
(2012) 05 CAL CK 0040
In the Calcutta High Court
Case No : C.R.R. No. 2323 of 2011

Smt. Rinku Saha

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7(1)
Specific Relief Act, 1963 — Section 41

Citation : (2012) 4 CHN 111

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Partha Pratim Sarkar, for the Appellant;

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—This application u/s 482 of the Code of Criminal Procedure, 1973 is directed against the proceeding in E.C.G.R. Case No. 2 of 2010 pending before the Court of the learned Additional Chief Judicial Magistrate, Tufanganj arising out of Buxirhat Police Station Case No. 10 of 2010 dated 30.01.2010 u/s 7(1)(a)(ii) of the Essential Commodities Act. On 31.01.2012 one Kalyan Ghosh, Sub-Divisional Controller (Food and Supplies) Cooch Behar lodged a complaint with Officer-in-Charge, Buxirhat Police Station resulting in the registration of Buxirhat Police Station Case No. 10 of 2010 dated 30.01.2010 u/s 7(1)(a)(ii) of the Essential Commodities Act.

2. The gist of the allegations in the first information report are as follows :

On 30.01.2010 at 10 hours a raid was conducted at Joraimore, P.S. Buxirhat when it was found that a truck bearing No. AS-17/8636 was proceeding with 160 quintals of rice in 322 bags as per Cash Memo/Chalan No. 148 dated 29.01.2010 of Ribi Enterprise, Village and Post Office Pakuahat, Police Station Bamangola, District Malda, the said truck was proceeding without any release certificate in terms of the West Bengal Rice Mills and Wholesalers (Control and Levy) Order,

2009 (hereinafter referred to as the Control Order), it was alleged that for violation of the aforesaid Control Order the truck and the consignment were seized and the first information report was registered against the consignor i.e. the petitioner herein and the driver of the said vehicle. Pursuant to investigation, it appears that a charge-sheet being No. 36/2010 dated 30.03.2010 was filed against the petitioner and other accused persons for commission of offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act and by impugned order dated 12.05.2010 the learned Additional Chief Judicial Magistrate took cognizance of the alleged offence against the petitioner and other accused persons.

3. The learned lawyer for the petitioner submitted that Bengal Rice Mills Association had filed a writ petition being W.P. No. 1271 (W) of 2009 before this Court, inter alia, challenging the validity of the said Control Order. It is also his submission that by order dated 21.12.2009 this Court passed an interim order restraining the respondents from resorting to any form of coercion in respect of sale of rice from their respective mills. He submitted that the order was extended from time to time and lastly the interim order was extended on 16.06.2010 till 10.08.2010 or until further orders or whichever is earlier.

4. He further submitted that the petitioner was a member of the aforesaid association which had taken out the said writ petition and, therefore, was protected by the aforesaid injunction. He also submitted that by order dated 14.09.2010 the petitioner had been added as a party to the said writ petition.

5. It is the case of the petitioner that in view of the aforesaid order of injunction passed by this Court in W.P. No. 1271 (W) of 2009, the initiation of the impugned criminal proceeding is clearly without jurisdiction, malafide and liable to be quashed. He has submitted written submissions to supplement his oral arguments. However, learned lawyer has not filed a copy of the writ petition on the basis of which the aforesaid interim order was passed.

6. Nobody appears for the State.

7. I have considered the submissions of the learned lawyer for the petitioner. The crux of his argument is that in view of the interim order restraining the respondents from resorting to any form of coercion in respect of sale of rice from their respective mills the initiation and continuation of the impugned criminal proceeding is illegal and liable to be quashed.

8. To test this argument one must examine whether the aforesaid order of restraint stood in the way of the de facto complainant from registering the first information report against the petitioner and commencing an investigation thereon.

9. A plain reading of the aforesaid order of injunction would show that there is no express prohibition passed in the writ proceeding upon the de facto complaint to register a first information report or initiate a criminal case against the petitioner

for violation of the Control Order in accordance with law.

10. Furthermore, the operation of the aforesaid Control Order was also not stayed by the aforesaid interim order. If that is so, then registration of the first information report and commencement of investigation in respect of violation of the Control Order cannot be said to be in violation of the aforesaid interim order, as argued by the writ petitioner.

11. However, in the absence of any express embargo in the registration of the first information report and commencement of investigation thereon in the aforesaid interim order, it has been strenuously argued that the words "from resorting to any form of coercion" ought to be interpreted to mean a clog on the institution and continuation of a criminal proceeding for violation of the Control Order.

12. To interpret the order of injunction in such terms would, in fact, run contrary to the provision of Section 41 Clause (d) of the Specific Relief Act. Section 41 Clause (d) of the Specific Relief Act is as follows;

"41. Injunction when refused. - An injunction cannot be granted -

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter".

13. In the light of such legislative embargo, to hold that the aforesaid order of injunction is to be understood to restrain the institution of a criminal proceeding is clearly misconceived and untenable in law.

14. It is settled proposition of law that what cannot be done directly should not be done indirectly. (See : Ram Preeti Yadav vs. Mahendra Pratap Yadav and other reported in 2007 (12) SCC 385)

15. I, therefore, hold that the order of injunction cannot be interpreted to mean that it operate as an embargo from the institution of the impugned criminal proceeding.

16. The other argument with regard to the absence of requisite mens rea is a matter of evaluation of facts which cannot be embarked on at this preliminary stage.

17. The decisions referred to in the written submissions do not help the petitioner. In the case reported in Nathulal Vs. State of Madhya Pradesh, the accused was acquitted after trial on the ground he did not have requisite mens rea to violate the Control Order. The existence of mens rea is a question of fact which is to be decided in the facts of each case. No conclusion as to its absence can be inferred at this early stage without appreciating evidence and the said decision is therefore distinguishable on facts. The other decision reported in State of Maharashtra Vs. Hans George, is not applicable to this case as it relates to an offence under the Foreign Exchange Regulation Act and it is held therein that mens rea is not an essential ingredient of such offences.

18. For the aforesaid reasons, I do not find any merit in this revisional application and the same is dismissed.

19. There shall be no order as to costs. Urgent certified photostat copy of this order be given to the parties, if applied for, subject to compliance with all necessary formalities.