

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 4085 of 2013

Nasir Ahmed Khan

-Vs-

The State of West Bengal

For the Petitioner : Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharjee
Mr. Anand Keshari
Mr. Aditya Ratan Tiwari

For the State : Mr. Avishek Sinha

Heard on : 03.04.2023, 13.04.2023

Judgment on : 22.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed for quashing of the proceedings of Dumdum Police Station Case No. 27 of 2011 dated 24.01.2011 corresponding to G.R. No. 542 of 2011 under Sections 269/278/284/285/336 of the Indian Penal Code, 1860 read with Sections 11C/12 of the West Bengal Fire Services Act pending before the Learned Judicial Magistrate, 3rd Court, at Barrackpore.

2. Petitioner submits in April, 2012 the petitioner along with another co-accused had filed an application under Section 482 of the Code of Criminal Procedure, 1973 before this Hon'ble Court seeking selfsame relief/reliefs which was registered as C.R.R. No. 2050 of 2012 when vide Order dated 30.09.2013 this Hon'ble Court was pleased to dispose of the same with liberty to the petitioner to file appropriate application. In pursuance to the said leave granted by this Hon'ble Court the instant application has been filed.
3. The petitioner being one of the partners of a registered firm viz S.A. Exports carried on business as merchants and exporters of processed marine products having its registered office at 548, Jessore Road, Kolkata – 700055. The said firm is designated as a “Star Export House” by the Director General of Foreign Trade, Ministry of Commerce, Government of India. The said firm had also been registered as merchant-exporter by the Marine Products Export Development Authority under the Ministry of Commerce & Industry, Government of India.
4. The petitioner stated that the said firm did not possess any processing unit of its own due to which the Marine Products Export Development Authority had issued the Certificate of Registration as “merchant exporter” and not as a “manufacturer exporter”. The certificate evidences inter alia that the said firm does not engage directly in manufacture of marine product and has such processing carried out by other qualified establishments.

5. The petitioner stated that one M/s. Veejay Impex, a partnership firm having its registered office on the 9th floor, India House, 69, Ganesh Chandra Avenue, Kolkata – 700013, had a processing, packing, freezing and storing marine products factory with two units with necessary expertise and infrastructure, and all the necessary sanctions, permissions and approvals granted by the concerned authorities together with Export Inspection Agency Approval No. 310 and Approval No. 425. The factory of M/s. Veejay Impex has been located at 548, Jessore Road, Kolkata – 700055, an industrial complex accommodating several independent enterprises on a plot of land admeasuring about 4 acres.

Since 2004 the aforesaid firm had entered into agreements from time to time with the said M/s. Veejay Impex for processing its raw materials into various kinds of frozen marine products and packing the same with materials provided by the said firm. Subject to the agreements, the firm all along supplied raw materials comprising of shrimps, prawns, lobsters and other marine species together with packing materials to M/s. Veejay Impex for processing the same into finished products, which was subsequently packed according to the specifications demanded by the importer/customers of the said firm. After the completion of processing and packing of the said marine products, M/s. Veejay Impex handed over the same to the firm on payment of agreed processing and packing charges. The agreements were valid for a period of three years and were made for each of the two units of M/s. Veejay Impex. The staff of the said factory [both managerial as well as workmen] at

all material times were and had been the employees of M/s. Veejay Impex and not concerned with the said firm.

6. The petitioner stated that processing agreements were endorsed on the Certificate of Registration issued by the MPEDA evidently by letter dated December 6, 2010 bearing No. REGN/VI/Kol./10/1510 addressed to M/s. Veejay Impex with a copy endorsed to the firm.
7. The petitioner further stated that under the terms of the agreements entered into between the firm and M/s. Veejay Impex, each year between the month of January to March, a particular month as per convenience of the parties was to be reserved for a complete operational shut down for the purpose of maintenance and overhauling. Accordingly in the year 2011 during January 11, 2011 the Unit – II of M/s. Veejay Impex was entirely shut down for maintenance and overhauling purpose. Consequently, in view of the same supply of the firm had not been made to Unit – II of the M/s. Veejay Impex during the month of January, 2011 at all.

It appeared that ammonia gas used in the cold storage plant for the purpose of freezing of Unit No. II of M/s. Veejay Impex had apparently leaked into the atmosphere on the evening of January 23, 2011, causing widespread panic in the area. The police, the Fire Brigade and the Disaster Management Authority of the Government of West Bengal sealed the aforesaid Unit No – II of M/s. Veejay Impex being notified.

