

Criminal Revision

Present:
The Hon'ble Justice **RAGHUNATH RAY**

Date of judgment: 06.01.2010

C.R.R. No. 3423 of 2008

CHANDAN KUMAR BANIK -- PETITIONER
-VERSUS-
THE STATE OF WEST BENGAL - OPPOSITE PARTY

Point:

INHERENT POWER, REASON: Order without reason-Whether it amounts to denial of justice- Order ex-facie manifests error of fact or law committed by Court- Whether the Magistrate can review its earlier order- Code of Criminal Procedure, 1973-S. 482.

Fact: Application filed by the petitioner on the ground that Ld. Magistrate committed error in reviewing earlier order. Question involved in the application is whether Ld. Magistrate is justified in reviewing order passed by his Ld. Predecessor.

Held:

It is essentially required that a judicial order must contain some reasons. In other words, reasons, even if brief, must be disclosed in a judicial order. It is well settled position of law that failure to give reasons amounts to denial of justice. Para 27

Section 482 of Code of Criminal Procedure is silent about exercise of inherent power by the subordinate criminal Courts. Such inherent power is vested only with the High Court but in absence of specific enabling provision, it can not and should not be interfered in that context that there is any prohibition for subordinate criminal Courts to do what is absolutely necessary for dispensation of justice. Subordinate criminal Courts have inherent power to do a real and substantial justice for which alone it exists or to prevent the abuse of its process. Although reference to subordinate criminal Courts is omitted in Section 482, the same does not necessarily imply that such criminal Courts can, in no circumstances, exercise inherent power.

Paragraph – 29

Review of order in question being devoid of even any iota of reasoning is warranted to prevent failure of justice and the Ld. Magistrate rightly passed order impugned reviewing earlier order on the basis of materials and documents which were made available to him to render just justice in this case. It is well settled proposition of law that in appropriate cases the Magistrate can review its earlier order, it is shown from the record that such order ex-facie manifests any error of fact or law committed by Court.

Paragraph – 30

In exceptional circumstances the subordinate criminal courts are required to render substantial justice for which such courts exist, in exercise of inherent power, although very sparingly, if express provisions of Cr. P. C. are found too inadequate to meet exigencies of circumstances. In such a compelling situation especially when such an order is not a speaking order and also is a factually incorrect one not reflecting true and exact state of affairs, exercise of inherent power by the subordinate criminal courts is extremely necessitated and provision under section 362 Cr. P.C. may not operate as an impediment towards dispensation of justice in a more meaningful and effective manner. Paragraph – 31

For the Petitioner : Mr. Narayan Ch. Das
 Mr. Saikat Ghosal

For the State : Mr. Pushpal Satpathi

The Court:

By filing this application under section 401 read with section 482 of the Code of Criminal Procedure the revisionist has sought to challenge an order dated July 16, 2008 passed by the learned Chief

Judicial Magistrate, 24-Parganas (South) at Alipore, in T.R. Case No. 5 of 1988 which arose out of Raina P.S. Case No. 3 dated 5.6.1981 under section 21(1) of the West Bengal Cold Storage (Licensing and Regulation) Act 1966 (in short said Act).

2. Heard Mr. Das, learned counsel for the petitioner in support of the instant revisional application. Mr. Satpathi, learned counsel appearing on behalf of the State has opposed the revision and has supported the findings arrived at by the learned Chief Judicial Magistrate, 24 – Parganas (South), in the order impugned.

3. It is submitted on behalf of the petitioner that Raina Police Station Case No. 3 dated 5th June, 1981 under section 21(1) of the said Act was initiated against him and his brother at the instance of the District Enforcement and on completion of investigation the investigating agency submitted a final report (F.R.T. No. 26 dated 19.9.1985). His further submission is

that, in view of the provision under section 167(5) of the Code of Criminal Procedure, a petition was moved before the learned Chief Judicial Magistrate, 24 – Parganas (S) at Alipore with a prayer for their discharge from the aforementioned proceeding and on perusal of the final report both of them were discharged from the said case on 4th October, 1991. After being discharged the petitioner, submitted a prayer before the learned Chief Judicial Magistrate, 24 – Parganas (South) at Alipore, for return of the seized articles / goods and the investigating agency was accordingly directed to return the seized articles / goods after expiry of the statutory period of appeal vide order dated 24th February, 1992. Despite such specific order, no steps were taken from the end of the investigating agency to return the seized articles / goods which include 40,000 (Forty thousand) packets of potatoes. When such inaction on the part of the investigating agency was brought to the notice of the

