
(2016) 02 CAL CK 0028
In the Calcutta High Court
Case No : Criminal Revision No. 59 of 2015

Sailen Ganguly

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Essential Commodities Act, 1955 — Section 3, 7, 7(I)(a)
Food Safety And Standards Act, 2006 — Section 36, 37, 37(2), 40, 42, 59(i), 97, 97(I)
Indian Penal Code, 1860 — Section 406

Citation : (2016) 4 CalHCN 245

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Mr. Sandipan Ganguly, Mr. Ayan Bhattacharjee and Mr. Antarikhya Basu, Advocates, for the Petitioner; Mr. Amarta Ghose, Advocate, for the Opposite party Nos. 1 and 2

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—The petitioner has preferred this revision under Section 482 of the Code of Criminal Procedure praying for quashing the proceeding of G.R. Case no.769 of 2013 arising out of Raipur Police Station Case no.103 of 2013 dated October 23, 2013 and challenging the order dated December 5, 2013 passed in the same case by learned Additional Chief Judicial Magistrate, Khatra in the district of Bankura, whereby the learned Magistrate took cognisance of the offence under Section 7(I)(a) of the Essential Commodities Act, 1955 and under Section 59(i) of the Food Safety and Standards Act, 2006.

2. It appears from the materials on record that the Block Development Officer, Raipur in the district of Bankura filed a written complaint before the Officer-in-Charge of Raipur Police Station on October 23, 2013, on the basis of which Raipur Police Station Case no. 103 of 2013 dated October 23, 2013 under Section 406 of the Indian Penal Code and under Section 7(I)(a) of the Essential Commodities Act, 1955 and under Section 59 (i) of the Food Safety and

Standards Act, 2006 came into existence. The police investigated the said criminal case and submitted charge-sheet against the present petitioner before the court of learned Magistrate. On December 5, 2013, learned Magistrate took cognisance of the offence only under Section 7(I)(a) of the Essential Commodities Act, 1955 and under Section 59 (i) of the Food Safety and Standards Act, 2006. The said order of taking cognisance by learned Magistrate is under challenge in this revision, apart from prayer for quashing the entire criminal proceeding.

3. Mr. Sandipan Ganguly, learned counsel appearing on behalf of the petitioner contends that learned Magistrate acted in excess of jurisdiction conferred on him by law by taking cognisance of the offences under Section 7(I)(a) of the Essential Commodities Act, 1955 and under Section 59(i) of the Food Safety and Standards Act, 2006. He has pointed out from the order passed by learned Magistrate that learned Magistrate did not take cognisance of the offence under Section 406 of the Indian Penal Code. By referring to the provision of Section 7 of the Essential Commodities Act, 1955, Mr. Ganguly argues that Section 7 of the Essential Commodities Act, 1955 can be invoked only if any person contravenes any order made under Section 3 of the said Act. He further argues that the Investigating Officer has not disclosed in the charge-sheet which order issued under Section 3 of the Essential Commodities Act, 1955 has been violated by the petitioner. By referring to the provision of Section 97 of the Food Safety and Standards Act, 2006 and the second schedule appended thereto, Mr. Ganguly contends that any order issued under the Essential Commodities Act, 1955 relating to food has been repealed with effect from August 4, 2011, i.e., long before the commission of the alleged offence disclosed in the FIR. According to Mr. Ganguly, in the absence of violation of any order issued under Section 3 of the Essential Commodities Act, 1955, the petitioner is not liable for any offence punishable under Section 7(I)(a) of the Essential Commodities Act, 1955.

4. With regard to the offence punishable under Section 59(i) of the Food Safety and Standards Act, 2006, Mr. Ganguly contends that the prosecution for the offence under Section 59(i) of the Food Safety and Standards Act, 2006 can be launched by the Food Safety Officer appointed by the Commissioner of Food Safety of the Central Government or authorised by the State Government under Section 37 of the Food Safety and Standards Act, 2006. By referring to the provision of Section 42 of the Food Safety and Standards Act, 2006, Mr. Ganguly submits that the Food Safety Officer can launch the prosecution under Section 59(i) of the Food Safety and Standards Act, 2006 only on the basis of communication of the Commissioner of Food Safety, which can be done by the said Commissioner of Food Safety if recommended by the Designated Officer appointed under Section 36 of the Food Safety and Standards Act, 2006. Mr. Ganguly has urged this Court to quash the proceeding under Section 59 (i) of the Food Safety and Standards Act, 2006 as the Sub-Inspector of Police who submitted the charge-sheet is not authorised as the Food Safety Officer by the State Government under Section 37 (2) of the Food Safety and Standards Act,

2006 and the said Investigating Officer has not followed the procedure laid down in Section 42 of the said Act.