8. The petitioner further contended that at the relevant time about two tons of frozen processed marine products were lying in the Cold Storage attached to Unit No. I of M/s. Veejay Impex. On account of such leakage of ammonia from Unit No. II the authorities had shut down the power to both the Units. It was therefore apprehended that the frozen marine products lying in Unit – I might commence to deteriorate in quality power being discontinued to the Unit No. I, in absence of electricity and accordingly the said firm had requested the police authorities by a letter dated January 25, 2011 seeking permission for removal of the aforesaid goods, which were permitted to be dislocated.
9. After the aforesaid leakage, based on an information Dum Dum Police Station Case No. 27 of 2011 under Sections 269/278/284/285/336 of the Indian Penal Code and Sections 11C/12 of the West Bengal Fire Services Act was initiated.
10. The petitioner further stated being informed of the instant case initiated against the petitioner and one co-accused, the petitioner along with the co-accused had approached this Hon'ble Court under Section 438 of the Code of Criminal Procedure, 1973 which was registered as C R M No. 875 of 2011. Vide Order dated 01.02.2011 this Hon'ble Court was pleased to allow the said prayer of the petitioner and the said co-accused. Subsequently, the petitioner herein had surrendered before the Court of the Learned Additional Chief Judicial Magistrate at Barrackpore on 11.02.2011 and was released on regular bail.

11. On completion of the investigation the investigating agency filed the purported Charge-Sheet being Charge-Sheet No. 71 of 2011 dated 31.03.2011 under Sections 269/278/284/285/336 of the Indian Penal Code read with Section 11C/12 of the West Bengal Fire Service Act.

12. Learned Advocate for the petitioner submitted that –

- i. The purported Charge-Sheet was but a replica of the First Information Report and does not in any manner reflect that any investigation was done to unveil the truth.
- ii. S.A Exports hereinabove referred to as the said firm is designated as a Star Export House by the Director General of Foreign Trade, Ministry of Commerce, Government of India and also as merchant exporter by the Marine Products Export Development Authority has not been reflected in the purported Charge-Sheet.
- iii. The purported Charge-Sheet is absolutely silent on the issue of that the processing of raw materials was carried on by one M/s. Veejay Impex and as such the petitioner does not have any role in the happening of the alleged incident.
- iv. The purported Charge-Sheet does not reflect as to whether any manner of investigation was done to find out as to whether the said firm had any processing unit of its own.
- v. The purported Charge-Sheet does not reflect that any manner of investigation was done to trace out the meaning and amplitude of the word “merchant exporter”.

- vi. The investigation authority failed to distinguish the subtitle difference in the word “merchant exporter” from that of “manufacturer exporter” as is alternately provided in the certificate of Registration.
- vii. Being granted the certificate of Registration as “merchant exporter” by The Marine Products Export Development Authority the said firm of the petitioner herein was in no manner permitted to engage directly in manufacture of marine products and as such the question of the involvement of the petitioner herein in the commission of the aforesaid alleged offences cannot and does not arise.
- viii. The concerned investigation officer did not find it fit and proper to consider that the processing agreements entered into by the said firm which the petitioner is a partner were all endorsed on the Certificate of Registration issued by the Marine Products Export Development Authority.
- ix. The Learned Magistrate while taking cognizance of the offence by relying on the purported Charge-Sheet failed to appreciate that nothing in the Charge-Sheet reflected that the petitioner herein had committed an offence punishable under Section 269 of the Indian Penal Code, 1860 the provision of which inter alia specifies that “whoever unlawfully or negligently does any act which is, and which he knows or has reasons to believe to be, likely to spread the

induction of any disease dangerous to life,” shall be liable for having committed an offence under the said provision.

- x. The Learned Magistrate failed to appreciate that neither the petitioner nor the said firm dealt with processing work and as such does not fall within the purview of Section 278 of the Indian Penal Code which inter alia provides as follows:- “Whoever voluntarily initiates the atmosphere in any place so as to make it noxious to the health of persons or general dwelling or carrying on business in the neighborhood or passing along a pathway shall be punished with fine which may extend to five hundred rupees”.
- xi. The investigating officer failed to enquire into the fact that on the scheduled date the said Unit – II where the incident had taken place was shut down for maintenance and overhauling purposes and at this juncture the said firm of the petitioner’s herein did not supply any raw material to M/s. Veejay Firm for processing.
- xii. The petitioner herein was in no manner liable to invigilate with the running or maintenance of the said factory namely M/s. Veejay Impex which in any event was under the strict vigilance and checks by the Export Inspection Agency of the Government of India and the Marine Products Export Development Authority.
- xiii. Neither the said firm nor its partners were the owner of the factory where the said leakage occurred thereby making the purported

Charge-Sheet and the impugned order failing cognizance of the offence unwarranted in the eyes of law.

