

13.02. 2023
item No.41
n.b.
ct. no. 551

CRR 2174 of 2018

With

IA CRAN 4 of 2020 (Old No. CRAN 266 of 2020)

Preksha Kankaria & Anr.

Vs.

The State of West Bengal

Mr. Soubhik Mitter,
Mr. Soham Bandyopadhyay,
Mr. Aditya Chaturvadi,
..... For the Petitioners.
Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose,
.... For the State.

This is an application under Section 482 of the Code of Criminal Procedure for quashing of a proceeding being EB G.R. No. 06 of 2014 arising out of Beniapukur Police Station Case No.52 of 2014 dated 12.2.2014 under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Section 120B of the Indian Penal Code, 1860 pending before the Court of Learned 3rd Judicial Magistrate, Sealdah, South 24 Parganas.

The brief fact of the case is that the instant case was initiated by one, Tapan Goswami, Sub-Inspector of Police, Fuel Section, Enforcement Branch containing, inter alia, in a written complaint that the present petitioners had entered into criminal conspiracy and were running the illegal business of Lubricating Oil by way of storing and selling the same to the public, thereby violating the provisions of Para 2(h), Paras 3, 14 and 18 of the Lubricating (License Control) Order, 1967 without having any valid

documents and hence committed offences punishable under Sections 120B of the IPC and Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. On the basis of the aforesaid written complaint, Veniapukur Police Station Case No.52 dated 12/2/2014 was initiated and investigation was taken up by the police. After completion of investigation police submitted charge-sheet being charge-sheet no.158/14 dated 29.11.2014 under Section 120B of the IPC and Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. The present petitioners arrayed as an accused of the said criminal proceeding filed this revision before this Court with a ground that the Lubricating (License and Control) Order, 1967 has been declared as ultra vires by the Hon'ble Court and the criminal proceeding initiated and arising out of the violation of the said order cannot be allowed to be continued.

Learned advocate for the petitioners cited a judgment which was annexed with this petition as 'P-2' of the WP. No.2116 of 2000 between ***Lubricating Oil Dealers' Association and Anr. Vs. Union of India and Ors.*** The Judgment was delivered on 14.7.2017. The para 32 of the said judgment is reads as follows:-

“32. To conclude, the delegation of power to make Licensing Order, 1967 by the State has not been proved. The provisions in the Licensing Orders are not in tune with the object of the E.C. Act. Those are not in tune even with the object stated in the order itself. The object stated in the order has become irrelevant in view of the radical change of the scenario and as such the purpose no more exists today. The Licensing Order have imposed some unnecessary, unreasonable and illegal conditions in the trade of lubricating oil

which are violative of the provision in Article 19(1)(g) of the Constitution of India. So, for this reasons and decisions mentioned above, the West Bengal Lubricating Oil Licensing Order, 1967 is hereby declared ultra vires the provisions of the Essential Commodities Act, 1955 and such not enforceable in law.”

Learned advocate for the petitioners further submits that the order passed by the Hon’ble Court has not been reversed/set aside by the Hon’ble Apex Court or by the Division Bench of this Court, so he submits the same judgment is regarded as a good law till today. So the criminal proceeding initiated against the present petitioner on the basis of violation of the said control order cannot be allowed to be continued. So he prayed for quashing.

Learned advocate appearing on behalf of the State submitted by this Court that the present status report has collected and it was submitted before the Court that the proceeding is still continuing before the learned Court. He further submitted before this Court that it is true that the said order of Hon’ble Court has not been challenged or has not been reversed by order of any higher or Apex Court; so, necessary order may be passed.

Heard the learned advocate, perused the order passed by this Court in W.P. 2116 of 2000 para 32 is crystal clear and Hon’ble Court is of the view that the West Bengal Lubricating Oil License order, 1967 is hereby declared as ultra vires the provisions of Essential Commodities Act, 1955 as such not enforceable in law. I am at per with the view of the Hon’ble Court in W.P. No.2116 of 2000.

I have perused the entire judgment and I have also perused the FIR annexed with this petition. The submission of the learned advocate for the petitioners have substance, and the further continuation of the proceeding against the present petitioners would amount to abuse of process of law.

Accordingly, there is merit to entertain this instant criminal revisional application. It is a fit case where this Court may invoke its inherent power under Section 482 of the Code of Criminal Procedure to quash the proceeding.

As a result thereof, the criminal proceeding being, EB G.R. No. 06 of 2014 arising out of Beniapukur Police Station Case No.52 of 2014 dated 12.2.2014 under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Section 120B of the Indian Penal Code, 1860 pending before the Court of Learned 3rd Judicial Magistrate, Sealdah, South 24 Parganas is hereby quashed.

The interim order, if any, passed earlier by this Court is also hereby vacated.

Connected CRAN applications, if any, are also disposed of.

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

(Subhendu Samanta, J.)