

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3527 of 2018

Parbati Sankar Nandi

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Rajdeep Mazumdar
Mr. Moyukh Mukherjee
Ms. Radhika Agarwal

For the State : Mr. Sudip Ghosh
Ms. Debjani Sahu

Heard on : 31.8.2022

Judgment on : 14.09.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the proceeding of GR case no. 2143 of 2018 arising out of Baharampur Police Station case no. 686 of 2018 dated 24.6.2018 under Section 379/411/413/414 of the Indian Penal Code read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, now pending before the court of learned Chief Judicial Magistrate, Berhampore, Murshidabad, the present petitioner has preferred this application under Section 482 of the Code of Criminal Procedure.

2. A *suo motu* complain was lodged by ASI, Baharampur police station on 24.6.2018 and the allegation levelled in the said complain *inter alia* states that on 24.6.2018, the opposite party no. 2 along with other police personnel were performing mobile duty on NH-34, when at about 15.15 hours, he received information from source that some trucks loaded with PDS rice were coming from Banjotia FCI Godown for selling rice at local market at a higher price. It is further mentioned in the complaint that on reaching the said spot the opposite party found four trucks loaded with several sacks of rice. During the search one of the four truck drivers managed to escape from the spot and on interrogation other three drivers disclosed that they procured the said food grains from Banjotia FCI Godown in connivance with the official staff of FCI Godown as per the direction of one ration dealer namely, the petitioner herein, for delivering the same to Ganga rice mill at Berhampore at a higher price. It was also alleged in the complain that 285 sacks of rice were recovered from truck no. WB 57A 2662, 292 sacks of rice from WB 57/ 4009, 281 sacks of rice from truck no. WGQ 1811 and 282 sacks of rice from truck no. WGQ 1325 with the help of local people. It is further alleged in the complain that aforesaid drivers failed to produce any valid paper in support of their trucks along with loaded rice. The complainant seized all the four trucks along with loaded rice under seizure list and it is alleged further that drivers of the truck procured the PDS rice either by stealing or by any fraudulent means to Ganga rice mill, Baharampur.

3. On the basis of aforesaid complaint, Baharampur police station case no. 686 of 2018 dated 24.6.2018 under Section 379/411/413/414 of the Indian Penal Code read with Section 7(1) (a) (ii) of the Essential Commodities Act against the accused persons including the petitioner herein, was started.

4. Learned advocate for the petitioner Mr. Rajdeep Mazumder submits that on a bare perusal of the aforesaid allegation it is clear that the offence alleged have no manner of application against the petitioner herein as it does not disclose the ingredients of the alleged offence. He further submits that the allegation that the alleged trucks containing 1140 sacks of rice were allegedly being illegally taken by the petitioner from FCI Godown of Banjotia to Ganga Rice Mill are false because the said consignment of rice was actually been transported from FCI Godown to the warehouses of the petitioner herein, which is situated at Domkol, as per regular course of business. This is also substantiated from the truck challans given from the CWC warehouses for nine other trucks which transported rice for the same warehouses on the alleged date of incident i.e. on 23.6.2018. In pursuance of the delivery order no. 18A 0925, the petitioner was carrying the goods and the documents produced by the petitioner are of sterling and unimpeachable character and the same goes to the very root of the allegations. He further submits that in this context it would be worthy to mention that in the above backdrop, on 3.7.2018, the District Collector, Food and supplies, issued a show cause notice with suspension notice to the petitioner. On 10.7.2018 the petitioner herein duly submitted his reply to the said show cause notice denying all the

allegations. Subsequently after hearing and being satisfied with the points put forward by the petitioner, the suspension order issued against the petitioner herein was withdrawn and recalled.

5. Mr. Mazumder further submits that the allegation of theft as well as other ancillary allegations like recovery of theft articles from the possession of petitioner does not hold good in view of the allegations projected. The articles in question do not belong to the officer-in-charge of Baharampur police station and therefore, it is trite law that the owner of stolen article has to file a complain of theft against the accused whereas the instant case was lodged *suo motu* against the petitioner herein which is against the established and settled principle of law.

