

(1999) 12 CAL CK 0006

Calcutta High Court

Case No: M.A.T. No"s. 3685-86 of 1999

Basant Saraf

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 13, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Essential Commodities Act, 1955 - Section 7(1)

Citation: (2000) 122 ELT 17

Hon'ble Judges: Satya Brata Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Saumen Kumar Ghosh and Kishore Dutta, for the Appellant; Kanika Gupta, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.

Both these appeals involving common question of law and fact and having arisen out of a common judgment were taken up for hearing together and are being disposed of by this judgment.

2. The writ petitioners are the appellants herein. They filed two writ applications for quashing two investigations made pursuant to first information reports leading to initiation of two cases u/s 7(1)(a)(ii) of the Essential Commodities Act, being English Bazar P.S. Case No. 404 of 1998 dated 30.11.1998 and English Bazar P.S. Case No. 405 of 1998 dated 30.11.1998 respectively as also confiscation proceedings, being E.C. Case No. 13 of 1998 and E.C. Case No. 14 of 1998 pending before the Collector under E.C. Act, Malda, as also the order dated 04.12.1998 passed therein.

3. The appellants/writ petitioners are exporters. They were exporting rice to Bangla Desh. Their trucks were seized for alleged violation of the provisions of conditions laid down under para 10 of the West Bengal Rice and Paddy (Control) Order, 1979,

as allegedly in terms thereof, they were required to produce the permit or authority for exporting the same.

4. A Division Bench of this Court in *Vijay International v. State of West Bengal and Ors.*, reported in 1999 W.B.L.R. 333 1999 (2) C.H.N. 53, inter alia, held that the provisions of clauses 9 and 10 of the said Control Order are ultra vires. It has not been and could not be disputed that the power to make investigation must emanate from first information report disclosing an offence. If the allegations made in the first information report do not disclose an offence the Court in exercise of its jurisdiction under Article 226 of the Constitution of India may quash the investigation and/or any action taken by the statutory authority pursuant thereto. The learned trial Judge, however, held that having regard to the fact that the goods were procured from the State of West Bengal refused to exercise his jurisdiction. The learned Judge further held that the Code of Criminal Procedure itself provides ample protection to a person who is wrongfully being prosecuted in a criminal case.

5. Having heard the learned Counsel for the parties, we are of the opinion that the learned trial Judge proceeded on a wrong premise. If the allegations made against the writ petitioners lead to alleged commission of an offence under clauses 9 and 10 of the West Bengal Rice and Paddy (Control) Order, which had already been struck down by this court, the question of any investigation being made or any proceedings being initiated or order passed therein, would not arise, as any action taken on the basis of a law which is unconstitutional would be a nullity. Furthermore, in our opinion, Code of Criminal Procedure does not provide for any remedy for quashing of an investigation or setting aside of an order passed in a confiscation proceedings. The High Court only in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India can direct quashing of an investigation initiated in terms of a first information report which does not disclose an offence, inter alia, on the ground that such investigation is mala fides. An investigation which had been initiated pursuant to an order which is ultra vires the Constitution or any confiscation proceedings initiate pursuant thereto, as indicated herein before, would become nullities. This aspect of the matter is covered by decisions of the Apex Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), and [Rashmi Kumar \(Smt\) Vs. Mahesh Kumar Bhada](#).

6. For the reasons aforementioned, the impugned order cannot be sustained, which is set aside accordingly. The Appeals and the writ applications of the writ petitioners are allowed and the investigations as also the orders passed in the confiscation proceedings both dated 04.12.1998 are hereby set aside.