learned Chief Judicial Magistrate, 24-Parganas (S) at Alipore, the learned Magistrate was pleased to reject the prayer of the petitioner without assigning any reason vide his order dated 5th July, 2000. Against such order, the petitioner moved a revisional application before the learned District and Sessions Judge at Alipore and the impugned order dated 5th July 2000 passed by the learned Chief Judicial Magistrate in T.R. Case No. 5 of 1988 was subsequently set aside in Criminal Motion No. 401 of 2000 by the learned Additional District and Sessions Judge, 11th Court at Alipore vide order dated 20th November, 2003.

4. It is further submitted by Mr. Das that despite such directions and orders, the investigating agency failed and /or neglected to return the seized articles or goods. Therefore, the petitioner had to move a revisional application before this Court under

section 483 of the Code of Criminal Procedure. The High Court was subsequently pleased to dispose of the revisional application being C.R.R. No. 1049 of 2008 on contest with a direction upon the learned Chief Judicial Magistrate, 24-Parganas (South) at Alipore to decide the matter pertaining to return of seized goods or articles conclusively and finally within a period of three months from the date of receipt of the copy of the said order. Accordingly, his application was taken up for hearing and the prayer for return of the seized potatoes was arbitrarily refused by him with the observation, inter alia, that no packets of potatoes were seized at the relevant point of time.

5. Being aggrieved by and dissatisfied with the aforementioned order of the learned Chief Judicial Magistrate, 24-Parganas (South) at Alipore, the petitioner has preferred this revisional

application mainly on the ground that the learned Magistrate has committed an error in reviewing his earlier order whereby the return of seized potatoes was ordered on 24.02.92. It is also vehemently argued by him that the learned court below has also ignored the factual position that emerges from the final report itself which indicates that there was seizure of forty thousand packets of potatoes from the cold storage of the petitioner. The Police Sub – Inspector’s claim in the final report that potatoes were returned to the producers after seizure is, however, disputed by him on the ground that save and except a mere reference in the final report no other document is forthcoming in support of such contention. It is, therefore, submitted by him that this Court would either pass a direction upon the investigating agency to return the said forty thousand sacks of potatoes to the petitioner or to remand the

matter to the learned Chief Judicial Magistrate, 24-Parganas (South) at Alipore, for hearing the same afresh.

6. Such submission is strongly controverted by Mr. Satpathi, learned counsel for the State. In this connection, he has drawn my attention to the Jimmanama executed by one Nemai Chandra Dana, wherefrom it appears that he took jimma in respect of certain cold storage receipts only and no potatoes were ever given in his jimma. According to him, not a single sack of potatoes not to speak of four thousand packets of potatoes, was ever seized from the cold storage of the petitioner since the owner petitioner himself was not present and no stock register was also made available to the raiding party at the material point of time. It is, therefore, submitted by him that there was no seizure of potatoes and as such the question of either removal of potatoes from the godown or retaining the

same by any one as Jimmader does not arise. It is further submitted by him that indication of seizure of forty thousand packets of potatoes as shown in the relevant column of F.R.T. appears to be a bonafide mistake on the part of the Police Sub-inspector concerned. In fact, there was no seizure of the potatoes in question. and as such no quantum of potatoes could be ever returned to the producer by the Investigating Agency as wrongly claimed in the F.R.T.

7. It is next argued by him that since the learned Magistrate passed the order impugned in terms of direction of this Court, the provision of section 362 of the Code of Criminal Procedure has no manner of application in the present case. It is, therefore, forcefully submitted by him that the order impugned does not suffer from any legal infirmity.

