

Ram Kumar Keshori Vs. the State

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Court : Kolkata

Decided On : Aug-14-1981

Reported in : 1981CriLJ1288

Judge : Monoj Kumar Mukherjee and ;S.N. Sanyal, JJ.

Appellant : Ram Kumar Keshori

Respondent : The State

Judgement :

Monoj Kumar Mukherjee, J.

1. On December 23, 1978 an Inspector of Police, Enforcement Branch, Calcutta, inspected the grocery shop-cum-godown of the petitioner, Ram Kumar Keshori, at 191. R. B. C. Road, Naihati and found various infractions of the West Bengal Anti-Profiteering Act, 1958, He seized the goods found in the shop, arrested the petitioner and registered a case against him under Section 8 of the W. B, Anti-Profiteering Act, 1958. During investigation, the Investigating Officer filed an application before the learned Sub-divisional Judicial Magistrate, Barrackpore stating that the investigation of the case also disclosed the commission of an offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 by the petitioner and praying that the above section may be added to the case and further time may be granted to complete the investigation. Though the application was dated July 15, 1979 the learned Magistrate took same for consideration on August

13, 1979. along with the objection that was raised on behalf of the petitioner to its maintainability, in view of the provision of Sub-section (5) of Section 167 of the Criminal P. C. By an order passed on the same day the learned Magistrate overruled the objection of the petitioner and allowed the prayer of the Investigating Officer. On completion of investigation charge-sheet was submitted against the petitioner, both under the Essential Commodities Act. 1955 and the W. B. Anti-Profiteering Act, 1958 on May 16, 1980 and cognisance was taken thereupon. A proceeding under Section 6-A of the Essential Commodities Act, 1955 was also initiated by the Collector of 24 Paraganas for confiscation of the seized goods. Aggrieved by the institution of the above two proceedings, the petitioner moved this Court for their quashing and obtained the present Rule.

2. At the outset we may point out that the prayer of the petitioner for quashing the proceeding under Section 6-A of the Essential Commodities Act is wholly misconceived. The above proceeding is separate and independent of the prosecution that has been instituted against the petitioner and validity of the former cannot be challenged along with that of the latter in one and the same application. Moreover in this criminal provisional jurisdiction the proceeding under Section 6-A cannot be challenged as the Collector who has initiated the proceeding cannot be said to be functioning as an inferior Criminal Court. In either view of the matter therefore, the prayer for quashing the proceeding under Section 6-A of the Essential Commodities Act is hereby rejected and the interim order passed by this Court, while issuing the Rule, staving the said proceeding is hereby vacated.

3. In assailing the institution of the prosecution, Mr. Balai Roy, the learned Advocate appearing in support of the Rule, urged that the Investigates Officer filed his application beyond 'the period of six months from the date of the petitioner was arrested, and since the case which was then being investigated was triable according to summons procedure, the learned Magistrate had no jurisdiction to entertain or allow the said prayer in view of the express provision of Section 167(5) of the Cr.P.C. According to Mr. Roy, in such a case, the Magistrate was statutorily obligated to stop the investigation after the expiry of six months, in absence of any prayer prior to such expiry for extending the time for completion of the investigation. Mr. Roy submitted that on the expiry of the said period, the learned

Magistrate became functus officio, and he was not entitled to entertain the prayer of the Investigating Officer, or to allow the same even on the ground that the investigation disclosed a case triable as a warrant case, namely under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Mr. Sarojesh Mukherjee, the learned Public Prosecutor, appearing for the State in his usual fairness, submitted that since there was nothing on record to indicate that the Investigating Officer made the prayer before the expiry of six months as contemplated under Section 167(5) he was unable to support the order of the learned Magistrate.

4. To appreciate the contention of Mr. Roy it will be necessary to refer to Sub-section (5) of Section 167, which reads as follows :-

If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

It is common ground that the case which was registered by the police against the petitioner was triable by a Magistrate as a summons case. It is also not in dispute that the petitioner was arrested on December 23, 1978 and the investigation of the case was not concluded within a period of six months from that date. In such a case, Section 167(5) by its plain language, gives a mandate to the Magistrate to make an order stopping further investigation into the offence unless the Officer can satisfy the Magistrate that continuation of investigation beyond the period of six months is necessary for special reasons and in the interest of justice. The power that has been given to the Magistrate to permit continuation of the investigation beyond the period of six months clearly envisages that it has to be exercised before the expiry of six months. That on the expiry of the said period the Magistrate cannot entertain any prayer to extend the period of investigation will be evident from the words 'the continuation of the investigation' and 'beyond the period of six months is necessary' appearing in Sub-section (5). 'Continuation of the investigation' in Section 167(5) may be read in contradistinction to 'further

investigation' appearing in Section 167(6). When so read 'Continuation of the investigation' pre-supposes an investigation which is in progress. Once the period of six months expires, the Magistrate by stopping the investigation brings an end to the investigation by the operation of Sub-section (5) of Section 167. If any prayer of the Investigating Officer is entertained after the expiry of said period and allowed the investigation thereby will be reopened and it will be 'further investigation' as envisaged under Sub-section (6) of Section 167, and not continuation of investigation. Then again, to record a satisfaction that the investigation 'beyond the period of six months is necessary', the Magistrate, necessarily has to obtain the satisfaction before the expiry. It must therefore be held that any direction for continuation of the investigation given under Section 167(5) after the statutory period will be without jurisdiction.

5. The next question to be considered is whether subsequent disclosure of a case triable as a warrant case, during investigation anyway alters the position. In our considered view as long as the initial investigation continues to be in respect of a case exclusively triable by a Magistrate as a summons case Section 167(5) will operate and the Magistrate has no option but to follow the mandate of the Sub-section. It may be argued however, that in spite of due diligence, an Investigating Officer may not succeed in unearthing a case triable as a warrant case or a sessions case against an accused before the period as envisaged, under Section 167(5) is over and the view we have taken may frustrate such genuine efforts. This aspect of the matter need not detain us, as in such an exigency the police can suo motu register a case and investigate into the same without in any way being inhibited by the rigours of Section 167(5).

6. For the foregoing discussions we must hold that the investigation that was carried on in the instant case after the expiry of six months was wholly without jurisdiction and the cognisance taken on the police report, which was based on such an investigation, was bad in law. We therefore quash the proceeding of G. R. E. Case No. 481 of 1978 pending against the petitioner in the Court of the Sub-divisional Judicial Magistrate. Barrackpore. The Rule is thus disposed of.

S.N. Sanyal, J.

7. I agree.

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