

GAHC010011442014



2024:GAU-AS:11271

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./450/2014

M/S CENTURY MERCHANTILE PVT LTD. and 2 ORS
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE COMPANIES
ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT BAJORIA COMPLEX,
1ST FLOOR, T.R. PHOOKAN ROAD, FANCY BAZAR, GUWAHATI- 781012,
ASSAM AND IS REP. BY ITS MANAGING DIRECTOR, SHRI PRAKASH
CHAND KABRA, S/O LT. RAM KARAN KABRA R/O KABRA BHAWAN, B.R.
PHOOKAN ROAD, GUWAHATI IN THE DIST. OF KAMRUP, ASSAM.

2: SHRI PRAKASH CHAND KABRA
S/O LT. RAM KARAN KABRA R/O KABRA BHAWAN
B.R. PHOOKAN ROAD
GUWAHATI IN THE DIST. OF KAMRUP
ASSAM.

3: SHRI KAILASH KABRA
S/O LT. RAM KARAN KABRA R/O KABRA BHAWAN
B.R. PHOOKAN ROAD
GUWAHATI IN THE DIST. OF KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM and ANR
Represented by PP, Assam

2: THE SUPERINTENDENT OF FOOD

CIVIL SUPPLIES AND CONSUMAR AFFAIRS
DEPARTMENT
BI EO
ASSAM
GUWAHATI-781032

Advocate for the Petitioner : MR.R JAIN, MR.G N SAHEWALLA, MD.ASLAM, MR.A

CHETIA,MR.P BORA

Advocate for the Respondent : MS. S JAHAN, PP, ASSAM,SC, FOOD & CIVIL SUPP.,ADDL. PP, ASSAM,MR.M H ANSARI,MS. S JAHAN (Addl PP)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

07.11.2024

1. Heard Mr. G N Sahewalla, learned Senior counsel assisted by Ms. TJ Sahewalla, learned counsel for the petitioner. Also heard Mr. P Barthakur, learned Additional Public Prosecutor, Assam.
2. The present petition under Section 482 Cr.P.C. is filed by the petitioner company for quashing of an FIR being registered as BIEO case No. 02/2014 dated 07.03.2014 registered under Section 120(B)/420 IPC read with Section 7 of the Essential Commodities Act, 1955.
3. The fundamental allegation as discernible from the FIR is to the effect that on the basis of a tip off, the BIEO had conducted an enquiry at the premises of the petitioner company at T.R. Phookan Road, Fancy Bazar on 29.01.2014 and 30.01.2014 and it was observed that the petitioner though possessed trade licence and as per the licence the storage godowns are allowed to be utilised by the petitioner on four locations described in the FIR but it was found, during enquiry that the dealer had utilised four more locations as godowns to store trade articles.
4. As per the allegation levelled in the FIR, the godown at serial No. 4 and 5 are not authorised godown to store trade articles and therefore, after conducting the enquiry, the BIEO presumed that the dealer is involved with mal practice of trade articles by

cheating the licensing authorities and hoarding trade articles for realisation of exorbitant price.

5. Certain examples were cited in the FIR alleging that the dealers have to display the list of prices and stocks of trade articles in term of Clause 15 of Assam Trade Articles (Licensing and Control) Order, 1982, whereas the dealer had displayed stock only and therefore, it was presumed that the dealer used to realise prices of edible oils as per their will. To accommodate themselves to realise exorbitant price of trade articles the dealer did not disclose the price of trade articles in the periodical returns as well as in price and stock display board and thus, violated Clause 15 of the Order, 1982.
6. On the basis of said FIR, BIEO PS case No. 02/2014 was registered under Section 120(B)/420 IPC read with Section 7 of the Essential Commodities Act, 1955. Certain material has also been seized by the BIEO authorities.
7. It is brought on record by the BIEO authority by filing an affidavit-in-opposition in this proceeding, an order dated 21.06.2014 passed by the Deputy Commissioner and Collector, Kamrup (M), the licensing and controlling authority whereby the application filed by the present petitioner for release of the commodities so seized was allowed. In the aforesaid order, the District Collector, who is the authorised authority under the Essential Commodities Act, 1955 to release such goods and to take action against the petitioner concluded the followings:
 - I. The applicant company had informed the Superintendent of Taxes about the arrival and storage of seized stock of vegetable oil in time.
 - II. The applicant company is found to have informed the undersigned Licensing Authority the fact of temporary storage of goods in Assam State Warehousing Corporation godown vide their letter dated 27.01.2014 and

29.01.2014 respectively which were received on 30.01.2014 by his office.

- III. The seized stocks of vegetable oils are in 1 liter, 500 ml and 200 ml packed bottles which contains maximum retail price (MRP).
- IV. The team of BI(EO) officials did not take the District Administration in confidence while conducting raid/ inspection in the applicant company despite State Government standing instructions, nor they had left it necessary to ascertain as to whether the applicant company had given intimation to the licensing authority about the storage of trade articles other than the godowns specified in the license. The BIEO acted in a pre-conceived mind.
- V. As per stock verification report dated 15.05.2014, the verifying officer observed leakages in few cartons and the labels scribed on the body of the cartons indicated that the seized products are of batch number within August, 2013 and November, 2013 and 'Best before six months.
- VI. There was no mala-fide behind the temporary storage of seized stock of vegetable oils in the godown of Assam State Warehousing Corporation made by the applicant company and there seems to be substantial compliance of terms & conditions of wholesale license granted and issued to them under the provisions of Assam Trade Articles (Licensing & Control) Order, 1982.

- 8. The Hon'ble Apex Court in ***Mohammad Wajid & Anr vs. State of UP and Ors*** reported in ***2023 INSC 683***, after dealing elaborately with the power of High Court under Section 482 Cr.P.C. so far same relates to the quashing of FIR and charge sheet has laid down the following principles.

- i. It will not be just enough for the court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.
- ii. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments made.
- iii. The overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation is to be looked into.

9. In view of the aforesaid settle principle of law, this court has taken note of the order passed by the Collector inasmuch as such order is not disputed by BI(EO) rather it is the BI(EO) who had brought the said order on record. From the aforesaid order, it is clear that when the allegation of violation of Control Order, 1982 not accepted by the authority under Order 1982 and such document / order is not being disputed by the prosecuting authority, in the considered opinion of this court, no case under Section 7 of the Essential Commodities Act, 1955 is made out inasmuch as Section 7 of the Essential Commodities Act, 1955 deals with violation of Control Order.
10. That being so, if the material available on record, more particularly the allegation levelled in the FIR the order passed by the Collector are accepted at its face value, this court finds no material either under Section 120(B) IPC or Section 420 IPC.
11. In view of the aforesaid, in the considered opinion of this court this is a fit case where this court should exercise its inherent power under Section 482 Cr.P.C. by quashing the impugned prosecution launched on the basis of BIEO case No. 02/2014 dated

07.03.2014 registered under Section 120(B)/420 IPC read with Section 7 of the Essential Commodities Act, 1955. Criminal petition stands disposed of.

12. Ordered accordingly.

JUDGE

Comparing Assistant