- xiv. The Learned Magistrate while taking cognizance of the offences under Sections 284/285 of the Indian Penal Code failed to appreciate that no ingredients which are required to commit an offence under the said provisions has been reflected in the purported Charge-Sheet.
- xv. The Learned Magistrate failed to construe from the cyclostyle reproduction of the First Information Report in the purported Charge-Sheet that in effect no offence under Section 336 of the Indian Penal Code, is made out against the petitioner herein thereby making the impugned order per se prejudicial to the interest of justice.
- xvi. The Learned Magistrate failed to consider that the concerned investigating officer had failed to make out a case against the petitioner herein which came within the purview of sections 11C/12 of the West Bengal Fire Services Act, 1956.
- xvii. The Learned Magistrate in Court below has failed to consider that it is trite law that before initiation of prosecution in respect of offences under Section 11J of the West Bengal Fire Services Act, 1856 for contravention of provisions of Chapter IIIA of the said act, a notice under Section 35 of the Act has to be served upon the owner or occupier of the said premises. Such notice, which is the condition precedent for initiation of the proceedings under this special legislation, was not served in the instant case. It is an admitted

position that no notice was served upon the petitioner or any co-accused under Section 35 of the said Act prior to incident and as such there cannot be initiation of prosecution under the said Act.

xviii. No prosecution has been launched and no case has been registered inter alia against the petitioner herein for non compliance of the notice under Section 35 of the said Act as no such notice was ever issued by the said office.

xix. The initiation of prosecution without following the procedure of law i.e. without serving the notice under Section 35 of the said Act and resultant non-compliance thereof has laid to travesty of justice and for the said reason, the proceedings is liable to be quashed forthwith.

xx. In any view of the matter the purported Charge-Sheet and impugned order taking cognizance of the offences are unwarranted in the eyes of law and is liable to be set aside and accordingly quashed to secure the ends of justice.

13. The agreement executed by and between the parties on 6th October, 2008, inter alia, stated that:-

“M/S. VEEJAY IMPEX, a Registered Partnership Firm, having its office at 69, Ganesh Chandra Avenue, 9th Floor, India House, Kolkata 700013 represented by its Partner Mr. Kishoro V Samtani, S/o Lt Vashdev P Samtani, residing at 1-B, Minto Park, Kolkata 700027, hereinafter referred to as “Professor” (which expression shall include unless it is repugnant to the context or meaning thereof, its successors & assigns.)

AND

M/S S A EXPORTS, a registered Partnership having its registered office at 548 Jessore Road, Kolkata 700055, represented by its Partner Mr. Naseer Ahmed Khan, S/o Lt. Hazi Abdul Gafur Ahmed Khan residing at 4/1, J K Ghosh Rd., Belgachia, Kolkata 700037, hereinafter called the “Merchant Exporter” (which expression shall include unless it is repugnant to the context or meaning thereof its successors and assigns.)

- a. The Merchant Exporter is engaged inter alia, in the business of exporting various types of Frozen marine products;*
- b. Veejay Impex engaged itself inter alia in the business of processing, packing and freezing exporting marine products for its own business and profit making activities has necessary expertise and infrastructure for the processing, freezing and packing of marine products as well as has cold storage facility at its factory bearing Export Inspection Agency (EIA) Approval No. 310 located at 548 Jessore Road, Kolkata-700055.*
- c. The Merchant Exporter is desirous of utilizing the facilities and expertise of M/s. Veejay Impex for processing, Packing and storing of various types of frozen marine products.*
- d. M/s. Veejay Impex has agreed to process the raw materials provided by the Merchant Exporter into various types of frozen marine products and pack the same with the packing materials provided by the Merchant Exporter on the terms and conditions herein contained.*

.....

1.3 ‘Premises’ means Veejay Impex processing-cum-cold storing factory located at 548 Jessore Road, Kolkata-55, West Bengal.

1.4 ‘Processing charges’ means charges payable by the Merchant Exporter to M/s. Veejay Impex as per the clause 4 of this Agreement for all the activities to be undertaken by Veejay Impex as per the terms and conditions under this Agreement.

1.5 ‘Raw Materials’ means and includes shrimps, prawns and wholefish, and other main products supplied by the Merchant Exporter to Veejay Impex for the purpose of processing and packing the same

into frozen products in the said premises under this agreement from time to time.

