

Milan Panja Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Oct. 5, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 102, 103
Essential Commodities Act, 1955 â€” Section 6A, 6B , 6C, 6D, 7(1)

Citation: (2000) CriLJ 2028

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Prabhat Kr. Chattopadhyay, for the Appellant; S.R. Islam, for Respondent 1, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Barin Ghosh, J.

No affidavit-opposition has been filed to this writ petition. Submissions were made on behalf of the respondents. The matter was heard from time to time and ultimately the judgment was reserved.

2. It appears on 31st Oct. 1998 Sri Amar Roy Choudhury, Sub-Inspector of Police, D.E.B. Burdwan intercepted a truck, bearing registration No.

WBO 8603, loaded with 150 bags of paddy, each bag containing 60 Kilograms of paddy, having a total quantity of 90 quintals of paddy, it is not

disputed, belonging to the petitioner, at a distance of one kilometer from Burdwan while the same was on its way to Pally Mongal Rice Mill,

whereupon the Truck as well as the paddy loaded on the truck were seized and the Driver of the truck was arrested. Thereafter, a First

Information Report was filed by the said Sub-Inspector of Police, the text whereof is as follows :-

In producing herewith accd. Samir Kumar Paul son of Shree Banamali Paul driver of truck No. WBQ 8603 of Madhyamgram P.S. Monteswar

Dist. Burdwan along with one seized truck bearing No. WBQ 8603. S.I. Amar Roy Chowdhury of D.E.B. Burdwan Sadar, do hereby lodge

complaint against the said arrested accd. Samir Kumar Paul to the effect that to day on 3,1-10-1998 after noon myself being accompanied by S.I.

Kumud Mahjee, W/C. 3074-Sk. Akkash Ali and W/C. 1064 Bharigunath Pandey all of D.E.B. Burdwan had been on burdawn Kama Road for

holding a raid against excessive storage of paddy by consumers.

During raid I found at about 14.30 hrs and truck proceeding towards Burdwan side from Kalna side along Kalna Burdwan Road. I with the help

of my accompanying force intercepted the truck in village Ausha, under P.S. Memari. Being asked the driver stated that the truck is loaded/stored

with paddy. On physical verification it was found that the truck is actually loaded with 150 (one hundred fifty) bags of paddy. Each bag contain 60

(sixty) kilogram of paddy (approx.). Therefore the truck is found stored with 90 quintals of paddy which was in possession of the driver of the

truck. The driver being asked by me stated that he is not a producer of paddy and regarding collection and having in his possession of the paddy

loaded/stored in his truck, he failed to produce any documents whatsoever.

Now I like to mention here that according to para 3 of the West Bengal Rice and Paddy Storage by Consumers Control Order, 1967, a consumer

can store or have in his possession only 2.87 qntls. of paddy for consumption. But in the instant case the driver who admitted himself not to be a

producer, was found stored 90 (ninety) qntls. of paddy in his truck which is an offence for violation of the provision of of para 3 of the West

Bengal Rice and Paddy Storage by Consumers Control Order, 1967 for which the driver rendered himself liable to for punishment u/s 7(1)(a)(ii)

of Act x/55.

I therefore, arrested the accd. driver who disclosed his aforesaid name and address.

I also prepared a seizure list and seized the following articles 1.90 (ninety) qntls. of paddy in 150 bags. Each bag contain 60 Kgs, (approx.) 11.

One truck bearing No. WBQ 8603 along with connected papers of the truck as mentioned in seizure list. The seized paddy is left in zimba with

one Sri Sudeb Chandra Gupta, son of late Krishna Chandra Gupta owner of Chashi Rice Mill. As the accd driver violated the provision of Para 3

of W. Bengal Rice and Paddy storage by Consumer Control Order, 1967.

I requested to kindly start a case u/s 7(1)(a)(ii) of Act x/55 against the accd. driver Samir Kumar Paul, S/o Sri Banamali Paul of Madhyamgram

P.S. Monteswar.

Confiscation prayer for seized truck and paddy is being submitted.

DEO-1, Burdwan Sadar will please arrange for its investigation.

3. On the basis of the First Information Report Memari Police Station Case No. 167/98 dated 31st Oct. 1998 was registered u/s 7(1)(a)(ii) of the

Essential Commodities Act, 1955 for alleged violation of para 3 of the West Bengal Rice and Paddy (Storage by Consumers) Control Order,

1967. The Investigating Officer thereupon prayed before the learned Collector, E.C. Act, Burdwan for sale of the seized goods. Such prayer was

considered and decided by an order dated 5th January, 1999 by the learned Collector, E.C. Act, Burdwan in the manner as follows :-

O.P. is absent without step learned A.P.P. is present. The O.P. has been given sufficient opportunity to adduce documentary evidence in support

of his claim that the seized paddy was his own production. But he has failed to avail of the said opportunity.

