

REGISTRAR GENERAL
HIGH COURT, CALCUTTA



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[BY SPEED POST/SPECIAL MESSENGER/E-MAIL]

No. 3579-RG.

Date: 12.04.2024.

To:

- (1) The Chief Judge, City Sessions Court, Calcutta;**
- (2) The Chief Judge, City Civil Court;**
- (3) The Chief Judge, Presidency Small Causes Court Calcutta.**
- (4) All The District Judges of West Bengal:**

(Darjeeling, Kalimpong, Jalpaiguri, Cooch Behar, Uttar Dinajpur, Dakshin Dinajpur, Malda, Murshidabad, Purba Bardhaman, Paschim Bardhaman, Bankura, Birbhum, Purulia, Paschim Midnapore, Purba Midnapore, Howrah, Hooghly, Nadia, North 24 Parganas, South 24 Parganas, Jhargram, Alipurduar, Andaman & Nicobar Islands).

Subject: Compliance in terms of the judgement dated 12.03.2024 passed by the Hon'ble Court in C.R.R. 1652 of 2013.

Sir/Madam,

With reference to the captioned subject, I am enclosing herewith a copy of the judgement dated 12.03.2024 passed by the Hon'ble Court in **C.R.R. 1652 of 2013** for your kind information and necessary action.

In view of the above, you are requested to circulate the same amongst all concerned.

Yours faithfully,


Registrar General

Enclosure: As stated above.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1652 of 2013

M/s SAJ Industries Pvt. Ltd. & Ors.

-Vs-

Sk. Firdos Ur Rahaman

For the Petitioners : Mr. Sekhar Basu,
Mr. Kallol Basu,
Mr. Suman Banerjee.

For the Opposite Party : Mr. Pradip Kumar Roy,
Mr. Joydeep Roy,
Mr. Tirthajit Roy Chowdhury

Heard on : 11.04.2023, 17.04.2023, 12.06.2023, 26.06.2023,
01.12.2023

Judgment on : 12.03.2024

Ananya Bandyopadhyay, J.:-

1. This instant criminal revisional application is preferred against an order dated 01.04.2013 passed by the Learned Judicial Magistrate, 4th Court at Howrah rejecting the prayer for stay of all further proceedings of Complaint Case No. 28C of 2012 (T.R. No. 31 of 2012) under Sections 34(5) and 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act.

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2. The Learned Advocate for the petitioners submitted as follows:

- i. Petitioners No. 2 to 5 had been the Directors of M/s SAJ Industries Pvt. Ltd., a company within the meaning of the Companies Act, 1956 with its registered office at Purna Bhavan, 5/1, Acharya Jagadish Chandra Bose Road, Kolkata - 700020 which merged with M/s SAJ Food Products Pvt. Ltd. in terms of an order dated 31.01.2011 passed by the Hon'ble High Court at Calcutta in Company Petition No. 529 of 2010 connected with Company Application No. 810 of 2010. Petitioner no. 6 had been the Chairman of M/s SAJ Industries Ltd. which merged with M/s SAJ Food Products Pvt. Ltd. Petitioners No. 2 and 3 had been the Joint Managing Directors & petitioners No. 4 and 5 had been the directors of M/s SAJ Food Products Pvt. Ltd.
- ii. M/s SAJ Industries Pvt. Ltd. had been engaged in the business of manufacturing, marketing and selling of biscuits and bakery products from its factory/manufacturing unit at Moheshpur, Uluberia, Birshibpur, District - Howrah.
- iii. For the purpose of manufacturing biscuits and bakery products, the petitioners procured processed raw materials like flour, sugar, skimmed milk, edible oil, cashew, nut, spice etc. from various suppliers across the State of West Bengal as well as from other States. Using these raw materials, petitioners manufactured new and distinct articles with a separate name, character, use and marketable individuality

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entirely changed in form, contour, physical appearance and chemical combination.

