

Pradip Kumar Agarwalla Vs. the State

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Court : Kolkata

Decided On : May-29-1991

Reported in : (1991)2CALLT159(HC)

Judge : Jyotirindra Nath Hore, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 482; ;West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977; ;West Bengal Rice and Paddy (Licensing and Control) Order, 1967

Appeal No. : C.R. No. 434 of 1991

Appellant : Pradip Kumar Agarwalla

Respondent : The State

Advocate for Def. : A.K. Paul, Adv.

Advocate for Pet/Ap. : Soumen Kumar Ghosh and ;Naren Ghosh Dastidar, Adv.

Judgement :

Jyotirindra Nath Hore, J.

1. These two revisional applications have been heard together as the same facts and questions of law are involved in both the cases. Both the petitions are Under Section 482 Cr. P. C. for quashing the impugned proceeding arising out of

Alipurduar P.S. Case No. 289 of 1990 dated 18.11. 90 Under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 3 of the Declaration of Stocks and Prices of the Essential Commodities Order, 1977 and paragraph 18(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967.

2. The petitioners in the two cases Pradip Kumar Agarwalla and Satya Narayan Agarwalla are partners of M/s. Satya Narayan Rice and Oil Mills and carry on business of rice milling and hold a licence. On 18.11.90 the District Controller, Food and Supplies, Jalpaiguri along with other officers of the Food and Supplies Department made a raid during Sunday which was a weekly holiday, at 11.30 A.M. and conducted search from 11.30 A.M. to 5.30 P.M. and seized various registers, stock books, rice and paddy etc. F.I.R. was lodged by the District Controller with the Alipurduar Police Station giving rise to the present case. The allegations against the petitioners are that the petitioner failed to maintain true and correct accounts and there was a discrepancy between the stock of paddy and rice shown in the registers and the actual stock found on weighment amounting to violation of paragraph-18(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 and non-writing of the stock board which amounted to violation of Para! 3 of the Declaration of Stocks and Prices of the Essential Commodities Order, 1977.

3. Mr. Ghosh, learned Advocate for the petitioners in both the cases has challenged the impugned proceeding on two grounds. Firstly, it has been contended that the closing balance of 17.11.70 as per books of accounts in respect of rice and paddy does not reveal real discrepancy and shortage, if any, is covered by the permissible handling loss and the question of violation of paragraph 18(1) does not and cannot arise at all. Secondly, it has been contended that the paragraph 19(e) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967, so far it authorises to seize the stock of rice and paddy by any of the persons referred to in paragraph 15(1) on the basis of his 'reason to suspect' is ultra vires and beyond the competence of the State Government inasmuch as Section 3(2)(j)(i) of the Essential Commodities Act authorises such seizure on the basis of 'reason to believe'. The expressions 'reason to believe' and 'reason to suspect' are not the same. The Central Government by notification No.

G.S.R. 1111 dated 24th July, 1967 authorises the State Government to make orders under the provisions of Section 3(2)(a) to (j) and the provision of Section 3(2)(j) relates to search and seizure on the basis of 'reason to believe' and as such the State Government has no competence or authority or jurisdiction to make a provision for seizure on the basis of 'reason to suspect' and the said provision of seizure is contrary to and inconsistent with the provisions of Section 3(2)(j) and to that extent the same is beyond the competence of the State Government and cannot be sustained in law. The search and seizure in this case are, therefore, illegal and without jurisdiction and the proceeding based on the same is also incompetent.

4. Mr. Paul, the learned Advocate for the State has contended that the Criminal Revision No. 434 of 1991 is not maintainable inasmuch as a previous revisional application being Criminal Revision No, 74 of 1991 filed by the petitioner Pradip Kumar Agarwalla for quashing the impugned proceeding was dismissed by this court, so far as the allegation for violation of West Bengal Rice and Paddy (Licensing and Control) Order, 1967 is concerned. It has further been contended that the F.I.R. prima facie reveals commission of an offence punishable Under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 18(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967.

5. Let me first take up the Criminal Revision No. 795 of 1991 for consideration. With regard to the alleged violation of paragraph 3 of the West Bengal Declarations of Stocks and Prices of the Essential Commodities Order, 1977, it appears upon a perusal of the F.I.R. that it does not, prima facie, disclose materials in support of the said allegation. It is not disputed before me that Sunday is the weekly holiday observed by the Mill. There is no allegation whatsoever in the F.I.R. that the mill was open and there was transaction of business at the time of the raid in violation of the notice of weekly holidays issued by the Shops and Establishment Authorities. If the mill was closed, and there was no transaction of business at all, there was no question of displaying the board showing stocks and prices of the essential commodities, namely paddy and rice on 18.11.90 and violation of paragraph 3 of the West Bengal Declarations of Stock and Prices of Essential Commodities Order, 1977 for non-display of the board showing the

stocks and prices of paddy and rice on 18.11.90. Mr. Paul, learned Advocate for the state does not dispute this.