In the meantime it is considered expedient to sale the seized paddy as an ad interim measure to keep the flow of paddy in the open market and to

avoid any loss as the paddy is subject to natural decay. Hence, it is ordered that S.C. F. & S. Burdwan shall arrange immediate selling of the

seized paddy and deposit the sale proceeds through Treasury Challan Officer-in-Charge, Memari P.S. shall render all sorts of assistance.

To 9-3-1999 for sale report.

4. The petitioner then filed writ petition No. 311 of 1999 and therein challenged the Memari Police Station Case No. 167/98 dated 31st Oct.

1998 as also the Order of the learned Collector, E.C. Act, Burdwan dated 5th January, 1999. In the said writ petition an interim order was passed

staying the order of sale dated 5th Jan. 1999 passed by the learned Collector. E.C. Act, Burdwan. The Court also restrained the respondents from

taking any further steps on the basis of the said First Information Report by way of an interim order. The writ petition No. 311 of 1999 was

ultimately disposed of by an order dated 7th April, 1999 by directing the petitioner to apply before the learned Collector, E.C. Act, Burdwan for

release of the seized paddy and the said Collector was directed to pass necessary orders in accordance with law after hearing the petitioner. The

learned Collector, E.C. Act, Burdwan then decided the matter upon an application being made by the petitioner in terms of the order of this Court

dated 7th April, 1999, by passing an order dated 20th April, 1999, the text whereof is as follows :-

O.P. Lawyer filed a hajira with put uppetition. Learned A.P.P. is present. Look up for hearing in compliance with Hon"ble High Court"s order

dated 7-4-1999.

Heard the learned Lawyer appearing on behalf of the O.P. and seen the written submissions made thereon. Also seen the documents furnished to

show a suggest that the paddy in question was the agril. produce of the O.P."s family. Gone through the contents of the O.P."s submission. As per

available information the O.P."s family possesses 5.29 acres of land and average annual paddy production is 160 quintals. Aman paddy is

generally harvested in December-January and Boro in April, May every year. Normally 25% of the gross production. So, net paddy available to

the family stands at 120 quintals only. Hence, it is quite in reliable that the family could hold 90 quintals of paddy in Oct. 1988 after maintaining the

family burdens for about 9 months.

Hence, the submission of the O.P that the seized stock of 90 quintals of paddy in his agril. production is not tenable.

As such, the sized paddy can not be released in his favour as prayed for.

To 3-6-1999 for further order.

5. At this juncture it is to be kept in mind that while disposing of the writ petition in W.P. No. 311 of 1999 this Court made it clear that it did not go

into the merits of the case as to contentions of the petitioner that he is a cultivator of paddy. The Court, however, set aside the order of learned

Collector, E.C. Act, Burdwan, dated 11th January, 1999. In this writ petition, thus, the order dated 20th April, 1999 has been assailed along with

the seizure and the First Information Report.

6. The relevant provisions of the West Bengal Rice and Paddy (Storage by Consumers) Control Order, 1967 are as follows :-

2. Definitions - In this Order, unless the context otherwise requires,-

(a) "consumer" means a person who purchases rice or paddy for consumption by himself and the members of his family and his servants living in

the same mess with him, but does not include an establishment or an institution or a producer;

3. Limitation on storage of rice or paddy, - (i) No. consumer shall store or have in his possession at any one time, - (a) more than 2.6 quintals of

rice, or

(b) more than 3.9 quintals of rice, or

(c) where a consumer stores or has in his possession both rice and paddy more than 3.9 quintals of paddy and paddy equivalent of rice in the

aggregate.

(2) Sub-paragraph (1) shall also apply in the case of producer in respect of any rice or paddy stored or held in possession by him other than the

paddy grown or caused, to be grown by him and the rice made therefrom.

5. Powers of entry, search, seizure, etc. - (1) Any Officer in the Department of Food and Supplies not below the rank of Assistant Sub Inspector

or any Officer under the Regional Director (Food), Eastern Region, Ministry of Food, Agriculture, Community Development and Co-operation

(Department of Food), Government of India, not below the rank of Inspector, may, with a view to securing compliance with this Order or to

satisfying himself that this Order has been complied with, -

(a) Inspect or cause to be inspected any book or documents or accounts as well as any stocks or rice or paddy belonging to or under the control

of any person.

(b) require any person to give any information in his possession with respect to purchase, sale or storage of rice or paddy.

(c) stop and search forthwith, with such aid or assistance as may be necessary, any person or vehicle or vessel or animal used or suspected or

being use for delivery of rice or paddy from a godown or other premises where he has reason to believe that rice or paddy is stored.