- iv. The aforesaid materials were thereafter used in manufacture of a different kind of 'product', namely, "biscuits and bakery products" where the "materials" used in its manufacture lost its identity. This "biscuits and bakery product" was a different commercial commodity of its own, capable of being sold in the market with its own identity.
- v. The petitioners procured raw materials, some of which were 'agricultural produce' not for the purpose of dealing with the same in the market as such. The petitioners procured the materials and assorted it in appropriate combination for manufacturing biscuits and other bakery products which were not 'agricultural produce'. The said 'biscuits and bakery products' were not 'agricultural' within the meaning of the said Act. Section 13 of the said Act dealing with licenses required to be gleaned by them who undertook the activities referred to therein for trading purpose and not for manufacturing purpose. A manufacturer procuring raw materials, some of which were 'agricultural produce' could not have come within the purview of the said Act. Both the purpose and the end product should be within the purview of the said Act to create a liability.
- vi. The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 had been enacted *"to provide for the regulation of marketing of agricultural produce in West Bengal; whereas it is expedient to provide*

13

for the regulation of marketing of agricultural produce in West Bengal and for matters connected”.

- vii. The provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 enacted the liability of submitting fortnightly returns to the Regulated Market Committee and paying of market fee to such Market Committee as envisaged in Section 17 and 17A of the said Act, which did not and could not apply in respect of the petitioners as they were in the business of manufacturing, marketing and selling of biscuits and bakery products which in no way could be equated with the ‘agricultural produce’ as defined in Section 2(1)(a) of the said Act.
- viii. On 27.10.2007, the petitioner communicated to the Secretary, Howrah Zilla Regulated Market Committee stating that the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, particularly Sections 17, 17A and Section 13 of the said Act were not applicable as petitioner no.1 did not subscribe to be a ‘trader’ as defined under Section 2(1)(t) of the said Act:
- ix. A license bearing no. 2819/60 dated 08/11/2007 was issued by the Howrah Zilla Regulated Market Committee in favour of M/s SAJ Industries Pvt. Ltd. to operate as a “Purchaser” of “agricultural produce” like flour, sugar, vanaspati and others under the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 and the Bye-laws made under the provisions of the said Act. The

said license was valid up to 07/11/2008 which was subsequently renewed in the following manner :

On 08/11/2009 for the period 08/11/2008 to 07/11/2009

On 08/11/2010 for the period 08/11/2009 to 07/11/2010

On 08/11/2011 for the period 08/11/2010 to 07/11/2011.

- x. Meanwhile, the Howrah Zilla Regulated Market Committee issued a notice vide office memo no. 119/L&M dated 23/05/2008 asking the petitioner No.1 to submit fortnightly return as required under Section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972.
- xi. Under the provisions of Section 17(1) of the said Act, Howrah Zilla Regulated Market Committee should levy fees on any 'agricultural produce' sold in the market area. The proviso to Section 17(1) of the said Act provided that no fee should be levied in the same market area more than once, in relation to the same 'agricultural produce' irrespective of the number of transactions.
- xii. As provided in Section 17(2) of the said Act only a 'licensed trader' would deposit the fees imposed by the Market Committee. According to the said Act, a licensed trader had been a person who was ordinarily engaged in the business of purchasing and selling 'agricultural produce' as a principal or as a duly authorized agent of one or more principals and included a person ordinarily engaged in the business of processing or preservation of 'agricultural produce'.