6. Mr. Paul has, however, contended there are prima facie materials in support of the allegation of violation of paragraph 18(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967. There is allegation in the F.I.R. that as per weighment of rice (fine boiled) the stock was found to be 306 quintals 95 kgs. 900 grms. but the closing balance of rice as per stock book of 17.11.90 was shown to be 29.70 quintals only. There is a discrepancy of 277 quintals 25 kgs. 900 grms. which was found to be in excess of the stock shown in the closing balance of 17.11.90.

7. The relevant registers seized by the I.O. were produced before me. It appears that accounts of the years 1989-90 and 1990-91 were maintained in the same register. Register No. III is of the stock of rice. The closing balance on 17.11.90 as shown for the year 1989-90 is 29 quintals 70 kgs. The register also shows closing balance on 17.11.90 of stock of rice for the year 1990-91 as 277 quintals and 20 kgs. The total of stock of rice as per the register is 306 quintals 90 kgs. There is thus discrepancy of 5 kgs and 900 gms only which is within the allowable limit. It appears that the stock for the year 1990-91 which was maintained in the same register and there is also reference to the same in the index was not taken into account by the complainant. The seized register itself shows that there was no real discrepancy in the stock of rice as shown in the register and the stock as found on actual weighment. Similarly, there is no real discrepancy in the stock of paddy as shown in the register and as found on actual weighment. Register No. 1 of raw paddy account shows the closing balance of 17.11.90 as 27 quintals 90 kgs. for the year 1989-90 and 487 quintals 50 kgs. for the year 1990-91 the total being 515 quintals 40 kgs. Register No. 2 of stock of processed paddy shows the closing balance on 17.11.90 as 20 quintals for the year 1989-90 and 120 quintals 86 kgs. for the year 1990-91 the total being 140 quintals 86 kgs. The total stock of paddy is thus 656 quintals 26 kgs and the stock on actual weighment was found to be 658.26 kgs, the deficiency being 2 kgs. only which is to be ignored being within allowable limits of handling loss. The registers seized by the complainant thus do not prima facie reveal violation of paragraph 18(1) of the West Bengal Rice and

Paddy (Licensing and Control) Order, 1967. Further continuation of the proceeding would be an abuse of the process of the court and for ends of justice it is liable to be quashed.

8. As the entire proceeding is to be quashed, the petitioner in Criminal Revision No. 434 of 1991 would be entitled to the benefit irrespective of the question whether this second revisional application is in the nature of review of the earlier order passed in Criminal Revision No. 74 of 1991. Even if this second revisional application be not maintainable, the impugned proceeding cannot proceed against him, inasmuch as the entire proceeding is to be quashed. Moreover, this second revisional application does not amount to revision or review of my earlier order in view of the changed circumstances. In the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh and Ors., reported in : 1975 CriLJ812 , the Supreme Court has held that the fact that a similar application for quashing the proceedings on a former occasion was rejected by the High Court on the ground that the questions involved were purely questions of fact which were for the court of fact to decide, is no bar to the quashing of proceedings at the later stage. Such quashing will not amount to revision or review of the High Court's earlier order. Order Under Section 561(a) should be passed in view of the circumstances existing at the time when the order is passed. Now, in the previous case, the seized registers were not produced and the petitioner being unaware of the actual entries in the registers wrongly advised the learned Advocate that there was no actual weighment but only eye estimation and actual weighment would show no discrepancy. The petitioner was, therefore, given liberty to file a petition before the Special Judge for actual weighment in order to ascertain whether this tallies with the closing balance as shown in the stock book. Realising his mistake, the petitioner has now come with a different and correct ground that the allegations regarding discrepancy in the stock are imaginary inasmuch as if the seized registers are produced, this would clearly show that there is no discrepancy at all and there is no basis for the prosecution. On the prayer of the petitioner the seized registers were produced by the State, and as noted earlier these registers do not reveal any real discrepancy and the allegations of discrepancy are imaginary not based on all the relevant entries in the registers. In this circumstance, the present revisional application does not amount to review of the

earlier order passed in Criminal Revision No. 74 of 1991.

9. As the entire proceeding is liable to be quashed on the aforesaid ground only, I need not consider the second point raised by Mr. Ghosh.

10. In the result, both the Revisional Case Nos. 434 of 1991 and 795 of 1991 are allowed and the impugned proceeding is quashed. I make no order as to costs.

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