
(1985) 03 CAL CK 0015
In the Calcutta High Court

State of West Bengal

APPELLANT

Vs

S. Bose

RESPONDENT

Date of Decision : 18-03-1985

Acts Referred:

Essential Commodities Act, 1955 — Section 6C, 7

Citation : (1985) CriLJ 1698 : 90 CWN 432

Hon'ble Judges : J.N. Chaudhuri, J

Bench : Single Bench

Judgement

J.N. Chaudhuri, J.—One Sanjoy Santra of Haripal, Hooghly, was charged sheeted as the owner of Truck No. WGA 4289 along with the driver of the said truck in connection with Chhatna P. S. Case No. 12i9)83 u/s 7(1)(a)(ii) of Act X of 1955 (The Essential Commodities Act) but the Prosecution case failed against both of them before the learned Special Judge. Therefore, Sanjoy Santra filed an application for return of the fine of Rs. 3000/- paid by him in lieu of confiscation of the said truck, as imposed by the learned District Magistrate and Collector. This application for return of the said fine was rejected and the said petitioner filed a Criminal Revisional application before the learned Sessions Judge, Bankura for setting aside the said order. The learned Sessions Judge (Sri S. Bose) therefore on 18-12-84 called for the records of confiscation Case No. 11 of 1983 and Chhatna P.S. Case No. 12(9)83 and directed the revisional application to be put up on 3-1-85 for hearing on the point of admissibility. He also directed the learned Public Prosecutor to appear on that date for hearing.

2. The record of Chhatna P. S. Case No. 12(9)83 was duly received on 3-1-85 by the learned Sessions Judge from the Court of the Special Judge, Bankura but the learned District Magistrate and Collector (Sri K. Chaudhuri) refused to send up the records of Confiscation Case No. 11 of 1983 by his order dt. 20-12-84. The said order dt 20-12-84 reads as follows:

Seen letter of learned Sessions Judge, dt. 19-12-84 with reference to Criminal Motion No. 63/84 calling for case record. He has no jurisdiction under the

Essential Commodities Act, Section 12AA is relevant. Copy of this to be sent to him for his kind information.

Sd/- A K. Chaudhuri.

20/12,

District Magistrate & Collector,

BANKURA.

Government of West Bengal

Office of the District Magistrate & Collector,

Judicial Munshikhana, (Bankura.)

Memo. No. 6062/J, dated, Bankura, the 21st Dec. 84

Copy forwarded to the Ld. Sessions Judge, Bankura for favour of kind information with reference to his letter No. 12%-Cr. dt. 19-12-84.

Basu/21-12-84 SD/- District Magistrate & Collector,

BANKURA.

The learned Sessions Judge on 22-12-84 passed the following order:

Seen the memo No. 6062/J dt. 21-12-84 forwarding a copy of order dt. 20-12-84 of the District Magistrate & Collector, Bankura, and without the record which was called for.

The learned District Magistrate be requested to state categorically and in an unambiguous term if his aforesaid order would be interpreted at this end as a refusal to send the record as called for. He be further requested to reply on or before the date already fixed, that is, 3-1-85, failing which it will be presumed that he really refused to send the record. Put up with the record on the date fixed after service of a copy of the aforesaid letter of the District Magistrate, Bankura to the learned Public Prosecutor and the learned lawyer for the petitioner of this motion.

Sd/-

Sessions Judge, Bankura.

3. Instead of sending the records the learned District Magistrate and Collector on 26-12-84 passed the following order:

Seen copy of Sessions Judge's order No. 2 dt. 22-12-84 in Criminal Motion No. 63 of 1984. He has desired that the District Magistrate state categorically if he (she) refuses to send the case record No. 11 of 1983 under the Essential Commodities Act. However, before any such categorical statement is made, the learned Sessions Judge on his part is requested to state categorically and in

unambiguous terms whether he considers that he has jurisdiction under the Essential Commodities Act, despite the fact that Section 6C under which the Sessions Judge was earlier authorised, has been amended in 1981, as follows:

In Section 6C of the principal Act:

(a) in Sub-section (1), for the words "any judicial authority appointed by the State Government concerned and the judicial authority" the words "the State Government concerned and the State Government" shall be substituted;

(b) in Sub-section (2), for the words "such judicial authority" the words "the State Government" shall be substituted.

