

08.08.2024

Court No.35

Item No.29

Subha

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

W.P.A 7585 of 2021

Kausar Ali Dhali

Vs

State of West Bengal

Mr. Kaji Safiullah

...for the petitioner.

Mr. Debasish Roy, Id. PP

Ms. Afreem Begum

...for the State.

The writ petition was preferred challenging the continuance of Airport P. S. Case No. 78 of 27-04-2018 which was registered for investigation under Sections 273/272/420/120B/34 IPC and Section 51 of the Food Safety and Standard Act, 2006.

The stage at which the petitioner approached this court was after the submission of the charge-sheet and cognizance was taken by the learned ACJM, Barrackpore.

Mr. Safiullah, learned advocate appearing on behalf of the petitioner canvassed that the Division Bench on perusal of the case diary was of the opinion that the sample which was seized on 27th April, 2018 was sent much later i.e., May, 25, 2018 or may be some days prior to the report being issued on 23rd April, 2018.

The subject matter relate to seizure of chicken flesh which were alleged by the Investigating Agency as a 'pasty rotten flesh'.

Learned advocate submits that in view of the samples being sent after a considerable period of time, the opinion of the expert is of no assistance to the court as by lapse of time automatically the flesh which was seized would have deteriorated and the test accordingly would be of no consequence.

Learned advocate further submits that as the test report in this case cannot be relied at all, so the continuance of the proceedings would be a futile exercise and as such the proceedings should be quashed.

Mr. Roy, learned Public Prosecutor was engaged by this court. He has submitted the memorandum of evidence as well as the status report. Case diary has also been produced before this court. Let the status report and the memorandum of evidence be kept with the record.

State has taken up a preliminary objection after drawing the attention of the court that once the charge has been framed by the jurisdictional sessions court and date for evidence has been fixed, it would be the duty of the petitioner to approach the court having determination for deciding revisional applications as the petitioner has preferred an application for discharge before the learned trial court and the said discharge application after being rejected, the learned trial court proceeded to frame charges against the accused.

Learned Public Prosecutor further submitted that the date on which the writ petition was affirmed by that

time cognizance was taken by the learned Magistrate and the case was committed to the court of sessions.

Be that as it may, I have taken into account the materials appearing in the case diary. Prima facie it appears that the refrigerators where the chicken were kept and were alleged to be rotten by the Investigating Authorities/Police Authorities were as a whole seized as is reflected from the seizure list, as samples were segregated and rest of the flesh as per the order of the learned ACJM, Barrackpore were destroyed. The said samples were thereafter sent for examination to the expert.

Having considered that the impression which has been created by the petitioner that the sample was taken out from the refrigerator and was kept at the police station and after a length of time the same was sent to the expert prima facie at this stage do not satisfy the test of correctness without the seizing officer being cross-examined.

So far as the wordings are concerned in the case diary relating to seizures as well as the receipt of materials the only issue which crops up relate to the preservatives not being used, as has been pointed out by Mr. Safiullah, learned advocate for the petitioner.

Taking into account the stage of the case, the above issue relate to disputed question of facts which are to be dealt with in the course of cross-examination.

Thus, at this stage, I am not inclined to interfere with the proceedings pending before the learned Additional Sessions Judge, 2nd court, Barrackpore.

Consequently, the writ petition fails. However the petitioner would be at liberty to canvass all the points in course of the trial.

With the aforesaid observations, the writ petition being WPA No. 7585 of 2021 is disposed of.

Connected applications, if any, are consequently disposed of.

Case diary be returned the learned Public Prosecutor appearing on behalf of the State.

All parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)