

(2008) 02 CAL CK 0067

Calcutta High Court

Case No: CRR No. 2719 of 2006

Pankaj Keshan and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Feb. 5, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 173, 2, 401, 482
- Prevention of Food Adulteration Act, 1954 - Section 12, 14, 14A, 16, 16(1AA)
- West Bengal Prevention of Food Adulteration Act, 1973 - Section 20, 20(1), 20(2)

Citation: (2008) 3 CHN 130**Hon'ble Judges:** Arunabha Basu, J**Bench:** Single Bench**Advocate:** Sekhar Kumar Basu, Soubhik Mitter, Amarta Ghosh, Rituparna De and Arindam Chatterjee, for the Appellant; Krishna Ghosh, for the Respondent

Judgement

Arunabha Basu, J.

The revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure is directed to quash the Special Case No. 4 of 2006 arising out of Domjur Police Station Case No. 102 of 2005 dated 22.4.2005 under Sections 5, 7, 16 and 17 of the Prevention of Food Adulteration Act, 1954.

2. In this case, chargesheet is already submitted against the petitioners.

3. In view of the direction passed by this Court on earlier occasion, learned Advocate for the State produced the case diary. From the copy of FIR available in the case diary, it appears that Inspector of Police, D.O. II, lodged an information before the Domjur Police Station. In terms of Section 154 of the Code of Criminal Procedure for adulteration of edible oils of various types. On receipt of FIR the case being crime case No. 102 dated 22.4.2005 was registered at Domjur Police Station and investigation was conducted by the police.

4. On conclusion of investigation, chargesheet was submitted against the petitioners as accused for commission of offence punishable under various provisions of Food Adulteration Act, 1954.
5. Mr. Basu, learned Senior Counsel, appearing for the petitioners submitted that present prosecution will not be maintainable in view of the prohibition as prescribed u/s 20 of the Act. The said Section is set out below:
- Section 20. Cognizance and trial of offences.- (1) No prosecution for an offence under this Act, not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorized in this behalf by general or special order, by the Central Government or the State Government:
- Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognized consumer association referred to in Section 12, if he or it produces in Court a copy of the report of the public analyst along with the complainant.
- (2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Court.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sub-section (1-AA) of Section 16 shall be cognizable and non bailable.
6. In order to institute the prosecution in a case under the provisions of Food Adulteration Act, the prosecution is required to be; instituted either by Central Government or the State Government or with the written consent of the Central Government or the State Government or by a person authorized in this behalf by a general or special order by the Central Government or the State Government.
7. According to Mr. Basu, so far as the present case is concerned, none of requirement as provided u/s 20 of the Act, is present herein and as such the entire prosecution is vitiated and cannot be permitted to continue before the learned Court below.
8. Needless to add the requirement of Section 20 of the Act, is mandatory. The present prosecution before the Court below must be initiated by following the procedure and strictly in the manner, as provided under Sub-section (1) of Section 20 of the Act.
9. In this case, chargesheet is submitted by a police officer in the rank of Sub-Inspector of Police, careful perusal of the case diary, however, does not show that the said officer is so authorized in terms of Sub-section (1) of Section 20 of the Act.

10. When the matter came up for hearing on earlier occasion, specific verbal direction was passed by this Court to show that the officer who instituted the prosecution by submitting report in terms of Section 173 of the Code of Criminal Procedure is so authorized in terms of Sub-section (1) of Section 20 of the Act. Cognizance in this case is taken by Id. Court below on the basis of police report submitted u/s 173 of the Code of Criminal Procedure. The instant prosecution being instituted on police report, the officer submitting report, must be such officer, empowered to do so in terms of Sub-section (1) to Section 20 of the Act.

11. It appears from the chargesheet, a copy of which is available in the case diary, the police officer while submitting chargesheet quoted Sub-section (2) of West Bengal Act 42 of 1973, empowering the said officer to submit the report for initiation of the prosecution now pending before the learned Court below.

12. For proper appraisal of the matter, Section 20 incorporated by West Bengal Act 42 of 1973 is set out below:

For Section 20, the following Section shall be substituted namely:

20. Cognizance of offences and arrest without warrant.- (1) All offences punishable under this Act shall be cognizable and non-bailable.

