

19.12.2025

DL-08

Ct. No. 236

Srimanta

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA/7681/1985

M/s. Bhagat Hari Prasad & Ors.

-Vs.-

State of West Bengal

Mr. Sardar Amjad Ali, Sr. Adv.,
Mr. Subhasis Sarkar,
Mr. Bikramjit Mandal,
Mr. Mustafi Rahaman

...for the petitioners.

Mr. Ranabir Roy Chowdhury

...for the State.

1. In this writ petition as filed under Article 226 of the Constitution of India/482 of the Code of Criminal Procedure the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities commanding them not to proceed with the FIR in connection with Khatra Police Station Case No. 03/1985 dated 12.05.1985 along with a further prayer prohibiting the respondent authorities to take any coercive step against the writ petitioners pursuant to the said FIR.

2. At the time of hearing Mr. Ali, Learned Senior Advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to the written complaint as lodged in the instant case. It is submitted that on careful perusal of the written

complaint as lodged in connection with Khatra Police Station Case No. 03/1985 no *prima facie* case has been made out under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to the said Act, in short). It is further submitted by Mr. Ali that no material could be placed before this Court that the informant being a Sub-Inspector of Police, DEB, Bankura had at all any authority to take entry in the petrol pump on the alleged day and hour in terms of the provisions of Kerosene (Restriction and Use) Order, 1966.

3. It is further submitted by Mr. Ali that from the said written complaint it would reveal further that the informant being a public servant has exceeded his jurisdiction in violation of the fundamental rights of the writ petitioners by entering into premises in question.

4. It is submitted that it is a fit case for granting relief or reliefs as prayed for by the writ petitioners.

5. By producing the photocopy of the Case Diary of Khatra Police Station Case No. 03/1985 Mr. Roy Chowdhury, Learned Senior Government Advocate appearing on behalf of the respondent/State also draws attention of this Court to the written complaint as lodged in connection with afore-mentioned Police Station Case as well as the formal FIR.

6. It is further submitted that from the written complaint as lodged in the said Police Station case it would reveal that immediately after seizure of the alleged adulterated petrol it was sent for chemical examination to the Quality Control Department of Haldia Refinery, Indian Oil Corporation through jurisdictional SDJM and such report clearly indicates adulteration of seized petrol beyond permitted limit.

7. It is submitted by Mr. Roy Chowdhury that no case has been made out for interfering with the investigation of Khatra Police Station Case No. 03/1985.

8. This Court has meticulously gone into the materials including the materials as available in the photocopy of the Case Diary.

9. This Court has also given its due consideration over the submissions of the Learned Advocates for the contending parties.

10. For effective adjudication of the instant *lis* this Court at the very outset proposes to look to the settled guidelines as set up by the Hon'ble Apex Court while exercising the plenary power of the High Court to quash a criminal proceeding either in terms of the provisions of Section 482 of the Code of Criminal Procedure (since repealed) or under Article 226 of the

Constitution of India which are quoted hereinbelow in verbatim:-

“(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 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.”

11. Such view was taken by the Hon’ble Supreme Court in the case of **State of Haryana –Vs.- Bhajan Lal** reported in **1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426.**

12. Keeping in mind the afore-mentioned provisions of law if I look to the factual aspects of the case it appears from the written complaint as filed in connection with afore-mentioned Police Station case

that the informant being a public servant of the DEB, Bankura on the basis of a secret information conducted a raid in the petrol pump of the writ petitioners and in course of such raid he seized some alleged contaminated petrol and diesel allegedly mixed with kerosene oil.

13. The said written complaint further disclosed that two bottles of seized articles each were sent to the Quality Control Department of Haldia Refinery, Indian Oil Corporation for chemical examination and the report of the said examination of the sample clearly indicates presence of more than 10% of kerosene in the said alleged adulterated petrol and diesel. It, thus, appears to this Court that from the materials as placed before this Court it would reveal that a *prima facie* case has been made out under Section 7(1)(a)(ii) of the said Act since the alleged action of the writ petitioners is in contravention of the said order of 1966.

14. It is settled position of law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence it is open to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure or under Section 528 BNSS or under high prerogative writ petition under Article 226 of the Constitution of

India to quash a criminal proceeding over which the Magistrate has taken a cognizance.

15. In considered view of this Court, no case has been made out on behalf of the writ petitioners to substantiate that the written complaint as lodged in connection with afore-mentioned Police Station case do not *prima facie* disclose commission of an cognizable offence.

16. On such score, the instant writ petition fails and is hereby dismissed.

17. Consequently, the interim order of stay as passed earlier in connection with the instant writ petition stands hereby vacated.

18. The Investigating Officer of Khatra Police Station Case No. 03/1985 is at liberty to submit its final report before the jurisdictional Magistrate at the earliest.

19. The photocopy of the Case Diary be returned to the Learned Advocate for the respondent/State after signing of this order.

(Partha Sarathi Sen, J.)