

(2017) 07 CAL CK 0057
In the Calcutta High Court
Case No : 1270 of 2014

Sudhir Prakash

APPELLANT

Vs

The State of West Bengal & Anr.

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in the account
[West Bengal Fire Services Act, 1950](#), [Section 35](#), [Section 35](#)

Citation : (2017) 07 CAL CK 0057

Hon'ble Judges : Sankar Acharyya

Bench : SINGLE BENCH

Advocate : Sabyasachi Banerjee, Sayak Biswas, Ranabir Roy Chowdhury, Rita Dutta

Judgement

1. The revisional application has been filed by the petitioner for quashing of the proceedings of GR Case No. 1456 of 2008 under Sections 11C/11J/11L of the West Bengal Fire Services Act, 1950 pending before learned Metropolitan Magistrate, 12th Court at Calcutta and for setting aside the order dated 28th October, 2009 taking cognizance of the offence.
2. In GR Case no. 1456 of 2008 the investigating police officer of Shakespeare Sarani Police Station submitted charge sheet after holding investigation on an FIR lodged by one Sudipta Bit, Station Officer, Head Quarter Fire Station of West Bengal Fire and Emergency Services. In that charge sheet the petitioner as owner of Kanak Project has been made accused no. 1 and an another person has been made accused as occupier of the premises which is the alleged place of occurrence.
3. Brief fact of the case as alleged is that on 30.05.2008 at about 10:25 a.m. fire broke out in the premises in the first floor of Kanak Building at 41, Chowringhee Road, Kolkata owned by the petitioner and occupied by another accused. It is the

allegation of State prosecution that there is no fire safety measures in the building where fire broke out and some unauthorised combustible articles were kept there.

4. At the time of hearing learned advocate for the petitioner has argued that petitioner is a director of the owner company Kanak Project Limited of the building in question and since the premises in question is under occupation of another viz. M/s. Reckitt and Colman India Limited the petitioner cannot be held liable for any contravention of the provisions under Section 11C of the West Bengal Fire Services Act, 1950. He has advanced arguments that the instant proceeding is not sustainable in law for want of valid service of notice under Section 35 of the West Bengal Fire Services Act, 1950. According to him a prosecution in respect of offence under Section 11J of the said Act for contravention of the provision of Chapter III A of the said Act a notice under Section 35 of the Act has to be served upon the owner or occupier of the premises. He relies upon three decisions of Single Bench of this Court in support of his arguments. Said decisions have been delivered in:-

1. Prem Swarup Sharma & Anr. Vs. State of West Bengal reported in 2009 (3) CHN 106 = (2009) 1 C Cr L R (Cal) 424.

2. Susanta Kumar Bose Vs. State of West Bengal reported in 2012 (2) CHN (Cal) 515;

3. In the matter of : M/s Laminated Products (India) & Ors. reported in. 5. He has also argued that the petitioner cannot be roped in a criminal proceeding putting vicarious liability only because he is a director of the owner company. He has cited a decision of the Supreme Court of India in connection with a proceeding under Section 138 of the Negotiable Instruments Act in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Ors. reported in (2005) 8 SCC 89.

6. On the other hand, learned counsel for the State has argued that the question of liability of the petitioner can be decided only after trial and not at this preliminary stage because at the time of trial as per proviso to Section 33 (1) of the West Bengal Fire Services Act it is the burden of petitioner to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Relating to the maintainability of the case he has argued that he differs with the view taken in the three reported cases of Hon"ble Single Bench of this Court and according to him service of notice under Section 35 of the West Bengal Fire Services Act, 1950 is not sine qua non for initiation of a proceeding for the offence of contravention of Section 11C of that Act. According to him as per substantive part of Section 11C (1) it is the duty of every owner or occupier of a high risk building to provide fire prevention and fire safety measures. The proviso to that Section does not have any effect in the said liability of owner or occupier of the building. He has advanced arguments that as per proviso to Section 11C the owner or occupier shall undertake and carry out additional (emphasis supplied)

fire prevention and fire safety measures in the high risk buildings whose construction was completed before coming into force of the West Bengal Fire Services Act or the buildings which were under construction at the time of coming into force of that Act as would be specified in the notice as would be served upon him/them under Section 35 of the Act after completion of inspection held under Section 34 of the Act.