2. SCOPE OF THE AGREEMENT

During the period of this Agreement i.e. from 01.10.2009 to 30.09.2012 Veejay Impex shall process the raw material procured by the Merchant Exporter into frozen products, pack the same in packing materials and store the same in the cold storage of M/s. Veejay Impex, at the premises, according to the terms and conditions in this Agreement. The above tenure of the Agreement is inclusive of a period of normal shut down for one month of the factory for regular maintenance that is normally undertaken during the period between January and March, depending on availability of raw material and mutual consent between the parties. The Merchant Exporter shall pay such processing charges as stated herein for the services rendered and providing other facilities to be provided by M/s. Veejay Impex under this agreement.

.....

5. STORAGE CHARGE

Upto 30 days there will be no extra charges for storing materials. If material kept more than 30 days then per carton will be charges extra Rs. 1.50 paisa per kg. per month or part thereof.

6. The processing charge will be paid by Merchant Exporter every fortnightly for the production of that month and payment in time shall be the essence of the contract.

7. All E.I.A Inspection fee and testing fee will be borne by Merchant Exporters.

8. All loading and unloading charges at the time of carrying materials to the factory and also at the time of making shipment will be borne by the Merchant Exporter.”

14. Similar terms as aforestated have been delineated in the agreement executed between the parties on 12th November, 2010. The addresses of the parties

are distinct. The present petitioner utilized the premises for the purpose of storage of the processed frozen marine products belonging to M/s. Veejay Impex at the premises i.e. M/s. Veejay Impex processing cold storage factory located at 548, Jessore Road, Kolkata-700055, West Bengal at a charge stipulated in clause 4,5, 6, 7, & 8 of the aforesaid agreement which stated as follows:-

“4) Processing, Packing and Storage charges will be as below:

A. For headless shell on HLT, Scampi, White and Brown Rs. 19.00/- per kg on finished product for USA shipment and for other shipment Rs. 18/- per kg.

B. PUB/PTO/P&D Shrimps Rs. 12/- per kg. On Finished product.

C. All fish items Rs. 9/- per kg. On Finished Product.

D. A FROM Head on to Headless Rs. 3.50 per kg.

5) STORAGE CHARGE upto 30 days there will be no extra charges for storing materials. If material kept more than 30 days then per canton will be charges extra Rs.1.50 paisa per kg. per month or part thereof.

6) The processing charge will be paid by Merchant exporter every fortnight for the production of that month, and payment in time shall be the essence of the contract.

7) All E.I.A inspection fee, all types of testing fee, will be borne by Merchant exporters.

8) All loading and unloading charges at the time of carrying materials to the factory and also at the time of making shipment will be borne by the Merchant Exporter.”

15. Sections 11C/12 of the West Bengal Fire Services Act states as follows:

“11C. Owner or occupier of high-risk building to provide fire prevention and fire safety measures. - (1) The owner or, where the owner is not traceable, the occupier of a high-risk building or part thereof shall provide fire prevention and fire safety measures in such building or part thereof and the occupier shall maintain the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of this Chapter or the rules made thereunder :

Provided that in the case of such building or part thereof, the construction of which has been completed on any date before the date on which this Chapter comes into force, the occupier and, in the case of such building or part thereof which is under construction on the date immediately before the date on which this Chapter comes into force, the owner shall undertake and carry out such additional fire prevention and fire safety measures as are specified in the notice served on him under section 35.

(2) The owner or occupier of a high-risk building, as the case may be, shall furnish to the Director or the nominated authority a 'Fire Safety Certificate' in the prescribed form issued by a licensed agency in the manner prescribed.

(3) The State Government may require compulsory endorsement of 'Fire Safety Certificate' by the Director or by a superior nominated authority in respect of any class or classes of high-risk buildings as may be notified by the State Government from time to time:

Provided that the Director or a superior nominated authority shall not endorse any 'Fire Safety Certificate' unless he or it is satisfied about the

fire prevention and fire safety measures including safety of electrical installations and provision of supply of adequate quantity of water for fighting purposes made by the owner or occupier of such building.

(4) The occupiers of all high-risk buildings shall carry out a mock fire drill involving the watch and ward staff of such buildings every year under intimation to the Director or the nominated authority in such manner as may be prescribed and a certificate of performance of such drill shall be furnished to the Director or the nominated authority, as the case may be.

(5) No person shall tamper with, or alter, or remove, or cause any injury or damage to, any fire prevention or fire safety equipment installed in any such building or part thereof or instigate any other person to do so.

...

