

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 648 of 2017

With

CRAN 2/2017 (Old CRAN 5166/2017)

Sk. Abdul Sabir

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Mrityunjay Chatterjee, Adv.
Mr. Debapriya Majumder, Adv.
Mr. T. Hazra, Adv.
Mr. A. Sarkar, Adv.

For the State : Mr. N.P. Agarwala, Adv.
Mr. Pratick Bose, Adv.

Heard on : 03.01.2024

Judgment on : 30.01.2024

Ajay Kumar Gupta, J:

1. The petitioner seeking quashing of proceeding being GR case No. 531 of 2017 arising out of Raina P.S. Case No. 38 of 2017 dated 17.02.2017 under Section 19 of West Bengal Cold Storage (License and Regulation) Act, 1966 (hereinafter referred to as 'the said Act') read with Section 4Q of the Cold Storage (License and Regulation) Rule, 1967 pending before the Learned Court of the Chief Judicial Magistrate, Burdwan by filing this revisional application.

2. The essential facts of the case are relevant for the disposal as hereunder:

On 17th February, 2017, the Asst. Director of agricultural marketing (administrative), Burdwan lodged a written complaint alleging, inter alia, that directors of M/S Prathana Food Processing Private Limited having its office at Badsahi Road, Bolpur, Machkhanda, Burdwan, violated the provision of Section 19 of the West Bengal Cold Storage (License and Regulation) Act, 1966 read with Section 4Q of Cold Storage (License and Regulation) Rule, 1967 and carrying on business of storing of Potatoes without a valid licence resulting in registration of Raina Police Station Case No. 38 of 2017 dated 17th February, 2017 under Section 19 of the West Bengal Cold Storage (License and Regulation) Act, 1966 read with Section 4Q of the Cold

Storage (License and Regulation) Rule, 1967 though the contention of the petitioner is that carrying on business of storing of potato since 2008 having valid licence No. 700 dated 15th January, 2008 and, thereafter, several occasions the said licence was renewed from time to time by the competent authority as such there is no question arises for any violation of provision of law. Under the above circumstances, the present application has come up before this Bench for quashing of the proceeding as it is abuse of process of law.

3. Learned Advocate appearing on behalf of the petitioner submitted that on 14th March, 2014, the petitioner applied for further renewal of licence of the cold storage from 5th January, 2013 to 14th January, 2014 with licence fee of Rs. 200/=. Subsequently, the authority directed the petitioner to submit documents regarding renewal process. As per requirement, petitioner has submitted the required documents but no licence has been issued by the competent authority. The petitioner further applied for cold storage licence on 11th August, 2014 after paying the renewal fees of Rs. 200/= and, thereafter, time to time the petitioner has applied for the renewal of licence after paying fees of Rs. 200/= through challans for subsequent years.

4. It is further submitted that Vide memo No. 1116 (121)/CS/2016 dated, Burdwan, 9th December, 2016 informed all the cold storage licensees including the petitioner that in pursuance of notice being memo No. 3870/1 (20), dated 25th of November, 2016 issued by the director- in- charge, agricultural marketing, West Bengal and licensing officer, loading of potatoes to the cold storage for the season 2017 shall not be allowed before 1st March, 2017 as per stipulation of Schedule [vide rule 4 (g)] with a view to avoid entry of immature potatoes in the cold storage.

5. It is further submitted that the petitioner's company never loaded any potato in the cold storage prior to 1st of March, 2017 for the season 2017. Despite of the said facts, the Assistant Director of Agricultural Marketing (Administrative), Burdwan lodged a false complaint before the Raina police station without proper verification as such same is totally illegal, bad in law and abuse of process of law, which requires quashing of the proceeding pending before the Learned Chief judicial Magistrate to secure the end of justice.

6. On the other hand, the learned counsel appearing on behalf of the State vehemently opposed the prayer and further submitted that licence was not renewed due to his own fault. Furthermore, the petitioner's company loaded the potatoes to the cold storage prior to

1st March, 2017 despite of restriction. Consequently, competent authority lodge a written complaint when it was found potatoes were stored illegally in the cold storage during the year 2017 without having a valid licence and much prior to storing period thereby violated the provision of the West Bengal Cold Storage (License and Regulation) Act, 1966 read with Section 4Q of the Cold Storage (License and Regulation) Rule, 1967. As such company has intentionally committed an offence punishable under Section 19 of the West Bengal Cold Storage (License and Regulation) Act, 1966 read with Section 4Q of the Cold Storage (License and Regulation) Rule, 1967. As such the revisional application filed by petitioner is liable to be dismissed.

7. Having heard the submissions of the parties and upon perusal of the case diary and the application along with annexure thereto, it appears that the petitioner had valid licence earlier and subsequently, petitioner has applied for renewal of licence time to time by paying the requisite fees for relevant years of Rs. 200/= each though the renewal licence was not issued in physical form by the authority concerned in spite of submission of application as well as depositing requisite fees. It is clear from Act itself that where application for grant or renewal of licence is refused or where license

is cancelled the reasons for such refusal or cancellation shall be recorded in writing and a copy of the same shall be furnished to the applicant. At the same time, where application for the grant or renewal of licence is refused, the fee, paid by the applicant along with the application, shall be refunded to him but such provision did not carry out by the concerned authority.