7. Having considered the arguments and the facts and circumstances of the case I am of the view that the questions of nature of the building as high risk building or otherwise and liability of the petitioner as a director of the owner company can be decided after recording evidence in trial only and it is not the proper stage for consideration of those question.

8. Relating to the maintainability of the case the pivotal question is whether service of prior notice under Section 35 of the West Bengal Fire Services Act, 1950 for a prosecution with allegation of contravention of the provisions of Section 11C is mandatory or not.

9. In Prem Swarup Sharma & Anr. Vs. State of West Bengal (Supra) learned Single Judge (Arunabha Basu, J.) held :

"It is clearly provided that a notice in terms of Section 35 of the Act is required to be served to the occupier indicating such additional fire prevention or fire safety measures that is required to be taken by the occupier. The language of proviso to Section 11C of the Act clearly stipulates that additional fire prevention and fire safety measures shall be taken as specified in the notice served on the occupier under Section 35 of the Act".

10. Relying on the aforesaid decision in Susanta Kumar Bose Vs. State of West Bengal (Supra) another learned Single Judge (Shyamal Kanti Chakrabarti, J.) held :

"Learned lawyer for the petitioner has drawn my attention to a case reported in (2009) 1 C Cr L R (Cal) 424, in which this Court quashed similar proceeding for non- compliance of proviso to Section 11C of the Act. I also subscribe to the same view and hold that the same principle will be applicable in this case. Accordingly, it is held that since no notice was served upon the petitioner in respect of the above premises specifying the measures to be taken, question of non-compliance of the same leading to institution of instant criminal proceedings is an abuse of this process of law and the instant proceeding is bad for non-compliance of proviso to Section 11C (1) of the West Bengal Fire Services Act, 1950 and the same should be quashed to prevent abuse of the process of the Court".

11. Similarly in the matter of M/s Laminated Products (India) & Others (Supra) another learned Single Judge (Kanwaljit Singh Ahluwalia, J.) held :

"In view of the above ratio of law laid in the case of Susanta Kumar Bose's case (supra) as relied by the Counsel for the petitioners the present petition is

accepted. The impugned complaint is quashed. However, liberty is granted to the opposite party/State to serve a notice upon the petitioners and thereafter proceed with the matter in accordance with the provisions of law".

12. Having considered the arguments advanced before me and the decisions of this High Court cited before me I like to set out the relevant provisions of the West Bengal Fire Services Act, 1950 first.

"11J. Penalty for contravention of provision of Chapter IIIA. - Whoever contravenes any provision of Chapter IIIA or the rules made thereunder or fails to comply with any requisition lawfully made to him under any provision of Chapter IIIA or the rules made thereunder shall, without prejudice to any other action that may be taken against him under section 36 or section 37, be punishable with imprisonment for a term of three years which may extend to five years or with fine of twenty thousand rupees which may extend to five lakh rupees or with both and, where the offence is a continuing one, with a further fine of one thousand rupees which may extend to ten thousand rupees for every day during which such offence continues after the conviction for the first such offence".

"11C. Owner or occupier of high-risk building to provide fire prevention and fire safety measures. - (1) The owner or, where the owner is not traceable, the occupier of a high-risk building or part thereof shall provide fire prevention and fire safety measures in such building or part thereof and the occupier shall maintain the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of this Chapter or the rules made thereunder :

Provided that in the case of such building or part thereof, the construction of which has been completed on any date before the date on which this Chapter comes into force, the occupier and, in the case of such building or part thereof which is under construction on the date immediately before the date on which this Chapter comes into force, the owner shall undertake and carry out such additional fire prevention and fire safety measures as are specified in the notice served on him under section 35.

(2) The owner or occupier of a high-risk building, as the case may be [shall obtain from the Director-General furnish to the Director or the nominated authority a "Fire Safety Certificate" in the prescribed form issued by a licensed agency in the manner prescribed.

(3) The State Government may require compulsory endorsement of "Fire Safety Certificate" by the Director or by a superior nominated authority in respect of any class or classes of high-risk buildings as may be notified by the State Government from time to time :

Provided that the Director or a superior nominated authority shall not endorse any "Fire Safety Certificate" unless he or it is satisfied about the fire prevention

and fire safety measures including safety of electrical installations structural means of escape from where owner or occupier can evacuate the buildings or place to a place of safety at the time of fire emergency and provision of supply of adequate quantity of water for fighting purposes made by the owner or occupier of such building.

