

15.03.2023
Court No.35
Item no.21

CRR 1512 of 2016

**G.V Seshan & Anr.
Vs.
The State of West Bengal & Anr.**

Ms. Devipriya Mitra.

.... For the opposite party.

Contravention of provisions punishable under Section 9 of Jute and Jute Textiles Control Order, 2000 and under Section 7 of the Essential Commodities Act, 1995, has been alleged against the present two petitioners. The petitioners are the Directors of Victoria Jute Works Private Ltd, and responsible for the functioning of the said concern. The petitioners are aggrieved with the criminal proceedings initiated against them under the above stated provision being G.R Case No. 2032 of 2012, now pending in Court of the Chief Metropolitan Magistrate, Calcutta. The connected police case is Hare Street Police Station Case No. 406 of 2012. They have prayed for quashing of the said proceeding against them.

Ms. Mitra, is representing the petitioners in this case. However, no one is appearing for the opposite parties in spite of due service, on occasions more than once and in spite of the present case having been pending in this list and called on several occasions.

Hence, without affording further opportunities to the

opposite party/State, this case is taken up for final determination, on second call.

Ms. Mitra submits that the FIR dated May 2, 2012, against the present petitioners is only a misconceived one. She has submitted that the allegations made in the said FIR, of supply of less number of jute bags and of infringement of the Control Order, 2000 and authority's order issued under the same, by the petitioners, is only a misconceived one. It is submitted that on August 22, 2012 the entire allocated quantity of jute bags have already been supplied and the mandates are duly complied with. It has further been pointed out that on May 18, 2012, the petitioners being in charge of the functioning of the Jute Mill, had duly informed the respective authority regarding their compulsion and inconvenience to produce requisite number of jute bags and also made request for cancellation of the requisition. According to Ms. Mitra, the authorities had never paid any heed to such prayer of the petitioners. As such, she says, that the FIR lodged against the petitioners alleging to be responsible for willful violation of the provisions of the Control Order and mandates of the authorities, is only unfounded, misconceived and baseless. She further says that accordingly there cannot be found any cognizable offence to have been made out in the said FIR against her clients. According to her, it is also that the allegations made in the said FIR, even if to be taken on their face value, do not make out any case against the present petitioners. On this ground Ms. Mitra has prayed for quashing of the FIR and the entire criminal

proceeding against her clients.

The prosecution was initiated with filing of the FIR dated May 2, 2012, being registered as Park Street Police Station Case No. 155 of 2012. According to the FIR, Jute and Jute Textiles Control Order, 2000 was operating in the field of controlling the supply and distribution of the jute materials in terms of the statutory provision. The Jute Commissioner was entitled under the said Control Order (Clause 4) to take all steps necessary for implementation of the Jute Packaging Materials (compulsory use in packaging commodities) Act, 1987, or any other directive of the Central Government. He was also entitled to order, direct any manufacturer or class of manufacturers or the manufacturer generally, to produce such quantities of such classes or specification of Jute Textiles, as may be specified in the order for such implementation. Production Control Order dated March 2, 2012, was issued for the period of December 2011 – April 2012 against the company of which the petitioners are the Directors, to produce B-Twill jute bags of stipulated specifications and quantity. Allegedly in contravention of such order the Mill has produced and supplied lesser number of jute bags, causing prejudice to the Government. Accordingly the defacto complainant has alleged offence under Clause 9 of the Jute and Jute Textiles Control Order, 2000 read with Section 7 of the Essential Commodities Act, 1955 against the present petitioners.

The petitioners have been alleged to have violated the regulatory order of the authorities and thereby committing breach

of a statutory provision of law. Regulations are meant for proper conduct of business. Compliance by the petitioners as the Director of the Jute Mill, of the regulatory order of the concerned authorities would amount to due discharge of their liability under the said Control Order as well as statutory provision, for which they cannot be subjected to any prosecution. It is a fact in this case, accepted and not disputed that, the Jute Mill to which the petitioners are Directors, has duly discharged its liability of compliance of the Production Control Order, as was imposed against it. Under such circumstances it is farfetched and difficult to conceive that the petitioners, being the Directors of the said Jute Mill can be entangled in any criminal liability for willful violation and disobedience of such a regulatory measure, which was required to be complied with vide order issued by the authorities.

Another notable point in this case is the failure on part of the prosecution to incorporate the Jute Mill as a party to this case. The petitioners being the Directors of the Jute Mill are vicariously liable for the alleged inaction, if any committed by the Jute Mill. In a case of like nature it was imperative for the prosecution to make the Jute Mill a party to it, in absence of which any prosecution against the Directors thereof cannot be maintainable in the eye of law.

On the grounds as stated above, this Court is constrained to hold that there is no cognizable offence made out against the present petitioners in the FIR and also that the allegations made

in the FIR would not constitute a prosecutable case against them. This must lead this Court to find that proceeding against the petitioners any further, would only amount to abuse of the process of Court which is however to be prevented by this Court in exercise of its inherent power under Section 482 Cr.P.C, 1973.

On the discussions as made above, it therefore appears that the present revision is legible to succeed.

Criminal revision being C.R.R No.1512 of 2016 is allowed. Applications, connected therewith, if any, are also disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

RAI
CHATTOPA
DHYAY

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CHATTOPADHYAY
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(Rai Chattopadhyay, J.)