(2010) 09 CAL CK 0084

In the Calcutta High Court

Case No : Writ Petition No. 874 of 2010

Suman Modern Rice Mill Pvt. Ltd. APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 420, 471
West Bengal Rice Mills and Wholesalers (Control and Levy) Order, 2009 — Section 7

Citation : (2011) 2 CALLT 483 : (2011) 1 CHN 498

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indira Banerjee, J.—In this writ application, the Petitioner has inter alia sought orders restraining the Respondents from proceeding and/or further proceeding with Berhampore P.S. Case No. 450 of 2010 initiated pursuant to a First Information Report lodged on 30th June, 2010.

2. The Petitioner No. l, a company registered under the Companies Act, 1956, carries on business of running a rice mill in Murshidabad district.

3. The Petitioner claims to be a member of the West Bengal Rice Mills Association. West Bengal Rice Mills Association has filed a writ petition in this Court being W.P. No. 1271 of 2009 (West Bengal Rice Mills Association and Anr. v. State of West Bengal and Ors.) which is pending. On the said writ application being moved, His Lordship, the Hon''ble Justice Tapen Sen was pleased to pass an interim order restraining the Respondents from taking coercive action in connection with the sale of rice from the respective mills of the members of the West Bengal Rice Mills Association.

4. On or about 30th June, 2010, certain officials of the office of the District

Controller, Food and Supplies, including the Chief Inspector inspected the rice mills of the Petitioner No. l, conducted search and seized various documents as also 10,000 quintals of paddy and about 590 quintals of rice.

5. A First Information Report was lodged, wherein it was inter alia alleged that the owner of the mill and its representative had violated the provisions of paragraph 8 of the West Bengal Rice Mills and Wholesaler''s (Control and Levy) Order, 2009, hereinafter referred to as the Control and Levy Order, by collecting a huge quantity of paddy and rice, in an unauthorized manner.

6. It was inter alia alleged "the owner of the said Mill Dilip Saha and his representative Prabir Acharya have violated the provisions of W B Rice Mills and W/Sellers (Control and Levy) Order, 2009 paragraph 8 and thereby punishable u/s 7(i)(a)(ii) of Act X/55.

7. I therefore request you to start a specific case u/s 7(i)(a)(ii) of Act - X/55 against the following accused persons:

1) Prabir Kr Acharya s/o Gour Acharya of Vill Madu

ii) Dilip Saha S/o Lt Krishen Pada Saha, S S Sen Road, Gorabjara, P.S. Berhampore.

8. Paragraph 8 of the Control and Levy Order is set out hereinbelow for convenience:

8. Certain restriction on Purchase of Paddy, Sale of Rice and Milling by millers/ wholesalers:

(a) Millers shall purchase paddy from the farmers at a rate not below the MSP prescribed by the Govt, of India.

(b) No miller shall sell, deliver or otherwise dispose of or move out of any rice mill any quantity or paddy owned by him, except under and in accordance with a permit granted by the District Controller.

(c) No miller or wholesaler shall sell, deliver or otherwise dispose of or move out any rice mill or his godown/storing point any quantity of rice produced or manufactured in any such rice mill out of paddy owned by him or dealt/traded by him until he sells and delivers to the State Government or its designated agency and the F.C.I, the quantity of rice required to be sold under sub-paragraph (1) of paragraph 4 and except in accordance with a release certificate issued by the Director.

(d) No miller shall produce or manufacture in his rice mill, rice out of any paddy not owned by him provided that the millers may produce rice out of paddy supplied by the State Govt, or its designated agency/ FCI for custom milling under decentralized procurement or for any scheme of the Government.

9. The allegations in the First Information Report ex facie do not disclose any contravention of paragraph 8 of the Control and Levy Order. There is no

restriction in the Control and Levy Order, on the quantity of paddy that might be stored in rice mills. Nor is there any specific mode prescribed in the Control and Levy Order for procurement of paddy. It is not alleged that the Petitioners purchased rice from farmers at any price below the minimum sale price prescribed by the Government of India.

10. Opposing the writ application, Mr. Deb submitted that there was discrepancy between the quantity of stocks of paddy and rice as recorded in the stock registers and other documents and the quantity actually found upon physical verification.

11. Mr. Deb further submitted that the Petitioner had concealed the stock of paddy by showing a lesser quantity in its records to evade its obligation to sell to the State Government or its designated agency or the Food Corporation of India, 50% of the entire rice produced in the rice mills from paddy.

12. Mr. Deb emphatically argued that the Petitioners had resorted to manipulation of records and concealment of stocks to evade its obligation in terms of Paragraph 4 of the Control and Levy Order. However, in the First Information Report, there is no allegation of any deliberate suppression, concealment or of manipulation, deliberate or otherwise.

13. Mr. Deb submitted that this Court ought not to interfere with an FIR. In support of his submissions Mr. Deb cited the following judgments:

(i) M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, ; (ii) S. Khushboo Vs. Kanniammal and Another, (iii) State of Bihar Vs. Gulab Chand Prasad, .

14. In MEDCHL Chemicals & Pharma (P) Ltd. (supra), the Supreme Court held that exercise of jurisdiction under the inherent power of Court, as envisaged in section 482 of the Code of Criminal Procedure, to have the complaint or the charge-sheet quashed, was an exception rather than the rule and the Court would not scuttle the prosecution by quashing the complaint at the initial stage except in the rarest of rare cases.

15. There can be no doubt that a complaint or a chargesheet ought not to be quashed for the asking, but only in exceptional cases. However, in MEDCHL Chemicals & Pharma (P) Ltd. (supra), the Supreme Court also held that in the event, the Court, on perusal of the complaint, came to the conclusion that the allegations levelled in the complaint or chargesheet, did not on their face, constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and interfere with the complaint as required under law.