5. Mr. Amrata Ghose, learned counsel representing the State has failed to produce any document to show that the Investigating Officer was authorised by the State Government as Food Safety Officer under Section 37(2) of the Food Safety and Standards Act, 2006. Nor is Mr. Ghose in a position to dispute the submission made by Mr. Ganguly with regard to violation of the procedure for launching prosecution laid down under Section 42 of the Food Safety and Standards Act, 2006.

6. On perusal of charge-sheet no.111 of 2013 dated December 4, 2013 submitted by one Prasanta Kumar Chatterjee, Sub-Inspector of Police, I find that the Investigating Officer has not disclosed in the charge-sheet which of the orders issued under Section 3 of the Essential Commodities Act, 1955 has been violated by the petitioner. The violation of the control order issued under Section 3 of the Essential Commodities Act, 1955 is conspicuously absent from the charge-sheet filed by the Investigating Officer. Moreover, Section 97 (I) of the Food Safety and Standards Act, 2006 lays down that the enactments and orders specified in the second schedule shall stand repealed with effect from the date as the Central Government may appoint in this behalf. The Central Government has issued the notification in this behalf on August 4, 2011. The order relating to food issued under the Essential Commodities Act, 1955 is mentioned in item no.8 of the second schedule appended to the Food Safety and Standards Act, 2006. Since any order relating to food issued under Section 3 of the Food Safety and Standards Act, 2006 was repealed with effect from August 4, 2011 by virtue of Section 97 read with item no.8 of the Second Schedule of the Food Safety and Standards Act, 2006, I am constrained to hold that the petitioner cannot be prosecuted on October 23, 2013 for violation of such order, if any issued under Section 3 of the Essential Commodities Act, 1955. Thus, no offence is committed by the petitioner under Section 7 (I)(a) of the Essential Commodities Act, 1955 for violation of any order issued under Section 3 of the said Act.

7. Now, the question for consideration of the Court is whether the petitioner is liable to be prosecuted for the offence under Section 59(i) of the Food Safety and Standards Act, 2006. It is pertinent to quote the provision of Section 42 of the Food Safety and Standards Act, 2006 which lays down the procedure for launching prosecution for any offence under said Act. Section 42 of the Food Safety and Standards Act, 2006 reads as follows:

"42. Procedure for launching prosecution.- (1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to

Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under Section 40."

8. On perusal of the above provision of Section 42 of the Food Safety and Standards Act, 2006, it appears that the Food Safety Officer appointed or authorised under Section 37 of the Food Safety and Standards Act, 2006 can draw the sample of food and send the same for analysis to the Food Analyst within a specified period of time. The Designated Officer appointed under Section 36 of the Food Safety and Standards Act, 2006 can make a scrutiny of the report of the Food Analyst and decide whether the prosecution can be launched and he can send his recommendation within a specified period of time to the Commissioner of Food Safety for sanctioning such prosecution. On perusal of Section 42 of the Food Safety and Standards Act, 2006, I find that the Food Safety Officer can launch the prosecution with the recommendation of Commissioner of Food Safety. In the instant case, nothing is on record to indicate that the Investigating Officer was authorised as Food Safety Officer under Section 37(2) of the Food Safety and Standards Act, 2006. Nor has the State produced the materials in the case diary to indicate that the procedure for launching prosecution laid down in Section 42 of the Food Safety and Standards Act, 2006 was followed in the instant case. In the absence of authorisation of the Investigating Officer as Food Safety Officer under Section 37(2) of the Food Safety and Standards Act, 2006 and in the absence of following the procedure for launching prosecution laid down under Section 42 of the Food Safety and Standards Act, 2006, I am constrained to hold that the petitioner is not liable to be prosecuted for the offence under Section 59(i) of the Food Safety and

Standards Act, 2006.

9. In view of my above findings, I have no hesitation to hold that the order dated December 5, 2013 passed by learned Additional Chief Judicial Magistrate, Khatra, Bankura, in G.R. Case no.769 of 2013 is set aside. Since no offence is made out against the petitioner, the criminal proceeding of G.R. Case no.769 of 2013 arising out of Raipur Police Station Case no.103 of 2013 dated October 23, 2013 pending before the court of learned Additional Chief Judicial Magistrate, Khatra, Bankura, is quashed.

10. Criminal revision is, thus, disposed of.

11. Let a copy of this order be sent down to the learned court below for favour of information and necessary action.

12. Urgent photostat certified copies of this order, if applied for, shall be given to the learned counsel for the parties, upon compliance of all formalities.