

Shree Krishna Traders & Anr vs State Of West Bengal & Ors on 22 February, 2024

22.02.2024
Ct. no.654
Sl. No.12
Sn/ss

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

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WPA 3678 of 2024

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Shree Krishna Traders & Anr.
Vs.
State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
..for the petitioners

Ms. Sonal Sinha
Mr. Amrita Lal Chatterjee
..for the State

Ms. Manika Roy
Ms. Sinita Roy
..for the respondent no.3

Affidavit of service filed by the petitioners is taken on record.

This writ petition has been filed by the petitioners under Article 226 of the Constitution of India challenging the notice dated 3rd February, 2024 under Sections 91/160 of the Code of Criminal Procedure (hereinafter referred to as "Code") issued to the petitioners by the Investigating Officer, Santipur Police Station, in relation to Santipur PS Case No. 1462 of 2023 dated 22nd December, 2023.

The brief fact of the case in a nutshell is that on the basis of source information, that one Parimal Ghosh son of Sukesh Ghosh of Fulia Buincha, Police Station Santipur, Nadia, is storing huge quantity of misbranded substance in his go-down and selling the same in the open market, the Sub-Inspector of Police, Santipur Police Station, caused raid and seized the following items:

- (i) 290 numbers of misbranded in containers covered with brown coloured hard paper box containing liquid oily substance (each containing 15 kg approx);

(ii) 10 numbers of misbranded tin containers covered with white coloured hard paper box containing thick oily substance (each containing 15 kg approx);

(iii) 4 numbers of misbranded tin containers covered with khakee coloured hard paper box containing liquid oily substance (each containing 15 kg approx);

(iv) One (01) electronic weighing machine.

On such basis, FIR was lodged and Santipur PS Case no. 1462 dated 22nd December, 2023 was initiated against Parimal Ghosh son of Sukesh Ghosh of Fulia Buincha, Police Station Santipur, Nadia under Sections 420/406/272/273/120B of the Indian Penal Code and Section 52 of the Food Safety and Standard Act, 2006 (hereinafter referred to as the "Act of 2006"). During the course of investigation, the Investigating Officer issued notice under Sections 91/160 of the Code to the petitioners on 3rd February, 2024 directing the petitioner no.2, proprietor of M/s Shree Krishna Traders (petitioner no.1 herein) to appear before the Investigating Officer alongwith sale register of his shop for the year 2023 within three days from the date of receipt of notice. Being aggrieved by such notice, the petitioners have preferred the present writ petition.

Mr. Debabrata Saha Roy, learned advocate for the petitioners referring to Sections 38 and 41 of the said Act of 2006 submits that the Food Safety Officer under the said Act is authorised to search and make seizure in relation to the offences under the said Act. Therefore, the seizure made by the police authorities is not in consonance with the provisions embodied under the said Act of 2006. The authority, i.e. the Food Safety Officer vested with the powers to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference by any authority upon whom the statute does not confer any jurisdiction is wholly unwarranted in law and violates the constitutional scheme. To buttress his contentions, he relies on the decision of Hon'ble Supreme Court passed in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others versus Director General of Civil Aviation and Others reported in (2011) 5 SCC

435. Furthermore, if initial action is not in consonance with law subsequent proceedings would not sanctify the same meaning thereby in case a foundation is removed, the superstructure falls. Since the FIR initiated by the police authorities is beyond its jurisdiction, hence the subsequent notice issued to the petitioners under Section 91/160 of the Code is also bad in law. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in Chairman-Cum-Managing Director, Coal India Limited and Others versus Ananta Saha and Others reported in (2011) 5 SCC 142. In light of his aforesaid submissions, he prays that the notice issued to the petitioners by the investigating officer dated 3rd February, 2024 should be quashed and/or set aside.

Ms. Sonal Sinha, learned advocate for the State- respondents submits that the case has been initiated on the basis of a source information. The petitioners have only been served with a notice under Sections 91/160 of the Code to produce sale registers for the sake of further investigation. Therefore, there is no illegality in issuing such notice by the investigating agency during the course of investigation. The petitioners need to cooperate with the investigation undertaken by the investigating agency. She files a letter dated 19th February, 2024 of Officer-in- Charge, Santipur P.S.

of investigating officer which is taken on record.

Ms. Manika Roy, learned Advocate for the respondent no.3 submits that the Regional Director, Food Safety and Standard Authority of India, Ministry of Health and Family Welfare (respondent no.3 herein) is not the licensing authority and as such, is not at all related to the dispute/issue involved in present writ petition.

At the outset, it is found that the impugned notice dated 3rd February, 2024 has been issued in connection with investigation undertaken by the Santipur Police Station for investigating the offences under Sections 420/406/272/273/120B of the Indian Penal Code and Section 52 of the Food Safety and Standards Act, 2006 initiated against one Parimal Ghosh. The investigation is at a nascent stage. Though the learned Advocate for the petitioners has strenuously argued that the police authority did not have the jurisdiction to hold investigation in respect of the Act of 2006, however, there is no challenge to the initiation of the proceeding save and except issuance of impugned notice under Section 90/160 of the Code. Therefore, the petitioner is not aggrieved by the initiation of such case. Moreover, it would be preposterous to decide the legality of an investigation at the instance of a party who has only been served with a notice under Section 91/160 of the Code to produce certain documents, at the preliminary stage of investigation. Further the Court cannot be oblivious to the fact that the case has been initiated not only under the Act of 2006 but also under allied offences of the Indian Penal Code. The investigation not been concluded the question of violation of provision of Act of 2006 and its consequences cannot be considered at this stage.

The proposition of law relied by the petitioner in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) (supra) though substantial but does not apply so far as the present case is concerned in view of the facts noted hereinabove.

In light of above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being W.P.A. 3678 of 2024 stands dismissed.

All connected applications, if any, stand dismissed. Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)