(4) The occupiers of all high-risk buildings shall carry out a mock fire drill involving the watch and ward staff of such buildings every year under intimation to the Director or the nominated authority in such manner as may be prescribed and a certificate of performance of such drill shall be furnished to the Director or the nominated authority, as the case may be.

(5) No person shall tamper with, or alter, or remove, or cause any injury or damage to, any fire prevention or fire safety equipment installed in any such building or part thereof or instigate any other person to do so".

"34. Inspection of building or premises. - (1) The Director or the nominated authority may enter and inspect any building or part thereof or any premises at any time between sunrise and sunset where such inspection appears necessary for ascertaining the contravention, if any, of fire prevention and fire safety measures referred to in section 11C and of the conditions referred to in section 13 .

13. Provided that the Director or the nominated authority may enter into and inspect any such building or part thereof or premises at any time if it appears to him or it to be expedient and necessary to do so in order to ensure safety of life and property.

(2) The Director or the nominated authority, as the case may be, shall be provided with all possible assistance by the owner or occupier, as the case may be, of such building or part thereof or premises for carrying out the inspection under sub-section (1).

(3) When any such building or part thereof or premises used as a human dwelling is entered under sub-section (1), due regard shall be paid to the social and religious sentiments of the occupiers, and before any flat or part of such building or premises in the actual occupancy of any woman who, according to the custom, does not appear in public, is entered under sub-section (1), notice shall be given to her that she is at liberty to withdraw, and every reasonable facility shall be afforded to her for withdrawing.

(4) Where the inspection is carried out by the nominated authority under the foregoing provisions of this section, it shall give a report of any such inspection to the Director or the superior nominated authority.

14. Explanation.- For the purposes of this section, "flat" shall have the meaning assigned to it in the West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993".

"35. Inspection of building or premises.- (1) The Director or the superior nominated authority, as the case may be, shall, after completion of the inspection of the building or part thereof or the premises referred to in section 34, record his or its views on the deviations from, or contravention of, the requirements with regard to the fire prevention and fire safety measures or the inadequacy of, or non-compliance with, such measures provided or to be provided therein with reference to the structure of the building or the premises or the nature of activities carried on in such building or part thereof or premises and issue a notice to the owner or occupier of such building or part thereof or premises directing him to undertake such measures, and within such time, as may be specified in the notice. Where the owner is not available, the occupier shall undertake such measures in the interest of public safety, notwithstanding anything contained in any other law for the time being in force".

15. On plain reading of the aforesaid Sections it appears that Section 11J is the penal provision for contravention of any provision of Chapter III A including Section 11C of the West Bengal Fire Services Act, 1950, or (emphasis supplied to denote disjunctive) on failure of the person concerned to comply with any requisition lawfully made to him under any provision of Chapter III A or the rules framed thereunder.

16. This case relates to allegation of contravention of the provisions of Section 11C (1) of the said Act. On plain reading of the section 11C (1) it appears that there is one substantive part and the another part is proviso. The substantive part is mandatory for compliance by owner or occupier of each high-risk building. The owner or occupier (where the owner is not traceable) shall (emphasis is supplied) provide fire preventive and fire safety measures in the high-risk building or part thereof and the occupier shall maintain the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of Chapter III A of the Act or rules made thereunder. Contravention of the said mandatory provisions attract the penal provision under Section 11J of the Act.

17. The proviso to Section 11C (1) is applicable only to those high- risk buildings which were constructed before coming into force the West Bengal Fire Services Act, 1950 or were under construction at the time of coming into force of that Act and it relates to undertaking and carrying out additional (emphasis supplied) fire prevention and fire safety measures in compliance of a notice served on the owner or occupier under Section 35 of the Act. Non- compliance of this part also attracts the contravention of requisition (emphasis supplied) lawfully made to the person concerned. Such requisition shall be made only after holding inspection by the Director or the nominated authority under Section 34 of the Act by service of notice under Section 35 of the Act. The proviso to Section 11C (1) comes into play when fire prevention and fire safety measures exist in the building and notice has been served on the concerned person requiring additional fire prevention and fire safety measures to be undertaken and carried out by the

occupier if the construction of the building was completed before the Act came into force or by the owner when the building was under construction at the time of coming into force of the Act.