6. Be it also mentioned, upon completion of the investigation, police has submitted charge-sheet and on bare reading of the charge-sheet it becomes amply clear that there is no iota of allegation against the petitioner herein is concerned. Learned counsel for petitioner further submits that the allegations even if taken to be true, do not make out any cause of action giving rise to initiation of an investigation. Even if the prosecution story is accepted to be gospel truth, then also placement of fact singularly lacks either of the ingredients of the offence alleged.

7. Accordingly, the petitioner has prayed for quashing the entire proceeding. The petitioner in support of his contention has drawn the attention of this court in respect of the truck challans issued by the Government of West Bengal, food supplies department dated 23.6.2018 the petitioner has also filed

the delivery order which was time to time extended and lastly it was extended on 23.6.2018. In this context, the petitioner further drawn my attention to the show cause notice issued by the District Controller and the order by which the suspension notice was withdrawn by the concerned authority by order dated 31.8.2018.

8. Mr. Sudip Ghosh, learned Advocate appearing on behalf of the state submits that investigation has already been ended in charge sheet and the case is ready for trial and at this stage question of quashing the entire proceeding does not arise.

9. Needless to say that in order to constitute offence under Section 379 of the Indian Penal Code (IPC) following ingredients are required to be fulfilled:-

- 1) the accused removed the movable property
- 2) he removed it within possession of another person without his consent
- 3) he did so with a dishonest intention.

10. From the aforesaid definition, it is clear that where the accused is in lawful possession of the sacks of rice on the material date it does not amount to theft. A charge of committing theft is generally lodged when the thing said to be stolen is recovered from the possession of the accused. In the present case, no allegation of theft has been lodged by any one and police had merely became suspicious that the truck loaded with rice may have been moved with dishonest intention to sale somewhere else at a higher price. The prosecution must establish mala fide intention on the part of the petitioner whilst the article in question so removed. Accordingly any article moved with the consent

of Government authority cannot constitute a cause of action for bringing a charge under Section 379 of the Indian Penal Code.

11. Similarly in order to bring home the guilt against a person under Section 411, prosecution must prove 1) that the stolen property was in possession of the accused 2) that some persons other than the accused was in possession of the property before the accused got possession thereof and 3) that the accused possess the property with the knowledge that the property is stolen and he got possession of the property dishonestly. Here also dishonest intention is the *sine qua non* of the offence under this section. So the first ingredient of the offence under Section 411 is that the property must have been stolen and then such property was in possession of the accused and some other person before that got possession of the same. Furthermore, accused possesses the property with the knowledge that it was stolen property and accused got possession of the property dishonestly. In view of the documents submitted by the petitioner, it appears that neither of the ingredients of the offence alleged are present in the present case. The question of habitual dealings with stolen property also does not appear in the present context, in view of the fact that prosecution has not produced any such document in support of the habitual dealings with stolen property by the petitioner. Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, also does not have any application in the present context, in the absence of any regulating or prohibiting order of licence or permit of petitioner by the Government. Penalty under section 7(i) (a) (ii) arises only in case of violation of order made in this context.

12. Having considered the facts and circumstances of the case, it appears that the ingredients of the offence is completely absent in the present context either from the contents of the complaint or from the materials collected during investigation, and as such I am of the view that continuance of present proceeding any further will be an abuse of process of the court as the allegations levelled against the petitioner is not only absurd but also inherently improbable. Accordingly it is a fit case where invoking power under Section 482 of the Code of Criminal Procedure, the proceeding is required to be quashed.

13. In view of above, CRR 3527 of 2018 is allowed.

14. Let all further proceedings being GR case no. 2143 of 2018 arising out of Baharampur Police Station case no. 686 of 2018 dated 24.6.2018 under Section 379/411/413/414 of the Indian Penal Code read with Section 7(1)(a)(ii) of the Essential Commodities Act, now pending before the court of learned Chief Judicial Magistrate, Berhampore Murshidabad is hereby quashed.

However there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)