courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(1993) 12 CAL CK 0011

In the Calcutta High Court

Case No : Matter No. Nil of 1993

Sri Mahadev Ch. Mazumder — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 16-12-1993

Acts Referred:
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Essential Commodities Act, 1955 — Section 2, 7(1)

Citation : (1994) CriLJ 3808

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shyamal Kumar Sen, J.—The facts inter alia leading to this Writ petition is that the petitioner was and still is carrying on a proprietorship business under the name and style of M/s. Baghbazar Grinding Mill at No. 2, Chitpur Bridge Approach Road, Calcutta-700 003 for last 20 years without having any complaint with regard to the nature of business. The petitioner being proprietor running the said grinding mill for the purpose of grinding different stone materials, viz. lime stone, china clay, lump stone, damaged/stoned cement etc. The petitioner at all material times was holding appropriate trade licence. He is a bona fide Income Tax assessee and professional tax payee.

2. The petitioner usually purchases damaged/stoned cement from Cement Corporation of India Limited (a Government of India Enterprise). Under the contract between the petitioner''s concern and Cement Corporation of India Limited, the petitioner cannot use the said cement for the purpose of construction and for resale. The petitioner is only grinding such materials to reduce into dust and to sale it off to different customers, who are, in turn, using the same for the purpose of making tiles, gafri, rain water pipes, primer paints etc.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan...

3. Suddenly, on 28th August, 1993, one Sub-Inspector of Enforcement Branch, respondent No. 3 came to the premises along with the officer-in-Charge of Shyam Pukur Police Station Respondent No. 2 with few constables and arrested the petitioner, his son and few employees. As per F.I.R. and G.D. entry they seized certain materials upon suspecting the labourers adulterating cement with some other materials under alleged instruction of the petitioner and his son. Such purported adulterated cement and other materials, grinding machine, weight machine etc. were seized and the mill-cum-go down was sealed under order of the superior officer as some of the seized articles cannot be removed as fixed with the floor of the go down. Save and except the signature of the concerned Sub-Inspector and Officer-in-Charge of the local Police Station, no other signature of any superior officer can be seen in xerox copies of the extract of the General Diary and First Information Report.

4. It is significant that from the date of initiation of the proceedings about 90 days expired but the respondents have not been able to frame any charge-sheet.

5. It has been submitted on behalf of the petitioner that the petitioner and his son were sufficiently harassed in the following :-

(a) They were taken into custody along with the employees and ultimately released on bail, but proceeding is pending.

(b) Due to sealing of mill-cum-go down, the business was closed specially before and after the Puja;

(c) The labourers were unpaid till date. They were not obtained their bonus for the period;

(d) The suppliers are repeatedly pressing for their necessary payments but the petitioner is unable to take any appropriate step.

(e) The customers are also insisting for delivery of the materials but the petitioner is not able to deliver the same from the mill-cum-godown since the go down is sealed.

6. It has been contended by the learned Advocate for the petitioner that the damaged/stoned cement cannot come within the purview of Cement Quality Control Order 1962 and, as such, their is no question of violation of para 3 of the said order or amended order.

7. It has further been submitted by the Learned Advocate for the petitioner that the First Information Report and G.D. entry in support thereto does not disclose any fact so as to come within the purview of penal provision of the Essential Commodities Act to constitute the starting point of lawful investigation. Under such circumstances, the Criminal Proceeding initiated is liable to be quashed.

8. Learned Advocate for the respondent submitted that the damaged/stoned cement comes within the purview of definition of Cement and the petitioner was found to have been adulterating cement and, as such, he has violated the para 3

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…

of such order which attracts the penal provision and accordingly, the police action is justified.

9. He has further argued that the Criminal Proceeding in question suffered from no illegality in any respect whatsoever warranting interference under Article 226 of the Constitution of India.

10. Mr. Biswas, Learned Advocate for the respondent submitted that the definition of the expression "CEMENT" under Clause 2 of the said Control Order is very wide and inclusive in nature but not exclusive. The definition clause provides that "CEMENT" means any variety of cement manufactured in India and includes.... " The expression VARIETY has its own meaning, bearing and impact on the expression "CEMENT" and when the expression VARIETY has been used to enlarge the meaning of the expression CEMENT in that event it includes all types of CEMENT which one can conceive of.

11. Learned Advocate further submitted that the makers of Order has not used any expression without any purpose and not in vain and accordingly not to read the expression variety to mean all types of cement, pure and adulterated, and more precisely where element of cement is there for using to consolidate materials as per expression "variety of cement" is to mean contrary to the intention of the makers of the said control order and thereby rendering a frustrating effect to control cement of adulterated nature in the event of its use in the manner for prevention of which control order has been introduced. Thus, the seized articles taking as a whole i.e. ghotting stone dust used for adulteration for cement, stoned cement loose lump stone, soil (Ganga Mati), 4 pieces of Belcha, 4 pieces of bucket, 2 spade, one chaluni, 2 hammer, one grinding machine, one Jaw crasher, one weight machine, 200 stitched full poly bags of cement unstitched poly bags of cement all suspected to be adulterated, 400 pieces of empty poly bags etc. leads one to the conclusion that the petitioners have been engaged in the trade of producing and/or manufacturing and selling adulterated cement for the purpose for which cement is used.