8. The short point involved for consideration is whether the learned Magistrate is justified in reviewing order dated 24.02.92 passed by his ld. predecessor.
9. I have paid anxious consideration to rival submissions so advanced by both sides with reference to materials and circumstances on record.
10. In order to appreciate the factual background of this case, having a chequered career for almost three decades, in its proper perspective it is necessary to summarize relevant facts shorn of unnecessary details as under ;-
11. In a summer evening of 04.06.1981 a raiding party led by Arun Kanti Ray S.I. D.E.O. Sadar Burdwan raided the premises of Lakshmi Narayan Cold Storage owned by the petitioner and his brother Ashim Banik. During such raid Nema Chandra Dana, the employee failed to produce the license of the cold storage in

question for retaining potatoes. Some receipts of the said cold storage were seized while potatoes could not be seized in the absence of owners and non-availability of stock register at the material point of time. However, as per complaint of the seizing officer alleging operation of cold storage without having any valid license, Raina P.S. Case No. 3 dated 05.06.81 under section 21 (1) of the said Act was initiated against the revisionist and his brother for alleged violation of section 3 of the said Act.

12. After the lapse of about more than four years on 19.09.1985

F.R.T. No. 26 was submitted on the following ground :

“..... the accused proprietors were not sent up in charge-sheet in the case as because accused Chandan Banik was awarded death sentence and Ashim Kr. Banik for life imprisonment on 11.04.85 in Con. with Gariahata P.S. Case No. 49 dt. 30.01.83 ST. Case No. 4/83 under

section 302/201/34 IPC by Sri D. N. Sen, ld. Additional District Judge,
10th Court Alipore”

There was also a prayer for forfeiture of the cold storage to the state of West Bengal although it was disclosed on the F.R.T. itself that the license No. 272 dt. 26.6.81 was issued in favour of the proprietors for the cold storage business.

13. No magisterial order was, however, passed on the said F.R.T. dated 19.9.85 till the ld. CJM Alipur had an occasion to deal with the prisoner's petition dated 03.04.91 praying for his discharge under section 167 (5) Cr. P.C. Accordingly, Ld. Chief Judicial Magistrate, Alipur discharged the revisionist and his brother Ashim Banik from D.G.B. Case No. 190 / 81 which arose out of Raina P.S. Case No. 3 dated 05.06.81 under the said Act vide order dated 04.10.91. Pausing for a moment it may be observed in this context that the prayer for discharge of accused under section 167 (5) Cr. P.C. appears to be redundant in view of submission of

F.R.T. Ld Magistrate's order allowing petition under section 167(5) Cr. P.C. after submission of F.R.T. also appears to be erroneous on that score.

14. On 23.11.91 the Revisionist submitted a prisoner's petition for return of seized goods and on 24.02.92 the then ld. C.J.M. Alipure directed return of seized goods to the revisionist after the period of appeal since ld. A.P.P. put no objection in the claim petition. However, subsequently on 05.07.2000, after taking the Police report and submission advanced by both sides into consideration, the ld. C.J.M. opined :
- 'there was no seizure of material article (forty thousand sacks of potatoes) from the custody of the accused or their employees, though some receipts were seized.' He therefore, concluded in the manner as indicated below :-
- " Under such circumstances, the question of returning the said sacks once again does not arise. Accordingly, the petition for return of seized goods stands rejected."

15. The aforementioned order dated 05.07.2000 was, however, challenged by preferring a criminal motion No. 401/2000 at the instance of the revisionist. The ld. Additional District and Sessions Judge, 11th Court Alipur allowed the revisional application on 28.11.03 holding inter alia that the ld Magistrate cannot review his order once passed under section 452 Cr. P.C.

16. Again the revisionist moved a petition afresh in T.R. Case No. 5 of 1985 on 18.5.2006 reiterating his prayer for return of the seized articles / goods. In view of non – disposal of the application for return of seized articles / goods pending before the ld. Magistrate the revisionist preferred CRR No. 1049 of 2008 under section 483 Cr. P.C. which was disposed of by this Court on 07.04.08 with a specific direction upon the ld. C.J.M., 24 – Pgs. (South) Alipur to decide the matter conclusively and

finally within a period of three months from the date of receipt of the copy of the order.

17. In terms of the aforementioned order of this Court, the learned Magistrate meticulously scrutinized the entire case record and came to a finding that the seizure list did not disclose any such seizure of forty thousand bags of potatoes. According to him, in fact, there is nothing on record to substantiate the contention of the petitioner that forty thousand packets of potatoes were ever seized in connection with the case under reference save and except an entry to that effect made in the F.R.T. by the Police Sub-Inspector Nandalal Sharma. Since there was no seizure of potatoes at the material point of time, the learned Magistrate rejected

the prayer for return of seized potatoes vide his order dated 16th July, 2008.

