

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. 9233 of 2020

With

IA No. C.A.N. 1 of 2020

Shri Swapan Roy

- Versus -

The State of West Bengal & Others

with

W.P.A. No. 9234 of 2020

Partha Saha

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9235 of 2020

M/s. Krishna Traders & Anr.

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9236 of 2020

Sanjib Roy

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9237 of 2020

Shri Kanchan Som

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9238 of 2020

Shri Barun Kumar Saha

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9239 of 2020

Shri Ayub Mondal

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9240 of 2020

M/s. Promising Export Ltd. & Anr.

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9284 of 2020

Shri Paritosh Biswas

- Versus -

The State of West Bengal & Others

With

W.P.A. No. 9285 of 2020

M/s. Accent Deal Trade (P) Ltd. & Anr.

- Versus -

The State of West Bengal & Others

For the Petitioner
(in all petitions)

: Mr. Sagar Bandopadhyay, Adv.,
Mr. Biswaroop Bhattacharjee, Adv.,
Mr. N. K. Chowdhury, Adv.,
Mr. Arijit Chakrabarti, Adv.,
Mr. R. N. Banerjee, Adv.,
Mr. Nilotpal Chowdhury, Adv.,
Mr. Prabir Bera, Adv.

For the State

: Mr. Kishore Datta, Ld. Advocate General,
Mr. Debasish Ghosh, Adv.,
Mr. Joydeep Banerjee, Adv.,
Mr. N. Chatterjee, Adv.,
Mr. Sayan Sinha, Adv.

For the Union of India

: Mr. Rajdeep Biswas, Adv.

For the Customs Authority

: Mr. K. K. Maiti, Adv.,

Last Heard on : December 23, 2020

Judgment dictated in Court on December 23, 2020.

Shekhar B. Saraf, J.:

1. This batch of writ petitions under Article 226 of the Constitution of India raises a common issue, primarily seeking the quashing of an F.I.R dated October 23, 2020. Accordingly the same are taken up conjointly.
2. The material facts in so far as comprehending the *lis* involved are as follows: These writ petitioners are exporters by profession. They purchased a certain tonnage of bags of wheat from local markets for the purposes of supplying/ exporting the same. On October 22, 2020 the officials of the Commissionerate of Customs (Preventive) had intercepted roughly 175 trucks loaded with the aforesaid bags of wheat in the parking lots at Ghojadanga Land Customs Station. These customs officials discovered that the jute bags bearing the wheat possessed marks and numbers of the Food Corporation of India, Government of Haryana and Government of Punjab. Suspicion arose that these bags of wheat essentially meant for the public distribution system of the country, were being diverted to Bangladesh illegally by the appellants in collusion with other unscrupulous businessmen. The custom officials as a consequence lodged a complaint before the concerned police station and upon receipt of such complaint, a case bearing Basirhat Police Station Case No. 1150 of

2020, dated October 23, 2020 was registered under Section 379/411/413/414/120B of the Indian Penal Code, 1860.

3. Subsequently, an application was submitted by the respondent no. 9 for the addition of Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the “EC Act”). Based on such application, by an order dated October 25, 2020, the learned Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas (hereinafter referred to as “ACJM, Basirhat”) allowed the addition of the aforesaid Section while also allowing an application submitted by the investigating officer which prayed for the issuance of directions towards the confiscation of the detained goods. By a memo dated November 11, 2020 the petitioners were intimated that the bags of wheat had been confiscated in pursuance of the order dated October 24, 2020 passed by the learned ACJM, Basirhat. However, such memo dated November 11, 2020 was issued by the Additional District Magistrate (Treasury), North 24 Parganas upon the petitioners after the petitioners had invoked the Court’s writ jurisdiction seeking the quashing of the criminal case registered as specified above.
4. By an order dated November 18, 2020 a coordinate Bench of this High Court passed an order in the above batch of writ petitions mentioned hereinabove. The relevant portions of the said order is delineated hereinbelow :-

“The issue as to whether the ingredients of the offences alleged under the IPC and under Section 7(1)(a)(ii) of the EC Act are available, can be decided only upon conducting the investigation. At this stage, when

there are only allegations and recriminations, the Court cannot anticipate the result of such investigation. It would be highly improbable to issue the direction, as sought for by the petitioners, amounting to a mandamus to close the case before the investigation is complete.