(2) Any police officer not below the rank of a Sub-Inspector of Police may arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having concerned in any of the offences punishable under this Act, vide W.B. Act 42 of 1973.

13. Sub-section (1) of Section 20 only stipulates that the offence shall be cognizable and non-bailable when any offence is declared to be cognizable, it only empowers the police officer to arrest without warrant.

14. Sub-section (2) of Section 20 incorporated in West Bengal Act 42 of 1973 only empower the police officer to arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having been involved in offences under this Act.

15. While Sub-section (1) in general terms declares that all offences to be cognizable and non-bailable, empowering a police officer to arrest without warrant in view of the definition of cognizable offences as appearing under Clause (a) to Section 2 of the Code of Criminal Procedure. The said Section stipulates that cognizable offence means an offence and cognizable case means a case in which a police officer may in accordance with the first schedule or under any other law, for the time being in force may arrest without warrant.

16. Sub-section (2) of Section 20 incorporated in West Bengal Act 42 of 1973 only empowers the police officer to arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of

his having been involved in offences under this Act.

17. While Sub-section (1) in general terms declares that all offences to be cognizable and non-bailable, empowering a police officer to arrest without warrant in view of the definition of cognizable offences as appearing under Clause (c) to Section 2 of the Code of Criminal Procedure. The said Section stipulates that cognizable offence means an offence and cognizable case means a case in which, a police officer may in accordance with the first schedule or under any other law, for the time being in force may arrest without warrant.

18. It appears to me that the general power of arrest available to a police officer in terms of Section 2(a) of the Code of Criminal Procedure, is once again specified under Sub-section (1) to Section 20 of the West Bengal Act 42. But this Section neither specifically nor by necessary implication indicates that police officer is empowered to investigate and submit report u/s 173 of the Code of Criminal Procedure even though they are not so empowered in terms of Section 20 of the principal Act.

19. Sub-section (2) of Section 20 of the West Bengal Act 42 of 1973 only stipulates the circumstances and case where the police shall arrest without warrant. It is now settled and also requirement of law that in any case where arrest is effected by police, reasons for arrest must be disclosed to the person so arrested.

20. Sub-section (2) of Section 20 of the West Bengal Act 42 of 1973 only stipulates that such arrest will be made by the police officer either on the basis of reasonable complaint or on the basis of credible information. The power vested under Sub-section (2) of the Section 20 is only extended to the power of arrest and nothing beyond that.

21. Under those circumstances, I am of the view that by West Bengal Act 42 of 1973, Section 20 of the Prevention of Food Adulteration Act, 1954 is in no way affected.

22. Section 20 of the West Bengal Act 42 of 1973 by itself does not empower the police to institute a prosecution in terms of Section 20 of the principal Act. There is nothing to show, so far as this case is concerned, that the police officer who submitted report in terms of Section 173 of the Code of Criminal Procedure is so authorized either by general or by a special order issued by the State Government in terms of proviso to Section 20 of the Act.

23. In view of the legal impediment as rightly pointed out by Mr. Basu, appearing for the petitioner, I am of the view that the present prosecution instituted by the police officer who is not authorized either by a special or by a general order can be continued. The report submitted by the police officer cannot be accepted as he is not so authorized under the Act to submit such report to initiate prosecution against the petitioners for alleged commission of offence punishable under Prevention of Food Adulteration Act, 1954. The very foundation of the case goes as no valid

cognizance on the basis of such report can be taken by Id. Court below. Further continuation of the case will be nothing but abuse of the process of Court as such the proceeding now pending before the Court below is liable to be quashed.

The proceeding being Special Case No. 4 of 2006 arising out of Domjur Police Station Case No. 102 of 2005 now pending before the Court of Chief Judicial Magistrate, Howrah and registered as G.R. No. 869 of 2005 is hereby quashed.

There shall be no order as to costs.

Criminal Section is directed to send a copy of the order to the learned Court below immediately.

24. Criminal Section is directed to supply the certified copy of the order to the learned Advocate for the parties within three days.