18. A close look to the order impugned coupled with other relevant materials on record as have been made available to me from the L.C.R. leads me to opine that the Id. Magistrate's finding to the effect that, in fact there was no seizure of forty thousand packets of potatoes, at the relevant point of time is founded on sound reasonings which are consistently backed by sufficiently strong materials and circumstances on record. Really, it is most unfortunate that a legal fight for return of forty thousand packets of potatoes has been carried forward for all these long twenty-five years on a misconceived notion without even having a glimpse over the First

Information Report itself which is the basic document in this case.

19. A mere perusal of the seizing officer's report which was subsequently treated as an F.I.R. is quite sufficient to resolve every dispute regarding purported seizure of forty thousand packets of potatoes. Sri Arun Kanti Roy, S.I., D.E.O. Sadar, who conducted the raid in the Lakshminarayan Cold Storage owned by the petitioner, Chandan Kumar Banik and his brother Ashim Kumar Banik both of 29, Hindusthan Park, Calcutta is found to be categorical in his assertion in the report dated 5th June, 1981 submitted before the then Officer - In - Charge, Raina Police Station, that he seized twelve number of cold storage receipt books and out of the same serial nos. 1 to 9 were taken into custody by him

and the rest were left with the jimma of the employee

Nemai Chandra Dana, under a Jimmanama. It was

further clearly written therein as follows :-

“packets of potatoes could not be seized as the stock register is with the proprietor in Calcutta and the exact number of packets in the cold storage could not be counted for by the employee. I have issued notice to the proprietor to produce the stock register and other relevant records to me on 7.6.1981 by 10 hours.” In his report he has requested the Officer – in – Charge, Raina Police Station, to start a Cog. Case under section 21(1) of the said Act against Chandan Kumar Bank, the owner. With his report he also enclosed the original seizure list and original jimmanama. On receipt of such report, Sri A.K. Chandra, the then Officer –in-Charge, Raina Police Station, started Raina P.S. Case No. 3 dated 5th June, 1981 under section 21(1) of the said Act of 1966. It is absolutely clear from the report in question that he visited the premises of the cold storage on 4th June, 1981

between 4-00 to 5-30 PM and in view of failure of owner / employee of the cold storage in question to produce the licence of the said cold storage for retaining potatoes, he opined that the proprietor violated section 3 of the said Act, 1966 and is liable for prosecution under section 21(1) of Act VI of 1966. Accordingly, he seized the aforementioned receipts etc. but could not seize any packet of potatoes on the ground as mentioned hereinbefore.

20. True it is that the petitioner has filed his prayer for return of 'seized potatoes' banking upon an entry in the column 7 of final report filed under section 173 of the Code of Criminal Procedure, wherein under the heading "property seized" there is mention of forty thousand packets of potatoes. His claim for return of seized potatoes is, therefore, mainly based upon the said entry. But such entry now appears to be absolutely erroneous one made by S.I. N.L. Sharma. On perusal of relevant

documents and materials on record I have no hesitation in holding that this is a sheer non-application of mind on the part of the police officer who submitted the F.R.T. in an irresponsible manner without even taking into consideration the First Information Report itself which sets the law into motion. Being a responsible police officer he ought to have consulted at least the First Information Report not to speak of any other document. It is strange enough to note that such an irresponsible officer was entrusted with the duties and responsibilities of D.E.O, Burdwan. He has also not perused the seizure list or Jimmanama and other relevant documents which were very much the part of the case diary and were required to be taken into consideration prior to submission of any report in final form on completion of investigation. This unwarranted erroneous entry has, in

fact, driven the petitioner to undertake such a long drawn legal battle for return of 'forty thousand sacks of potatoes'. This is undoubtedly, a very sorry state of affairs. It is really distressing to note that such a Police report in final form was submitted in a very casual fashion with a prayer that return of potatoes to producers by the Jimmadar may be approved while destruction of rest of the items may be permitted. I fail to understand as to how and why the Sub-Inspector, Sri N.L. Sharma, made a utopian prayer based upon such wrong entries since no Jimmanama indicating jimma of forty thousand packets of potatoes is in existence. It is also astonishing to note that he has merely stated return of potatoes to the producers "by the Jimmadar" without naming anyone and also not specifying the exact date of alleged return. He has also given a note that item no. 1

potatoes were returned to the producers; but there is no reference to any supporting document to substantiate his claim. In fact, the question of return of potatoes to the producers by any Jimmadar does not arise at all since corroborative materials on record conclusively indicate that there was no seizure of potatoes from the cold storage in question at the material point of time.