In view thereof, this Court is reluctant to exercise any discretion in favour of the petitioners and the interim orders, as prayed for, are refused.

The respondents are directed to file their affidavit-in-opposition within two weeks from date. Reply thereto, if any, be filed within two weeks thereafter.”

5. The above order was challenged before the Division Bench of this Court. The Division Bench disposed of the appeal by a judgment and order dated December 10, 2020, wherein the Division Bench held as follows :-

“19. We accept the submission as advanced by the appellants and the judgment relied upon in support of the proposition that before passing an order of confiscation, the Collector has to be satisfied as to the violation of order passed under Section 3 of the E.C Act. We are not, however, at one with the submission of the appellants that the F.I.R does not disclose violation of order passed under Section 3 of the E.C Act. It has been alleged in the F.I.R that the goods seized are meant for the Public Distribution System and the appellants attempted to divert the same in the garb of exporting. The State must proceed with the investigation against such grave allegation and take it to its logical conclusion.

20. Since we have held that the order of confiscation is not sustainable, the judgments relied upon by the State have no manner of application at this stage.

21. In our view, the learned Single Judge should not have refused to interfere with the order of confiscation holding the same was not without jurisdiction. The learned Single Judge ought to have arrived at his prima

facie satisfaction as to whether the condition precedents for passing the confiscation order were followed.

22. The order of confiscation dated October 29, 2020, passed by the Sub Divisional Officer, District – 24 Parganas (North), therefore, is set aside. The State, however, will be at liberty to initiate fresh confiscation proceedings if it so desires adhering to the requirements of Section 6-A of the E.C. Act, as discussed above. If such proceeding is initiated, the same should be concluded within a period of eight weeks from the date of passing of this order. Till the confiscation proceeding is concluded, the seized goods shall remain at such place where they have been kept now. Since the seized goods are perishable in nature, subject to the aforesaid directions, parties will be at liberty to approach the learned Single Judge seeking appropriate directions or reliefs during pendency of this writ petitions.

23. For the reasons aforesaid, the appeals and connected applications being MAT No. 756 of 2020 with IA No. CAN 1 of 2020 and MAT 757 of 2020 with IA No. CAN 1 of 2020 are disposed of. There will be no order as to costs.”

6. Similar orders dated December 15, 2020 were also passed in two criminal revisional applications bearing nos. CRR 1688 of 2020 and CRR 1690 of 2020 that had been filed before this High Court.

7. During the course of the arguments, it has come to my knowledge that arrest warrants have been issued against most of the writ petitioners on December 15, 2020 by the ACJM, Basirhat. On December 17, 2020 the writ petitioner in W.P.A No. 9233 of 2020 pressed CAN 1 of 2020 seeking, inter alia, the following reliefs:

“(I) An Order allowing the writ petitioner/ applicant, to get the goods covered under Shipping Bills No. 6027556 dated 22/10/2020 and 6027558 dated 22/10/2020 against bond for export during pendency of

the writ petition being W.P.A. 9233 of 2020 [Shri Swapan Roy, Proprietor of M/s. Prayas – Vs- The State of West Bengal and Ors.] before this Hon’ble Court;

(II) An Order directing the respondents not to take any coercive action against the applicant/ writ petitioner during the pendency of the writ petition being W.P.A. 9233 of 2020 [Shri Swapan Roy, Proprietor of M/s. Prayas – Vs- The State of West Bengal and Ors.] before this Hon’ble Court;

(III) Any other or further order(s) and/or direction(s) as may deem fit and proper to the Hon’ble Court.”