(d) enter and search, with such aid or assistance as may be necessary, any such godown or other premises, and

(e) seize and remove, with such aid or assistance as may be necessary, the entire quantity of any stock of rice or paddy along with the packages,

coverings or receptacles in which such stock is found and the animals, vehicles, vessels or other conveyances used in carrying such stocks, if he

has reason to suspect that any provision of this Order has been, is being, or is about to be, contravened in respect of such stocks or any part

thereof in respect of any other stock of rice or paddy, which immediately before the contravention was stored or possessed along with such stocks

and thereafter take or authorise the taking of all measures necessary for securing the production of the stocks of rice or paddy, packages,

coverings, receptacles, animals, vehicles, vessels or other conveyances so seized either in a Court of before the collector of the district under

provisions of Sections 6A to 6D of the Essential Commodities Act, 1955 (Act 10 of 1955), and for their safe custody pending such production :

Provided that in exercising the powers under this sub-paragraph due regard shall be paid to the social and religious customs of the inmates or

occupants of the place or premises.

(2) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), relating the search and seizure, shall so far

as may be, apply to searches and seizure under this paragraph.

7. It is to be noted that by an amendment effected in 1967 the quantum of paddy that can be stored by consumer has been reduced to 2.8 quintals.

8. From a bare reading of the above provisions contained in the said order it would be clear that the said order does not apply to the producer of

paddy. The said order authorises stoppage of vehicles provided it is used or being used for delivery of rice or paddy from a godown or other

premises where the official stopping has reason to believe that the rice or paddy is stored. The said order further authorises seizure and removal of

the stock of rice and paddy along with the vehicles carrying the same, if the Officer seizing and removing has reason to suspect that any provision

of the order has been or is being or is about to be, contravened in respect of such stock or any part thereof which immediately before the

contravention was stored or possessed along with such stocks.

9. Therefore, in order to exercise power under the said order each of the following ingredients must be present :-

(i) A consumer has stored or is in possession of paddy in excess of 2.8 quintals;

(ii) By a vehicle such consumer is removing excess quantity of paddy from a godown or other premises where, there is reason to believe, that the

paddy in excess of 2.8 quintals is stored, and

(iii) The stock of paddy in excess of the permissible quantity loaded in the vehicle was stored or possessed along with other stock of paddy.

10. The First Information Report in the instant case proceeds on the basis as if the truck driver was the consumer. The petitioner claimed that the

paddy seized belongs to him and that he is a cultivator. This assertion of the petitioner has not been denied. On the contrary in the order dated 20th

April, 1999 it was accepted that the petitioner is a cultivator. If that be so, the said order has no application whatsoever in so far as the petitioner is

concerned as well as the seized paddy is concerned.

11. The truck carrying the paddy of the petitioner was stopped and searched but then nothing has been mentioned in the First Information Report

that the concerned Sub-Inspector had reason to believe that the paddy, which was being carried by the truck in question, was stored in any

godown or other premises. Similarly while the paddy was seized it was not indicated in the First Information Report or in the Seizure List that the

same was stored or possessed at any place and on the contrary the First Information Report proceeds as if the paddy in question was stored on

the truck itself.

12. While accepting the petitioner to be a cultivator, instead of directing dropping of the proceedings, the learned Collector, A.C. Act, Burdwan

held by his order dated 20th April, 1999 that the petitioner could not hold the quantum of paddy seized. In so doing the learned Collector, E.C.

Act, Burdwan took recourse to surmises and conjectures. The learned Collector, E.C. Act, Burdwan did not dispute that the cultivable land

available to the petitioner is 5.29 acres and that he cultivates such land. He proceeded, however, on the basis of average yield and normal

production. Even then he found that more than the quantity seized could be produced by the petitioner. He then proceeded to hold that after

meeting family burden the petitioner could not have his produced paddy to the extent seized purely on the basis of assumption and conjectures.

Once it was held that the petitioner is a producer of paddy and he is capable of producing the quantum of paddy seized, the proceeding initiated on

the basis of First Information Report ought to have been dropped.

13. In any event the paddy in question as well as the truck ought not to have been seized at all for without there being a reason to believe that such

rice was being delivered by the truck in question from a godown or a premises where the same was stored, the truck could not be stopped or

searched at all. No such reason o believe find place in the First Information Report. There is no mention of the godown or the other premises in the

First Information Report. The seizure is equally bad.

14. In the premises I set aside the order of the Collector, E.C. Act, Burdwan dated 29th April, 1999, quash the First Information Report as well

as as the Memari Police Station Case No. 187/98 and all proceedings taken in pursuance therewith and direct the respondent to forthwith return

the seized goods to the petitioner.

This disposes of this writ petition.