Let a copy of this be sent to the learned Sessions Judge, Bankura and to the Public Prosecutor to whom the Id. Sessions Judge has also sent a copy.

Sd/- K. Chaudhuri.

District Magistrate & Collector, Bankura

4. On 7-1-85, after receiving the said order dt. 26-12-84 of the learned District Magistrate and Collector, the learned Sessions Judge passed a lengthy order setting out the awkward situation arising out of the refusal of the learned District Magistrate and Collector to send up the records called for by the learned Sessions Judge. In the said order dt. 7-1-85 the learned Sessions Judge in conclusion has stated as follows:

I am again struck with awe with the order dt. 26-12-84 of my learned counterpart in which he has commented on the jurisdiction of a Court, at a stage when the particular matter was a question in issue. More exactly speaking, this comment has been made when the petition was pending for admission only. I am constrained to say that this order is not only in excess of my learned counterpart but also wrong and actionable. Not sending the record in proper time has already caused delay in the administration of justice hampering the interest of litigant and if the same recurs, it is to be noted that the same would amount to an obstruction to the administration of justice. I am afraid that the higher authorities may not ignore this, but, I restrain myself from referring the same to them on consideration of certain factors which are personally known to me.

But, temperament and tolerance too has a reasonable limit Hence I fix 15-1-85 for hearing the matter on the point of admissibility. The persons concerned must render their assistance to this Court by whatever means they are required to do so, viz., sending the records, preparing themselves for placing the matter in Court, typing out the findings etc. etc. Failure of duty by anyone in this respect, will be properly dealt with and without any further reference. Inform all concerned.

Sd/-

Sessions Judge, Bankura.

5. On 14-1-85, the learned Advocate General appearing on behalf of the State of West Bengal obtained the present Rule and stay of the said order of the learned Sessions Judge. By his order dt 15-1-85 the learned Sessions Judge has sent his explanation relating to the present rule.

6. In my view, the fact that the learned District Magistrate and Collector was acting as a Collector in the present proceedings does not mean that he does not remain a District Magistrate any longer. The learned Sessions Judge is undoubtedly higher in the judicial hierarchy. From that point of view alone, without going into any other question it was clearly the duty of the learned Magistrate and Collector to immediately send the records when called for by the learned Sessions Judge. The conflict created by the learned Magistrate and Collector was totally uncalled for and one derogatory to the decorum and the dignity associated with the administration of justice. It was not for him to demand any explanation as he has purported to do, from the learned " Sessions Judge. The learned Magistrate and " Collector was also wrong in prejudging the issue as he has purported to do. The question as to whether the learned Sessions Judge has any jurisdiction in the matter in view of the provisions of the Essential Commodities Act is a matter for the learned Sessions Judge and not for the learned Magistrate and Collector.

7. The learned Sessions Judge had called for the said records for a hearing on the point of admissibility. Hence, I do not go into the question of the jurisdiction of the learned Sessions Judge but leave the question open, since the learned Sessions Judge will consider the same when he hears the parties on the question of admissibility of the revisional application after getting the records from the learned District Magistrate and Collector.

8. The learned Advocate General has submitted that the dignity of the judicial system should not be impaired in any way by any act on the part of any authority.

9. I direct the learned District Magistrate and Collector to forthwith send the records of the said Confiscation Case No. 11 of 1983 to the learned Sessions Judge, Bankura. The learned Sessions Judge will after receiving the said records hear the parties concerned, upon reasonable notice to them of the hearing, regarding the question of his jurisdiction, and other matters, if any, relating to the admissibility of the Revisional application.

10. In view of the fact that this Court has directed by this order that the records will be sent to the learned Sessions Judge and also pointed out that it was wrong on the part of the learned District Magistrate and Collector not to send the records immediately to the learned Sessions Judge when the same was called for, it will be in the interests of harmony and dignity if the question of the refusal to send the records by the learned District Magistrate and Collector is not pursued any further.

11. This application is thus disposed of. The interim stay granted by this Court is vacated and the Rule is discharged.

12. Let the records be sent to the learned Registrar, Appellate Side, before being sent down.