

Kamala Ranjan Dey Vs The State

Court: Calcutta High Court

Date of Decision: April 23, 1982

Acts Referred: Essential Commodities Act, 1955 " Section 7(1)(a)(ii)

Citation: 86 CWN 917

Hon'ble Judges: N.C. Mukherjee, J; Amitabha Dutta, J

Bench: Division Bench

Advocate: Sobhendu Sekhar Roy, for the Appellant;

Final Decision: Allowed

Judgement

Amitabha Dutta, J.

This revisional application is (or quashing the proceeding being C.S.G.R. Case No. 1074/7a u/s 7(1)(a) (ii) of the

Essential Commodities Act, 1955, pending in the Court of the sub-Divisional Judicial Magistrate, Rampurhat, including the charge framed against

the petitioner by order dated 18.8.1980. The prosecution case was that on 4.11.78 Sri N.L. Sharma Sub-Inspector of Police attached to the

District Enforcement Branch, visited the fertiliser shop of the petitioner and found on physical verification that the actual stock of fertilizers was

short of or less than the book balance. As a result, he seized the stock of fertilizers and the books of accounts and filed a case which was

registered at Mayureswar P.S. Thereafter he investigated the case and submitted charge-sheet against the petitioner.

2. The learned Magistrate took cognizance of the offence on the said charge-sheet and ultimately after considering the materials filed along with the

charge sheet, framed the charge u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 against the petitioner

3. It is submitted by the learned Advocate appearing for the petitioner that as Sri N.L. Sharma, Sub Inspector of Police attached to the District

Enforcement Branch, who Investigated the case was not (sic) Inspector within the meaning of paragraph 19 of the Fertiliser (Control) Order,

1957, he had no authority to inspect the fertiliser shop of the petitioner or seize the fertiliser which was stocked there and thus was also not

competent to investigate the case and submit charge sheet, and as the entire proceeding, taken in Investigating the alleged offence, resulting in

submission of charge-sheet, was illegal and void ab initio, Sri Sharma having no authority to function as Inspector within the meaning of Paragraph

19 of the Fertiliser (Control) Order, 1957, the charge-sheet which was filed before the learned Magistrate as a result of such investigation, was

illegal and the learned Magistrate could not validly take cognisance of the alleged offence on the basis thereof

4. None has appeared on behalf of the State to oppose the Rule.

5. After hearing the learned Advocate for the petitioner and considering the decision in *Bimal Ranjan Roy & Anr. vs State of West Bengal*,

reported in 1978(2) CLJ 300, in which a learned single Judge of this Court has held that the inspection and seizure made without authority by an

Inspector of the District Enforcement Branch were illegal and consequently the investigation carried on thereafter and cognizance of the case taken,

became illegal and void and inasmuch as under a notification being No 2792 Fert dated 17th September 1974, published in the Calcutta Gazette

(Extraordinary) dated September 17, 1974 Issued by the Department of Agriculture and Community Development, In exercise of power

conferred by paragraph 19 of the Fertiliser (Control) Order, 1957 and Item 21 thereof the Sub Inspector of Police and all officers above the rank

of Inspector attached to Enforcement Branch were appointed under the said paragraph of the Fertiliser (Control) Order, 1957 throughout the

State of West Bengal In super session of previous notifications on the subject, we held that the point raised on behalf of the petitioner is well

founded and should prevail. It appears that the learned Magistrate did not take Into account the aforesaid Notification of 1974 while he overruled

a similar objection raised before him on behalf of the accused and it also appears that he did not apply his mind to the earlier Notification no. 501

dated 12th February, 1969 in which also only officers above the rank of Sub Inspector attached to the Enforcement Branch were appointed

Inspectors of Fertiliser for the purpose of Fertiliser (Control) Order, 1957.

6. In the circumstances, we find that the Impugned order of the learned Magistrate is not in accordance with law and cannot be sustained. As the

entire proceeding starting from inspection and seizure and followed by arrest in investigation of the case and submission of charge sheet was

without jurisdiction and not according to procedure established by law, the cognizance taken by the learned Magistrate on the basis of the charge

sheet must be held to be illegal and void and the entire proceeding in the criminal case against the petitioner has therefore, become liable to be

quashed.

7. We, therefore, held that the present application should succeed. The proceeding in CSGR case No. 107A/78 pending against the petitioner in

the Court of the learned Sub Divisional Judicial Magistrate Rampurhat, is quash, The Rule is thus made absolute.

N.C. Mukherjee, J.

I agree.