- xiii. The petitioners were neither engaged in the business of purchasing and selling 'agricultural produce' nor engaged in the business of processing or preservation of 'agricultural produce'. They were in the business of manufacturing, marketing and selling of "biscuits and bakery products" which were distinctively non-identical in name, use and quality from the raw materials used therein. They purchased those raw materials in order to manufacture 'biscuits and bakery products' exclusively.
- xiv. Reference was drawn to a case decided by the Hon'ble Supreme Court of India for relief from payment of 'market fees' as the appellant was engaged in the manufacturing of 'paper' using 'bamboo' which was an agricultural produce as raw material. It was specifically pointed out by the Hon'ble Supreme Court of India that the appeal deserved to be allowed as the manufacturing of 'paper' was not the processing of 'bamboo' alone.
- xv. Processing could not be equated to manufacture, as those two were distinct concepts. 'Processing', as normally understood, retained its character but for 'manufacture', something more was necessary including transformation into a new and distinct article with a distinct name, character and use.
- xvi. Unlikely as alleged, Section 17A of the said Act had also no application in relation to the business of the petitioner as it would appear from the very language of Section 17A(1) of the said Act that. *"Every licensed trader shall submit to the Secretary returns of turnover in such manner*

for such period and by such dates as may be prescribed". As the petitioners could not be termed as 'licensed trader', the question of filling of return of turnover did not arise.

- xvii. To such notice dated 23.05.2008, the petitioners sent a written representation dated June 12, 2008 to the addressor of the aforesaid notice reiterating the point taken by the petitioners in its earlier letter dated October 27, 2007 and further pointing out that the petitioners could not have any liability to submit fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17A of the said Act since the same did not and could not apply in respect of the petitioner no.1 being a manufacturer of 'biscuit and bakery product' which was not an 'agricultural produce' under the said Act. Moreover, it was required to be stated in the said 'Return' that 'turnover' was of 'biscuits and bakery products' which were not 'agricultural produce' in terms of the said Act. Furthermore, it was also pointed out that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 was not applicable in respect of the petitioner no.1 being a manufacturer of 'biscuit and bakery product' which were not an 'agricultural produce' under the said Act, and as such, it was requested in the said letter to renew the R.M.C license without submitting of any Return.
- xviii. Subsequently, there was a complete, freezing and deceptive silence from the respondent Howrah Zilla Regulated Market Committee with

regard to the liability of the petitioners for submission of fortnightly Return under Section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Furthermore, the license bearing No. 2819/60 dated 08/11/2007 was renewed for three successive occasions without asking the petitioners to submit any Return under the aforesaid Act, or requiring the petitioners to pay market fees under the said Act.

- xix. After a lapse of nearly two years, the petitioners were served with a hearing notice issued by the respondent authorities concerned under Memo No.114/L&M dated 16/08/2010 calling upon the petitioners to appear for a hearing before the Secretary of the Howrah Zilla Regulated Market Committee either personally or through an authorized nominee on 23/08/2010 at 2 p.m. and produce before the undersigned all oral and/or documentary evidence in support of such reasons as to why the market committee should not initiate assessment proceedings against the petitioners for non-submission of return on the purchase of notified agricultural produce by the petitioners failing which market fees would be determined on suo-moto assessment in accordance with the law. It was for the first time pointed in the said letter that the replies made by the petitioners in its earlier letters were not acceptable to the respondent authorities concerned.
- xx. Subsequently, the petitioners were served with another hearing notice dated 12/08/2011 issued by the respondent authorities concerned

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calling upon the petitioners for a further hearing on 23/08/2011 in response whereof the petitioner no. 1, by a letter dated 19.08.2011, informed the respondent authorities concerned that M/s SAJ Industries Pvt. Ltd. had merged with M/s SAJ Food Products Pvt. Ltd. with effect from 1st March, 2011 which had been approved by the Hon'ble High Court at Calcutta by an order dated 31.01.2011, and as such, M/s SAJ Industries Pvt. Ltd. had no existence with effect from 1st March, 2011. A request was made to issue a fresh hearing notice in the name of M/s SAJ Food Pvt. Ltd. so as to enable the petitioner to attend the said hearing.