18. Here, simple case of the prosecution is that the fire protection system is absent in the first floor of the building. Thus, obviously this allegation attracts the non-compliance/contravention of the substantive part of Section 11C (1) of the West Bengal Fire Services Act, 1950 without looking for service of any notice under Section 35 of that Act. There is no assertion in the revisional application that fire prevention and fire safety measures exist in the premises in issue which is the alleged place of occurrence. No averment has also been made in the revisional application that the building in issue is not a high-risk building. In my view, only if any requirement of undertaking and carrying out any fire prevention and fire safety measure is claimed by the Director or the superior nominated authority under section 35 of the Act after completion of inspection in the building under Section 34 of the Act then service of notice calling for compliance in the interest of public safety under Section 35 of the Act is mandatory.

19. In the light of discussion in foregoing paragraphs it can be safely hold and therefore I hold that every owner of a high-risk building or part thereof must provide fire prevention and fire safety measures in the building or part thereof and if he fails to do so it will be contravention of Section 11C (1) of the West Bengal Fire Services Act, 1950 and such contravention is punishable under Section 11J of that Act.

20. As per Section 34 of the Act inspection in a building or part thereof may (emphasis supplied) be done for ascertaining the contravention, if any, of fire prevention and fire safety measures referred to in Section 11C and of the condition referred to in Section 13 of the Act. The word "may" used in the section implies "may not". If it is obvious without assistance of expert that there is no fire prevention and fire safety measures in a high-risk building inspection under Section 34 may not be necessary.

21. Section 35 of the Act comes into play only when inspection is completely done under Section 34 of the Act and as per views of the inspecting authority necessity of service of notice under Section 35 arises. In the instant case no inspection was done under Section 34 of the Act as fairly conceded by learned advocate for the State.

22. Since I am of the view that inspection under Section 34 of the West Bengal Fire Prevention Act is not sine qua non for launching prosecution with allegation of contravention of Section 11C due to absence of any fire prevention and fire safety measures in the premises in question where the alleged incident of fire occurred on 30.05.2008 I am of the view that the impugned proceeding pending in the 12th Court of learned Metropolitan Magistrate, Calcutta cannot be treated as vitiated. Therefore, accepting the arguments of the State respondent I find that said proceeding need not be quashed for want of service of notice upon the

petitioner under Section 35 of the West Bengal Fire Services Act, 1950.

23. The above findings and the findings made earlier by three different Single Benches of this Court as per citation (*supra*) cannot coexist. In the premises, offering my due honour to the Hon''ble Judges who authored the said cited decisions I respectfully differ with their interpretation of law on the subject.

24. However, maintaining the judicial discipline I think it is a fit case for a decision by a larger Bench of this High Court for a decision on the point of law as to whether a criminal proceeding alleging contravention of the provision of Section 11C of the West Bengal Fire Services Act is not maintainable only because no notice under Section 35 of that Act was served upon the accused before initiation of the proceeding.

25. If such decision of Hon''ble Larger Bench goes against the findings on the point made in this judgment this revisional application shall stand allowed and the impugned proceeding shall stand quashed. But if such decision goes in favour of the findings made in this judgment this revisional application shall stand dismissed and the impugned proceeding in the Court below will be continued as usual in accordance with law.

26. Be that as it may, further hearing of this revisional application is considered unnecessary after decision of Hon''ble Larger Bench. Therefore, this revisional application be disposed of with observation that the final result of this case will abide by the decision of the Hon''ble Larger Bench. Under peculiar circumstances the order dated 25.04.2014 passed for stay of all further proceedings of GR Case No. 1450 of 2008 pending before the learned Metropolitan Magistrate, 12th Court at Calcutta be continued till decision of a larger Bench of this High Court as aforesaid.

27. This case be placed before the Hon''ble the Acting Chief Justice of this High Court with humble request for constitution of a larger Bench to resolve the question of law as to whether a criminal proceeding with allegation of contravention of the provisions of Section 11C of the West Bengal Fire Services Act, 1950 is not maintainable only because no notice under Section 35 of that Act was served on the accused before initiation of the criminal proceeding.

28. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties or their advocates expeditiously following usual legal formalities.