21. It is, however, stated by Sri N. L. Sharma, that despite violation of provisions of section (3) of the said Act F. R. T. was submitted by him against the revisionist, Chandan Kumar Banik and also his brother, Ashim Kumar Banik, since both of them were not sent up only on the ground that the petitioner, Chandan Kumar Banik was awarded death sentence and Ashim Kumar Banik was awarded life term on 11th April, 1985 in

Gariahat Police Station Case No. 49 dated 30th January, 1983. At any rate, several prisoner's petitions were submitted before the Id. Court below alleging high handedness on the part of the police through initiation of this criminal case against him 'with malafide intentions and malafide motive for extracting illegal gains.'

22. It is, however, obvious from the materials on record that since inception of D.G.R. Case No. 190 /81 (subsequently registered as T.R. Case No. 5 of 88 on its transfer from the Court of Id. S.D. J.M. Burdwan to the Court of Id. CJM Alipur as per order of the High Court passed in Misc. Case No. 19/84) the prosecution took a very indifferent attitude towards the revisionist and his brother who had to face custody trial in connection with

Gariahat P.S. Case No. 4/83 under section 302/201/34 IPC. In fact, the case in question was unnecessarily dragged for the reasons best known to the prosecution against the revisionist who was awaiting execution of death sentence at that material point of time.

23. Against such backdrop of factual scenario as enumerated in preceding paragraph the misleading statements of the Police Sub – Inspector Sri N. L. Sharma regarding seizure of a huge quantity of potatoes as shown in the FRT is to be viewed with suspicion and annoyance for the simple reason that FIR and seizure list do not speak about purported seizure of potatoes. Rather, it is firmly established from the FIR itself that potatoes could not be seized from the godown in question due to non availability of stock register. Therefore, Mr. N. L. Sharma

S. I. is at fault in not consulting the relevant documents including FIR and seizure list etc prior to submission of report in final form against the revisionist.

24. In view of foregoing discussions, I am to hold that the learned Chief Judicial Magistrate, 24-Parganas (South) at Alipore, is absolutely justified in his finding that there was no seizure of potatoes in question. He has therefore, rightly rejected such prayer for return of the seized potatoes.

25. The revisionist's next plea challenging the ld. Magistrate's legal competence to review earlier order is neither legally nor factually tenable on the face of order dated 24.02.92. As already analysed in preceding paragraphs, ld. Chief Judicial Magistrate directed return of seized goods vide his order dated 24.02.92 in a very mechanical fashion

without going through the relevant Police Papers which include FIR, seizure list and Jimmanama etc. It is a very common and usual practice in almost all criminal courts to call for a report from the Investigating Agency. But no such report has been called for in this case.

26. The general tenor of the aforementioned order which has already generated much useless controversies over the issue of return of purported seized potatoes and has also caused agonizing ordeal to the petitioner, suggests sheer non application of judicial mind by the ld. Magistrate. Even if ld APP did not put any objection in claim petition, a duty is cast upon the ld Magistrate to pass a speaking order on consideration of all the relevant documents including FIR, Seizure list and Jimmanama etc.

27.

In fact, non-disclosure of reasons indicate utter non – application of judicial mind by the ld. Magistrate. On the contrary, assigning of reasons minimizes the chances of arbitrariness. Therefore, it is essentially required that a judicial order must contain some reasons. In other words, reasons, even if brief, must be disclosed in a judicial order. It is well-settled position of law that failure to give reasons amounts to denial of justice. Such being the factual and legal position the decision arrived at by the ld. Magistrate in his order dated 24.2.92 directing return of seized goods without penning down any reason whatsoever is no decision at all. In the instant case, it can safely be concluded that although it is obligatory on the part of the ld. Magistrate to record clear and explicit reasons in support of his decision allowing return of seized articles, the ld.