12. Learned Advocate also referred to Clause 3 of the said Cement Quality Control Order 1962 and submitted that the prohibition contained in the said clause will also apply in the case of damaged/stoned cement.

13. I have considered the respective sub- missions and decisions cited from the bar.

14. Under The Cement (Quality Control) Order 1962 Cement has been defined as followed: -

CEMENT" means any variety of cement manufactured in India, and includes blast furnace slag cement, portland prozzolana cement, rapid hardening portland cement, white portland cement, hydrophobic portland cement, ordinary portland cement, low heat portland cement, high strength ordinary portland cement, cement used for the manufacture railway sleepers, masonary cement, oil well

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…

cement, super sulphated cement or any other variety of cement which the Central Government may, by notification in the official gazette, specify for the purposes of this order.

15. On proper construction of the definition of cement as appears in the said order damaged/stoned cement is not at all cement. The said varieties referred to in the definition does not include damaged/stoned cement. In my view the damaged/stoned cement has lost its chemical quality to be used as cement or used previously and formed stone.

16. In terms of the contract with the Cement Corporation of India Limited the petitioner cannot use the said cement for the purpose of construction and for resale. The petitioner is only grinding such materials to reduce into dust and to sale it off to different customers who are, in turn, using the same for the purpose of making tiles, gafri, rain water pipes, primer paints etc. which facts has not been disputed.

17. The list of seized articles in the proceeding shows that the following articles were seized.

(1) One grinding machine, made by "Dawan" Company.

(2) One Jaw crusher.

(3) One tight machine capacity 300 kgs.

(4) 200 stitched full poly bags of cement suspected to be adulterated of different branch.

(5) 15 Unstitched Poly bags cement suspected to be adulteration for cement.

(6) 435 Ghotting stone dust used for adulteration for cement.

(7) 105 bags of lump stoned cement.

(8) 25 tons approx. loose lump stone lying on the floor inside the godown.

(9) About 20 tons of soil.

(10) 4 pieces Belcha, 4pcs. Bucket, 2 spade, 1 Chaluni, 2 hammer.

(11) 400 pieces of empty Poly bags.

18. No allegation has been made that the damaged/stoned cement were going to be sold by the petitioner and will be used for the purpose of construction. It is the contention of the petitioner that the petitioner is only grinding such materials to reduce into dust and to sale it off to different customers, who are, in turn, using the same for the purpose of making tiles, gafri, rain water pipes, primer paints etc. If that be so then the petitioner was not using damaged/stoned cement for the purpose of construction which has been prohibited in terms of the contract of the petitioner and Cement Corporation of India Limited.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…

19. Moreover, under para 3 of the Cement Quality Control Order - "No person shall himself or by any person on his behalf, manufacture or store for sale, sell or distribute any cement which is not of the prescribed standard ." The petitioner is not dealing or manufacturing the cement under the aforesaid Quality Control Order application of Provision of Section 7(1)(a)(ii) of the Essential Commodities Act as alleged in the extract of the G.D. Entry does not arise at all. The entire proceeding in my view appears to be without any basis. First information report and G.D. Entry did not disclose any essential requirement of penal provision which can form any foundation of the starting point of the investigation as alleged or at all and as such criminal proceeding is liable to be quashed.

20. The judgment and decision in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, was relied upon by the learned Advocate for the petitioner. It was held by the Supreme Court in the aforesaid decision that whether an offence has been disclosed or not must necessarily depend on the fact, and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation relating to the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

21. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . The Supreme Court laid down the guidelines wherein the High Court may under Article 226 or u/s 482 of Cr.P.C. interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Supreme Court, however, observed that such power should be exercised sparingly and that too in the rarest of rare cases, namely.

(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 u/s 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 allegation 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 u/s 155(2) of the Code.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…

(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.

22. In the instant case allegations made in the FIR or complaint even if taken in their face value do not disclose the commission of any offence so as to make out a case against the petitioner.

23. Learned Advocate for the petitioner also relied upon the judgment and decision in the case of Safikur Rahaman v. The State of West Bengal reported in (1988) WN 1189 wherein seizure of non-levy cement was challenged by the petitioner in the criminal revision case and in the writ petition as being without authority of law. Further prayer was made in the writ petition for a writ in the nature of Mandamus commanding the respondents to pay to the petitioner a certain sum of money as compensation occasioned by losses suffered by him or sale of non-levy cement.

24. It was also held that prior to February, 1982 cement was a controlled commodity but not an essential commodity.

25. The effect of the Cement Control Order, 1967, the Cement Control (Third Amendment) Order, 1982, the West Bengal Cement (Licensing and Control) Order, 1979 since repealed by the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 is that non-levy cement was not an essential commodity asi defined in Section 2(a) of the Essential Commodities Act, 1955.

26. Considering the facts and circumstances of the case it appears to me that the concerned authorities are not justified in seizing the aforesaid materials, and the petitioner appears to have been unnecessarily1 harassed.

Petitioner accordingly succeeds in this writ petition.

27. In that view of the matter, the respondents are directed to release the godown in favour of the petitioner and hand over the seized articles mentioned in annexure ''B'' to the petition and the criminal proceeding initiated against the petitioner also should stand quashed and set aside.

20. The writ petition is, accordingly, disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…

29. There will be no order as to costs.

30. All parties concerned are to act on a signed copy of the operative part of the judgment on the usual undertaking.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sri-mahadev-ch-mazumder-appellan…