8. Mr. Sagar Bandopadhyay, learned counsel on behalf of the petitioners, submits that the complaint, treated as F.I.R had been submitted on the basis of unsubstantiated speculation and baseless assumption of the commission of offences under Sections 379/411/413/414/120B of the IPC. He strenuously argued that the allegations leveled do not disclose the commission of the said offences.
9. He also argued that the successive incorporation of Section 7(1)(a)(ii) of the E.C Act is patently absurd and inherently improbable in as much as there had been no violation of any specific control order made under Section 3 of the E.C Act.
10. He also submitted that the free passage of export consignment cannot be withheld/ delayed for any reason and that in case of any doubt, the concerned authorities may ask for an undertaking from the exporter and release such consignment. In support of such contention he has placed reliance upon the guidelines framed under the Foreign Trade

(Development & Regulation) Act, 1992. Mr. Bandopadhyay also argued that the procedure as prescribed under Sections 457 & 459 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) has not been followed though the petitioners are entitled to the possession of the property.

11. With regard to the arrest warrants that have been issued dated December 15, 2020 Mr. Bandopadhyay has argued that these arrest warrants are in contravention of Section 73 of the CrPC. His primary contention was the fact that the petitioners were cooperating with the ongoing investigation and not evading arrest; therefore, such warrants are without jurisdiction. He has relied on the judgment of the Supreme Court in ***State through CBI –vs.- Dawood Ibrahim Kaskar & Ors.*** reported in ***2000 (10) SCC 438*** to buttress his argument on the scope of Section 73 of the CrPC, 1973.

12. Mr. Bandopadhyay has also relied on the judgments of the Supreme Court in the matter of ***Arnab Manoranjan Goswami –vs.- The State of Maharashtra & Ors. (Criminal Appeal No. 742 of 2020)*** dated November 27, 2020 to emphasise that this Court has the power to protect a citizen by an interim order in a petition which has invoked the discretionary powers under Article 226 of the Constitution. He has also relied on the Full Bench (7 Judges) decision of the Allahabad High Court in ***Ramlal Yadava & Ors. –vs. State of U.P. & Ors.*** reported in ***1990 All LJ 47 (FB)*** to further emphasise that this Court while exercising its

powers under Article 226 of the Constitution of India, can quash an F.I.R that does not disclose the commission of an offence as opposed to invoking the inherent powers of the High Court under Section 482 of the CrPC.

13. *Per contra* Mr. Kishore Datta, learned Advocate General appearing for the respondents submits that the Court's writ jurisdiction under Article 226 was not the appropriate forum to quash the F.I.R. against the petitioners. Mr. Datta further submits that since the goods were meant for the public distribution system and were in line to be diverted for export to Bangladesh, the question of interference by this Court, at this stage, does not arise when the investigation is in progress by the pertinent authorities. Mr. Datta also argued that the investigation was of utmost importance since the declared export price of the seized wheat per quintal was astonishingly, found to be less than the prescribed minimum support price (MSP) of the said crop.
14. I have considered the submissions made on behalf of the learned Counsel appearing on behalf of the parties and perused the materials placed on record.
15. I do not want to join issue with any of the judgments cited by the petitioners. The same are on principles of law and are to be followed by me as per principles established in law. One need not quarrel with the proposition that a writ court has the power to quash a F.I.R. The Supreme

Court judgments have made it clear that a F.I.R may be quashed under Article 226 as also under Section 482 of the Code of Criminal Procedure by the High Court. I further make it clear that if this writ court were to find that no offence was made out in the F.I.R the same would be liable to be quashed and any proceedings that have been under taken by the police and ACJM, Basirhat based on such a F.I.R may also be quashed. This would also apply to any order of issue of warrant of arrest that may have been issued by the ACJM, Basirhat. However, it appears from the records that in this present matter, I need not go into the issue of quashing of the F.I.R as discussed in the paragraphs below.

16. Upon a careful perusal of the order passed by the Division Bench, it is explicitly clear that only the confiscation order dated October 29, 2020 has been set aside. However, this Court cannot lose sight of the fact that the Division Bench had declined to agree with the submission of the petitioners (appellants before the Division Bench) that the F.I.R does not disclose a violation of a control order passed under Section 3 of the E.C Act. The Division Bench had also recognized that since the seized goods were meant for distribution under the State's public distribution system and given the fact that the petitioners attempted to divert the same under the veil of exports, the State was directed to proceed with the investigation against such a grave allegation and to ensure a logical conclusion of the same. In other words, the Division Bench had agreed with the submissions of the learned Advocate General with regard to non-quashing of the F.I.R by the writ court.