Magistrate has failed to satisfy such legal obligation / requirement.

28. It is really, shocking for this court's judicial conscience to note that an order directing return of seized articles was passed without even ascertaining the factum of seizure and nature of articles allegedly seized about a decade ago. More so, whenever such commodities i.e., potatoes are perishable in nature. There is no indication in the order itself that Id. Magistrate ever perused the seizure list, written complaint and other relevant documents prior to passing of the aforementioned order. Such inaction on the part of the Id. Magistrate has caused serious miscarriage of justice since no goods / potatoes etc. were in fact, ever seized in connection with D.G.R. case as mentioned earlier. It is beyond comprehension

as to how such arbitrary order can be carried out by the Police whenever no such articles / potatoes have actually been seized.

29. True, Section 482 Cr. P.C. is silent about exercise of inherent power by the subordinate criminal courts. Such inherent power is vested only with the High Court. But in absence of specific enabling provision, it can not and should not be inferred in that context that there is any prohibition for subordinate criminal courts to do what is absolutely necessary for dispensation of justice. It can not be disputed that subordinate criminal courts have inherent power to do a real and substantial justice for which alone it exists or to prevent the abuse of its process. As already indicated earlier, although reference to subordinate criminal courts is omitted in Section

482, the same does not necessarily imply that such criminal courts can, in no circumstances, exercise inherent power.

30. In my considered view, ld. Magistrate is under legal compulsion to reopen the chapter regarding return of seized goods / potatoes. Earlier order passed by his predecessor was a mere abuse of process of Court causing serious miscarriage of justice because Investigating Agency was directed to return articles / potatoes which were never seized by them. In such a complete fiasco, review of order in question being devoid of even any iota of reasoning is warranted to prevent failure of justice. Therefore, ld. Magistrate has rightly passed order impugned reviewing earlier order on the basis of materials and documents which were made

available to him to render just justice in this case. I am therefore, of the definite view that Id. Magistrate has not exceeded his jurisdiction in any manner and has not committed any error of law or fact. It is well – settled proposition of law that in appropriate cases the Magistrate can review its earlier order, if it is shown from the record that such order exfacie manifests any error of fact or law committed by the Court. It is needless to mention that order dated 24.02.92 passed by the then Id. C.J.M. suffers from factual error of fact for the simple reason that such cryptic order was passed by him on misrepresentation of fact that there was seizure of potatoes in question, although there was really no such seizure at all. In such compelling circumstances to prevent abuse of process of court and to secure ends of justice, Id. Magistrate has rightly decided the issue of

return of seized potatoes finally by refusing revisionist's prayer for return of seized potatoes.

31. In the light of foregoing discussion it is held that in exceptional circumstances the subordinate criminal courts are required to render substantial justice for which such courts exist, in exercise of inherent power, although very sparingly, if express provisions of Cr. P. C. are found too inadequate to meet exigencies of circumstances. In such a compelling situation especially when such an order is not a speaking order and also is a factually incorrect one not reflecting true and exact state of affairs, exercise of inherent power by the subordinate criminal courts is extremely necessitated and provision under section 362 Cr. P.C. may not operate as an

impediment towards dispensation of justice in a more meaningful and effective manner.

32. That apart, ld. Magistrate has not proceeded to review earlier order suo moto in the present case. Rather fortified with the direction of the Hon'ble Court passed in C.R.R. No. 1049 of 2008 he has exercised his discretion in disposing of the issue of return seized potatoes as per his own reading and appreciation of materials on record and has thus ignored / reviewed earlier order passed by his ld. predecessor.

33. In such circumstances, I feel convinced to hold that order impugned dated 16.07.08 passed by ld. CJM 24-Parganas (S) does not suffer from any legal infirmity and as such his findings need not be disturbed.

34. For foregoing discussion order impugned passed by Id.
CJM 24 Parganas (South) Alipur in T.R. No. 5 of 1988
stands affirmed.

**35. Accordingly, this revisional application i.e. CRR
3423 of 2008 being devoid of any merit stands
dismissed.**

**Let the lower court records be sent down to the
learned court below at once.**

Urgent xerox certified copy of this order, if applied for, be
supplied on priority basis.

(RAGHUNATH RAY, J.)