Before entering into the merits of this case and for the sake of ready reference, it would be appropriate to take a look at the relevant legal provisions. Section 4 of the said Act, 1966 which says as follows:

Section 4. *(1) Every application for the grant of a licence under section 3 shall be made in duplicate to the Licensing Officer in such form and in such manner and shall be accompanied by such fee not exceeding five hundred rupees as may be prescribed.*

(2) The licence shall be granted by the Licensing Officer in such form and shall be subject to such conditions as may be prescribed.

(3) Every licence granted under this Act shall be valid for a period of five years and may, on application by the licensee in the manner prescribed and on payment of the prescribed fee not exceeding two hundred rupees, be renewed from time to time for a period of two years on each occasion, by the Licensing Officer provided such application for renewal is made at least thirty days before the expiry of the period of the licence.

(4) The Licensing Officer may, after giving the applicant an opportunity of showing cause in such manner as may be prescribed, refuse to grant or renew a licence to any applicant.

(5) When a licence is lost, destroyed, torn or defaced, the Licensing Officer shall, on application made in this behalf and on payment of the prescribed fee, issue a duplicate licence in the prescribed manner.

(6) The Licensing Officer may, after giving the licensee an opportunity of showing cause in such manner as may be prescribed, cancel any licence granted under this Act for any breach of the terms and conditions of the licence or for any contravention of the provisions of this Act.

(7) Where an application for the grant or renewal of a licence is refused or where a licence is cancelled the reasons for such refusal or cancellation shall be recorded in writing and a copy of the same shall be furnished to the applicant.

(8) Where an application for the grant or renewal of a licence is refused, the fee, paid by the applicant along with the application, shall be refunded to him.

Section 19 of the West Bengal Cold Storage (License and Regulation) Act, 1966 says: *Every licensee shall be bound to comply with such direction or order as may be issued to him by the Licensing Officer under this Act and any failure to comply with such direction or order within the period of thirty days shall be deemed to be contravention by the licensee of the provisions of this Act.*

Upon careful perusal of the aforesaid provisions and considering the contention of the petitioner, it reveals petitioner

applied for renewal of licence with requisite fees along with relevant documents time to time without fail but the concerned authority did not respond with regard to renewal or cancellation or refusal, as per the aforesaid provision of Section 4 of the said Act, thus it would be deemed as acceptance of fees and renewal of licence for the relevant years. For aforesaid reason, it cannot be said that the petitioner had no licence for storing potatoes in its cold storage. Furthermore, Notice issued to the Petitioner on 09.12.2016 itself indicates the petitioner possesses valid licence. However, the present case seems some other allegations too. The accusation of the authority is that upon inspection of the cold storage on 13.02.2017, found the potatoes have already been stored illegally in the cold storage for the season 2017 without having a valid licence and much prior to the storing period starting from 1st March, 2017 and thereby the petitioner had violated the memo No. 3870/1 (20), dated 25th of November, 2016 issued by the director-in-charge of agricultural marketing, West Bengal and licensing officer. Whereas, the claim of the petitioner is that they did not store or load potatoes for the season 2017 prior to 1st March, 2017. However, no any document such as stock register or loading and unloading register and memo of receipts etc. produced by the petitioner to show the allegation is false, illegal and not tenable in law. It is a matter of investigation and trial whether the petitioner's

potatoes found in cold storage are potatoes of the relevant season, 2017 and/or not loaded prior to 1st March, 2017 for the season 2017. These issues can be decided during investigation or ventilated before the trial Court. It is not possible to this Court to come to conclusion without sufficient materials or valid documents at this initial stage. No final report has been filed in this case till date.

8. In the light of above facts and circumstances, this Court does not find any sufficient and justified reasons or grounds to quash the proceeding being GR Case No. 531 of 2017 arising out of Raina P.S. Case No. 38 of 2017 dated 17.02.2017 under Section 19 of West Bengal Cold Storage (License and Regulation) Act, 1966 read with Section 4Q of the Cold Storage (License and Regulation) Rule, 1967 pending before the Learned Court of the Chief Judicial Magistrate, Burdwan at the stage of investigation.

9. Accordingly, **CRR No. 648 of 2017** is, thus, disposed of without order as to costs and **CRAN 2/2017 (Old CRAN 5166/2017)** is also disposed of.

10. All issues raised by the petitioner are kept open before the Ld. Court below during taking cognizance or framing charge, if occasion arise. Any observation made by this Court in the instant

case shall not stand in the way of investigation and/or filing its report and/or framing of charges, if any.

11. Return the C.D. to an appropriate Authority.

12. All parties shall give liberty to act on the server copies of this order downloaded from the official website of this Court.

13. Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)