

29.11. 2022
item No.27
n.b.
ct. no. 551

CRR 980 of 2018

**Nirmal Kumar Agarwala
Vs.
The State of West Bengal**

Mr. Subhodip Paramanick,
Mr. Amit Ranjan Pati,
... for the petitioner.

Mr. Navanil De,
.... For the State.

This is an application under Sections 401,397 and 482 of the Code of Criminal Procedure filed by the petitioner challenging the order dated March 17, 2018 and April 16, 2018 passed by the learned Additional Chief Judicial Magistrate Raghunathpur rejecting an application for releasing of the seized kerosene oil in connection with Kashipur P.S. Case No.08 of 2018 dated 25.01.2018 under Section 7(i)(a)(ii) of Essential Commodities Act 1955.

The brief fact of the case is that on the basis of an information lodge by one Partha Kumar Bhuinya, Sub Inspector of Police, Kashipur P.S., Purulia. A FIR No.08 of 2018 dated 25.1.2018 has been registered under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 against the petitioner. Nine barrels of Kerosene oil containing 220 liters each and ten liters of loose kerosene oil in barrel in his shop was seized during the course of investigation. After completion of investigation police

submitted charge-sheet. The petitioner being the accused submitted a prayer before the learned Judicial Magistrate for release of the kerosene oil. The prayer of the petitioner was earlier turned down before the completion of the investigation on 17.3.2018 and, therefore, finally on April 16, 2018. Being aggrieved by these orders the instant revisional application was filed.

Learned advocate for the petitioner submitted before this Court that the seized kerosene oils are the public property and investigation of the police ended in charge sheet, keeping the kerosene oil would automatically evaporated and the public property would be demolished. He further argued that the I.O. has submitted a report after completion of investigation that he has no objection if the kerosene oil was returned to the petitioner. Instead of his prayer, of the petitioner was turned down by the learned court below, which would improper and illegal in the eye of law. So, he prayed for setting aside of the impugned order and for specific direction.

Learned advocate appearing on behalf of the State submitted before this Court that though I.O. has submitted the report but before the completion of the trial of the case, the kerosene oil that is seized property cannot be handed over that may deemed to be used as material in the trial. Material has to be exhibited before the court at the time of trial unless which the trial cannot be concluded.

Heard the learned advocate perused the impugned order and also perused the Case Diary and other materials. After

completion of investigation the I.O. has submitted a report that he has no objection if the seized kerosene oil be handed over to the petitioner in 'Jimma'. The fact alleged in the charge-sheet the kerosene oil was stored by the petitioners violating his licence conditions thus they were required from the possession of the present petitioner. It was also not denied by the petitioner that it was seized from his shop room. The defence as well as the prosecution case shall not be any hamper if the 'Jimma' of the kerosene oil is handed over to the petitioner. During the trial of the criminal case the material exhibits is required to produce in the court but in this case the documents regarding the licence and purchasing bills/disbursing challans of kerosene oil would be sufficient for production of the material. The huge amount of kerosene oil not required to be produced before the Court of law for the purpose of materials exhibits.

Considering the same, I find no justification to keep the kerosene oil in the Jimma' of the prosecution instead of which the 'Jimma' of the seized kerosene oil may be handed over to the petitioner, so that he may dispose of the same being the public property. However, it is directed that the petitioner shall make proper inventory, keep proper accounts of the seized kerosene oil regarding its measurement and bills of accounts of disbursing challans etc.

The petitioner is also directed to hand over the account book etc. in respect of seized kerosene oil to the investigating agency or before the trial Court as and when it will call for. Accordingly, the impugned order passed by the learned Court

appears to me improper and they are set aside. The prosecution is directed to hand over the 'Jimma' of the kerosene oil to the petitioner. The learned court below is at liberty to receive such undertakings from the petitioner or/ and impose such conditions, which learned Court below thinks fit and proper in respect of the facts the circumstances of the particular case.

Accordingly, CRR 980 of 2018 is disposed of.

Connected pending applications, if any, are consequently disposed of.

Any order of stay passed by this Court during the pendency of the instant revisional application is also vacated.

Let of this order be sent down to the Learned Court for his information and necessary action.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)