12. Bar to use of premises for storing or processing hazardous substances without license. - *No premises in any area where this Act is in force shall be used for the purpose of storing or processing at any material point of time hazardous substances beyond such quantity as may be prescribed unless the owner or occupier thereof shall have previously been granted a license by the Collector."*

16. The complaint lodged by the Station Officer, Cossipore Fire Station, West Bengal Fire & Emergency Services dated 24.01.2011 before the Officer-in-Charge of Dum Dum Police Station, inter alia, stated as follows:-

"Dear Sir,

Ammonia gas was profusely leaking from the ammonia plant of the aforesaid establishment at about 04.10 p.m. dated 23.01.2011 as a result the entire locality got effected by the ammonia gas. During the operation, it is observed that crack generated in cylinder/receiver resulted in fatal incident.

On preliminary investigation, it is revealed that said establishment is running without fire safety certificate/Fire Service License and in violation of Section 11C, 12 of the West Bengal Fire Services Act, 1950 amended in 1996 with up to date. This is a cognizable offence and

non bailable under Section 11J, 11L & 26 of the aforesaid act and relevant Sections of I.P.C.

You are requested to lodge an F.I.R. against Mr. Kishore V. Samtani, Mr. Anis Ahmed Khan & Mr. Nasir Ahmed Khan reported to be the owner/partner/occupier of the said establishment and initiate appropriate action in the interest of Public safety.”

17. The Learned Advocate for the State submitted that the S.A. Exports had informed the Officer-in-Charge, Dum Dum Police Station on 25th January, 2011 that they had entered into an agreement with the said Veejay Impex for processing their raw materials into various kind of frozen Marine products and packed the same with packing material provided by them.
18. It was further submitted by the Ld. Advocate for the State that the premises no. 548 is a large plot of land, comprising of more than 12 bighas. M/s. Veejay Impex had two processing factory/plants unit no. I and unit no. II in a portion of the said premises no. 548, Jessore Road. S.A. Exports had taken lease of an area of 400 Sq. Ft. being a building situated in a portion of the said premises no. 548, Jessore Road as the registered office of the firm which was separated from the aforesaid units of M/s. Veejay Impex. There were other offices, factories and business premises on the other portion of the said premises no. 548, Jessore Road.
19. The Learned Advocate for the State submitted since, the petitioner had a portion of the premises under its control, utilizing the same as the registered office was responsible for maintenance of the place of occurrence and was liable for negligence thereof, though he was not the owner or the occupier of the place of occurrence.

20. Admittedly, the cold storage facility was provided at the factory located at 548, Jessore Road, Kolkata-700055, where the processing of frozen marine products was conducted along with packaging and storage which was also utilized by M/s. Veejay Impex. The “Scope of agreement”, as a term of the agreement executed between the parties as aforesaid stated that *“the Merchant Exporter shall pay such processing charges as stated herein for the services rendered and providing other facilities to be provided by M/s. Veejay Impex under the agreement”*.
21. The maintenance of the aforesaid cold storage factory including compliance with safety rules was not cast upon the petitioner as would be evident from the terms of the agreement as aforesaid and cannot be held liable for the offence alleged.
22. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon’ble Supreme Court has held as follows :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any

¹ 1992 Supp (1) SCC 335

precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

23. In view of the above discussions, where the complaint did not express specific overt act on the part of the petitioner to have been involved in the alleged offence, who was neither the owner or the occupier of the portion of the premises being no. 548, Jessore Road, Kolkata-700055, where a cold storage factory had been situated. The petitioner utilized the facility of processing, packaging and storage of the frozen marine products in the capacity of a merchant exporter and was neither the owner nor the occupier of the place of occurrence. The petitioner paid the charges as stipulated in the agreement, for utilizing the premises as aforesaid. The petitioner was not endowed with the responsibility to maintain the premises as per the agreement and comply with the provisions of safety in accordance of West Bengal Fire Services Act. The petitioner was designated as ‘Merchant Exporter’ since he did not possess any manufacturing or processing unit of his own.

24. Moreover, the company was not made a party. The provisions of Section 35 of the West Bengal Fire Services Act with regard to service of notice was not

complied with. To allow and continue with the trial will result in abuse of process of law.

25. Accordingly, the instant criminal revisional application is allowed.
26. The proceedings being G.R. No. 542 of 2011, arising out of Dum Dum Police Station Case No. 27 of 2011 dated 24.01.2011, under Sections 269/278//284/285/336 of the Indian Penal Code, 1860 read with Sections 11C/12 of the West Bengal Fire Services Act pending before the Learned Judicial Magistrate, 3rd Court at Barrackpore is quashed.
27. Connected application if any is also disposed of accordingly.
28. There is no order as to cost.
29. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
30. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)