the case to 25-1-1982 on which date the challan was submitted by the police and the learned Magistrate purported to take cognizance on the said challans. It is strenuously argued on behalf of the State that as Section 167(5) of the Code require stopping of investigation and nothing more and as the learned Magistrate granted time to the investigating officer till 25-1-1982 there was sufficient compliance with the provision of Section 167(5) of the Code and therefore, there is no reason to quash the proceeding on that ground. On the first ground taken on behalf of the petitioner, it is difficult to accept the submission made on behalf of the State as the wording of Sub-section (5) of Section 167 of the Code makes it clear that the Investigating Officer has to apply before the learned Magistrate giving special reason why he could not complete the investigation within the period of six months and the learned Magistrate after applying his mind to the special reason so given, can permit continuation of investigation beyond the period of six months in the interest of justice without stopping the investigation. In the present case in the petition filed by the Investigating Officer no special reasons were given and the order dated 6-1-1982 of the learned Magistrate also does not show that the aforesaid provision has been complied with and the prescribed procedure has been followed. It must, therefore, be held that the continuation of investigation beyond the period of 180 days was illegal and the learned Magistrate was not competent to take cognizance on the challan submitted as a result of such investigation. There is also substance in the second point raised on behalf of the petitioner namely, that the petitioner and the other persons proceeded against for vicarious liability are not liable for prosecution when the principal i. e. the company has not been made an accused in the proceeding. As regards the third point raised on behalf of the petitioner, paragraph 3(7) of the aforesaid Control Order does not cover the allegations made in the F.I.R., as such allegations do not come within the mischief of paragraph 3(7) of the Order.

4. In the circumstances I find that there is substance in the points raised on behalf of the petitioner impugning the proceeding against them which should be quashed.

5. The application, therefore, succeeds and the Rule is made absolute. The Impugned proceeding is quashed.

