
(1991) 06 CAL CK 0025
In the Calcutta High Court
Case No : C.O. No. 2416 (W) of 1991

Sri Suresh Ram Shaw

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 CALLT 415

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Ram Anand Agarwalla, for the Appellant; D.P. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—This writ petition has come up for final hearing in presence of Mr. D. P. Sengupta appearing on behalf of the State respondents.

2. When this writ petition was moved before this court on February 18, 1991, this court passed direction for filing affidavits after passing civil order and directed that the criminal case initiated in the court of the learned Judge, Special Court-II under E.C. Act, Calcutta in G.R. Case No. 2086/90 will continue but no final judgment be passed pending disposal of the departmental appeal pending before the Director of Consumer Goods, being respondent No. 2 and the Director of Consumer Goods, West Bengal, was directed to dispose of the appeal preferred by the petitioner as quickly as possible preferably within a period of six weeks from the communication of this order passed by this court. Ultimately the Director of Consumer Goods had disposed of the departmental appeal March 11, 1991. The said decision of the appellate authority is quoted herein-below :

"In the circumstances, in consideration of the fact that due observation of the requirement of law as per Kerosene Control Order having not been made, and the alleged customers having reported to the shop at a time when it was not

supposed to remain open, hence the question of refusal to sell S.K. oil does not arise-the cancellation of the licence of the appellant has not been proper, more so, when he was not given the opportunity of being heard properly and the order of suspension was not only communicated to him".

3. This court further passed an order to the effect that as the order of cancellation of the licence was revoked by the appellate authority, this court adjourned the hearing of the Writ petition and directed that the entire matter be taken up for final hearing regarding the quashing of the criminal case being G.R. Case No. 2086 of 1990 pending in the court of the learned Judge, Special Court-II (under E.C. Act), Calcutta. Accordingly, this writ petition has come up for final hearing in presence of the learned Advocate appearing for both the parties.

4. Mr. Agarwalla, appearing on behalf of the writ petitioner submits that in view of the order passed by the Director of Consumer Goods, West Bengal, on February 11, 1991 which was communicated to the petitioner on March. 4, 1991, whereby the order of cancellation of the licence was removed and the licence was restored, there is no necessity of continuation of the criminal case on the basis of the F.I.R. lodged by the Sub-Inspector of Police, Enforcement Branch.

5. It appears from the F.I.R. submitted by A. K. Sarkar, Sub-Inspector, Enforcement Branch, that the petitioner has been charged for refusing to sell kerosene oil although there was sufficient stock of kerosene oil at about 06. 45 hrs. to one Sri Gouri Sankar Mallick, Kamal Samanta and Anil Kumar Gupta on September 26, 1990. The petitioner was also found guilty for violation of the provision of paragraph 12 of the West Bengal Kerosene Control Order 1968 and the condition of the licence as mentioned in the S.L. No. 8 of the said order and para 3(2) of the West Bengal Declaration of Stock & Prices of Essential Commodities Order, 1977 and punishable u/s 7(1)(a)(ii) of the E.C. Act.

6. As in the departmental appeal, the petitioner has been acquitted from the aforesaid charges, according to the petitioner, there is no necessity for continuation further with the criminal trial.

7. Mr. D. P. Sengupta, appearing for the State respondents submits that since the charge sheet had already been submitted on December 12, 1990 and cognizance has been taken by the learned Judge, Special Court-II, normally this court may not interfere with the criminal proceeding and the Writ petitioner may be given leave to move before the criminal revision jurisdiction of this court for quashing the criminal trial.

8. In reply, Mr. Agarwalla had placed reliance on the recent judgment of the Supreme Court in the case of State of U.P. Vs. R.K. Srivastava and Another, , wherein the Supreme Court held as follows :

"It is a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute, an offence, the criminal proceedings instituted on the basis of such FIR should be

quashed".

9. The Supreme Court in the said judgment has also held that the High Court has rightly held that as the Criminal proceedings have been started against the respondent on the basis of a FIR which does not contain any definite accusation, it amounts to an abuse of process of the court and, as such, is liable to be quashed.

10. Mr. Agarwalla has also placed reliance on the unreported judgment of N. K. Mitra, J, dated March 2, 1988 in the case of Mohonlal Monka v. State of West Bengal wherein similar offence u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 started against the petitioner for alleged violation of the provision of Clause 3(2) of the West Bengal Declaration of Stock and Prices of Essential commodities Order, 1977 was quashed by this Court sitting in the Constitutional Writ Jurisdiction.

11. In the present case after considering the facts disclosed in the order passed by the Director of Consumer Goods, West Bengal, in the departmental appeal, I am of the view that since the petitioner having been exonerated in the departmental appeal, the petitioner should not be allowed to contest the criminal case and/or should be directed to move before the criminal revisional jurisdiction for quashing the criminal case.

12. Accordingly, in my view, as the F.I.R. quoted hereinabove does not contain any offences, the trial of the criminal case pending before the learned Judge, Special Court-II under E.G. Act, Calcutta being G.R. No. 2086/90, should be quashed and is hereby quashed.

13. Accordingly, the respondents and each of them are restrained from proceeding with the said criminal case pending before the learned Judge, Special Court-II under E.C. Act, Calcutta, being G.R. Case No. 2086/90.

14. The Writ petition is allowed to the extent as indicated above. There will be no order as to costs.

Let a Xerox copy of this order be given to the learned Advocate for the petitioner on observing all formalities.