17. Given the Division Bench's stringent observation, this Court is bound by the same and is disinclined to rule in favour of the writ petitioners in quashing the F.I.R under the writ jurisdiction of this Court. As per the settled doctrine of *stare decisis*, a legal pronouncement of a superior forum, in a hierarchical structure, when cited before a inferior forum is binding on the inferior forum. If a judgment of a Division Bench is placed before a Single Judge of the same High Court, then the law recognized in such a judgment is binding for all practical purposes unless the judgment is patently contrary to the applicable statute or it is contrary to a Supreme Court judgment. If any reference is sought on the above point, reliance may be placed on the judgment of this Court in ***Bijon Mukherjee -vs.- State of West Bengal*** reported in **2018 (4) CHN (CAL) 454**.

18. In the present case, the Division Bench has already examined the F.I.R. and explicitly decided that it cannot be stated that the F.I.R does not disclose any offence. Once such observations are on record from a superior forum in this matter itself, no further examination by this Court is necessary as this Court cannot hold to the contrary keeping in mind the Doctrine of Precedent and *stare decisis*, as discussed above. In fact, in my view, filing of affidavits by parties shall also not bear any fruit for either parties. As is crystal clear from the grounds of appeal (Ground Nos. VI, X & XI) the issue in relation to quashing of F.I.R was before the

Superior Court and the Court has decided on the same against the petitioners. That being the case, I see no reason to keep this batch of writ petitions pending.

19. After the matter was heard comprehensively for two days, the learned Advocate General pointed out that the classification of the writ petition shows “residuary”. Accordingly, he submitted that the matter should have actually appeared before the Hon’ble Judge taking up residuary matters. Counsel on behalf of the petitioners submitted that since the matter conjointly dealt with confiscation of essential commodities and quashing of a F.I.R based on an offence under the essential commodities, the determination would be before the Judge taking up essential commodities matters. Accordingly, leave is granted to the advocates on record to carry out the correction in the writ petition. In any event, since the matter related to confiscation of goods relating to essential commodities, there is no impediment in my taking up this matter.
20. Mr. Bandopadhyay has further submitted that the order made by the Division Bench was against an interim order and therefore, the finding in the said order cannot act as a binding precedent upon the Single Judge. However, upon a reading of paragraph 19 of the said Division Bench order it is clear that the Court has rejected the submission of the petitioner that no offence was made out in the F.I.R. The Court specifically directed the State to proceed with the allegations made in the investigation. Upon such directions having been passed, I am of the view that my hands are tied

now with regard to examining an issue that has already been dealt by the Division Bench. The finding of the Division Bench does not appear to be a prima facie finding as directions have also been given in furtherance of the said findings. In light of the same, both the issues in the writ petition with regard to the confiscation and quashing of the F.I.R have been answered by the Division Bench and the Single Bench is now required to follow the same.

21. Therefore, the precedents relied on by the petitioners does not help their cause. In view thereof, this Court declines to quash the F.I.R. registered against the petitioners while exercising its discretionary remedy under the writ jurisdiction. The petitioners shall of course be at liberty to proceed against the alleged illegal orders passed by the ACJM, Basirhat including the warrant of arrest issued by the ACJM, Basirhat before the appropriate forum.
22. The Division Bench has given liberty to the State to initiate fresh confiscation proceedings that are to be concluded within a period of eight weeks. In parting, this Court also directs the State authorities to ensure that the goods that have been seized are kept in a secured manner as directed by the Division Bench. I make it clear that in the event the goods are detained without having been seized or detained as per law, the State authorities shall not create any impediment and shall release the same forthwith.

23. Accordingly, this batch of writ petitions is disposed of along with all connected applications.
24. Since affidavits are not exchanged, allegations made in the writ petitions are deemed not to have been admitted.
25. I would go amiss if I do not put on record the diligent efforts by the counsels appearing on behalf of all the writ petitioners namely, Mr. Sagar Bandopadhyay, Mr. Biswaroop Bhattacharjee and Mr. Arijit Chakrabarti as well as the learned Advocate General on behalf of the State. The counsels have assisted me assiduously and with great aplomb.
26. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)