16. The Court may not look into the correctness of the allegations in the complaint and/or chargesheet but if the allegations, even assuming the same to be correct, do not disclose any offence, the complaint would have to be quashed.

17. In Gulab Ch. Prasad (supra) a complaint was filed against a dealer for possessing unaccounted soda ash but the order alleged to have been violated was not mentioned. It was, however, alleged that the accused was liable to be punished u/s 7 of the Essential Commodities Act, 1955.

18. The Supreme Court found that the State of Bihar had issued an order, namely, Bihar Essential Articles (Display of Price and Stocks) Order, 1977 which was published in the Bihar Government Gazette Extraordinary dated 10th September, 1977. Clause 3 of the order cast an obligation on the dealer to display particulars of stocks of articles along with price thereof. Sub-clause (a) of Clause 2 of the order defined ''article'' to mean any essential commodity mentioned in Schedules 1 and 2 appended to the order and further conferred powers on the State Government to include such items in the Schedule as might be found necessary. Soda ash (for washing purpose) was one of the articles covered by the order, which had been issued in exercise of power conferred by section 3 of the Essential Commodities Act, 1955.

19. The Supreme Court found that the allegations in the complaint that had been filed disclosed contravention of the order, even though the order had not been mentioned. Contravention of the Order was punishable u/s 7 of the Essential Commodities Act. The Supreme Court also found that there were other allegations which constituted offences under sections 420 and 471 of the Indian Penal Code.

20. It was in the backdrop of the aforesaid facts that the Supreme Court held that it could be unwise to ignore the existence of a subsisting order and to dispose of a proceeding as if no order was there. The judgment is clearly distinguishable on facts.

21. In this case, there is a categorical allegation in the First Information Report, of contravention of Paragraph 8 of the Control and Levy Order. Paragraph 8 of the Control and Levy Order (i) requires millers to purchase paddy from farmers at a rate not below the minimum selling price (MSP) prescribed by the Government of India; (ii) prohibits millers from selling, delivering, disposing of or moving out of any rice mill paddy not owned by them, except in accordance with the permit granted by the District Controller; (iii) prohibits millers from selling, delivering, disposing of or removing any rice produced in their mills without first meeting their obligations to sell and deliver rice to the Government or its designated agency and the Food Corporation of India in terms of paragraph 4(1) of the Control and Levy Order and except in accordance with a release certificate issued by the Director; and (iv) prohibits millers from producing any rice from out of paddy not owned by the miller, subject however, to the exceptions in Paragraph 8(d) of the Control and Levy Order.

22. As observed above, there is no allegation that the Petitioners purchased paddy from farmers at a rate lower than the rate prescribed. There is no allegation that the Petitioners sold, delivered, otherwise disposed of or removed

any paddy. There is no allegation that the Petitioners sold any quantity of rice without fulfilling its selling obligations under paragraph 4 (1) of the Control and Levy Order. There is no allegation that the Petitioners had manufactured rice out of any paddy owned by them.

23. In the Control and Levy Order, there is no restriction on the quantity of paddy that might be stocked for conversion into rice. There is also no other subsisting law which restricts the quantum of paddy that might be stored.

24. Mr. Deb submitted that under Paragraph 12 of the Control and Levy Order the Collector or the Director or any Officer of the Department of Food and Supplies not below the rank of Sub-Inspector authorized by the Collector, or any police officer not below the rank of Sub-Inspector might, with a view to securing compliance of the Control and Levy Order or to satisfy himself that the Control and Levy Order has been complied with, inspect or cause inspection of any books of accounts or stocks, require any person to provide information, stop and search any person, vehicle, vessel or animal used for delivery of rice or paddy from a rice mill or any other premises where he has reason to believe any rice or paddy is stored, enter and search any rice mill, godown or other premises and also seize and remove books of accounts relevant to any proceeding for contravention of the Control and Levy Order as also the things specified in sub-paragraphs (i), (ii) and (iii) of sub-paragraph (e) of paragraph 12.

25. It is not in dispute that paragraph 12 of the Control and Levy Order confers power to carry out search and seizure. However, the condition precedent for search and seizure under Paragraph 12 of the Control and Levy Order is reasonable belief of contravention or of imminent contravention of the Control and Levy Order.

26. In the absence of any restriction on the quantity of paddy or rice that might be stocked in rice mills, hoarding of paddy or rice cannot constitute any offence punishable in law.

27. In the absence of any requirement under the Control and Levy Order to maintain stock books and/or stock registers, any discrepancy in entries is not an offence punishable u/s 7 of the Essential Commodities Act, 1955.

28. Paragraph 12 of the Control and Levy Order which confers power on specified authorities to inspect, conduct search or seize documents, registers and books of accounts with a view to ensure compliance with the Control and Levy Order does not cast any obligation on millers to maintain any registers and books of account in any particular manner.

29. It is well-settled by a plethora of judicial decisions including the judgment in S. Khusboo v. Kaniammal and Ors. cited by Mr. Deb as also State of Haryana v. Bhajanlal, reported in 1992 Supp. (1) SCC 635, that a complaint which does not even disclose any prima facie case of a statutory offence might be interfered by this Court in exercise of its power of judicial review.

30. In State of West Bengal and Others Vs. Swapan Kumar Guha and Others, the Supreme Court in effect held that the Court could, in exercise of jurisdiction under Article 226 of the Constitution of India quash a First Information Report which prima facie disclosed no offence.

31. The writ application succeeds. The First Information Report impugned is set aside and quashed.

32. The Respondents are restrained from proceeding with and further proceeding against the Petitioners on the basis of the impugned First Information Report.