- xxi. Disregarding the aforesaid fact that the petitioners were served with an order dated 23/08/2011 passed by the Secretary of the Howrah Zilla Regulated Market Committee, as communicated under memo no. 314/1/L&M dated 23/08/2011, in the name of M/s SAJ Industries Pvt. Ltd. which however did not have an existence after its merger with M/s SAJ Food Products Pvt. Ltd. holding the petitioners liable to submit fortnightly return under Section 17A of the said Act and suo-moto assessing the petitioners' liability to pay market fees of Rs. 26,00,000/- (Rupees Twenty Six Lac Only) for the period from 08/11/2007 to 23/08/2011 to the office with 15 days from the date of receipt of the said notice.
- xxii. The term 'fee' presupposed the existence of some service rendered to the payer of the fee. The levy fees should be quid pro quo for the service

15

rendered. The levy of fees should be correlated to the expenses incurred by the agency in rendering the service individually. The payment of fee was like a reimbursement for the quantifiable benefit provided or to be provided to its payer. There had been no expenditure to have been incurred for the infrastructural facilities attached with the market and on any issue related with the purpose of implementation of the scheme of the said Act.

- xxiii. Upon enquiry the petitioners came to know that there was no principal market area as defined in the said Act. They did not intend or propose to set up any such market once under the Scheme of the said Act and even there was no budgetary allocation for such.
- xxiv. The Market Committee concerned had given no service to the petitioners. The Petitioners had also come to know that the Market Committee had not spent or invested anything for the betterment of the infrastructure of the markets in that area. So they could not claim fee out of nothing. Therefore, without rendering any service, the respondents could not claim any fee as demanded.
- xxv. There is an object and purpose of the said Act. The steps ostensibly taken under the said Act must be for achieving the purpose. It is submitted that the purpose of the said Act is not to collect tax. The amount as demanded by the respondent is a fee and not a tax. It is pertinent to mention that the said Act is regulatory in nature and such regulatory mechanism is provided in the said Act. In absence of such a

Committee, meaning thereby the Regulatory Market Committee any establishment cannot claim fees as demanded.

- xxvi. The petitioners had not dealt with any "agricultural produce" in any Principal Market Yard or Sub-Market Yard and further the petitioners did not purchase the same from any agriculturalist. The petitioners purchased different items from different traders situated in different areas.
- xxvii. The petitioners came to know that no Market Committee had yet been constituted so as to be functional and proceed under the said Act. The alleged Secretary of the Committee could not take any step unless the Market Committee was properly set up and constituted under the said Act.
- xxviii. The Petitioners intend to refer the Notification dated February 20, 1982 and November 23, 2006 as well as Gazette Notification dated December 21, 2010 and also a Gazette Notification dated January 11, 2011 and pointed out that:
- a) The former Notification dated February 20, 1982 declares, inter alia, the names of the members of the Uluberia Regulated Market Committee established by the Notification dated February 20, 1982. On enquiry the petitioner came to know that the person against serial no. 7, Kanailal Jasu in the list of names of members expired on March, 1992. There was no

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reconstruction of Howrah Zilla Regulated Market Committee till date in an appropriate manner.

- b) The Notification dated January 11, 2011 mentioned about the appointment of Sk Firdous UR Rahaman as Secretary of Howrah Regulated Market Committee. It further appeared from the Notification dated September 21, 2010 that District Magistrate, Howrah had been appointed as authorized person to discharge the duties and functions of Howrah Zilla Regulated Market Committee. It was submitted that the Uluberia Regulated Market Committee which existed earlier had ceased to exist and the members of that market committee were adopted to constitute the Howrah Zilla Regulated Market Committee.
- c) In view of the above statements the dissolved Uluberia Market Committee had become the Market Committee for the Howrah District and the said Committee had been functioning. There could not be any appointment of District Magistrate under Section 22(1) of the said Act of 1972. Such appointment was illegal and without jurisdiction.
- d) In view of such circumstances it was submitted that there was no appropriate authority under the law to execute the reasonableness of the scheme of the Act namely the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. The

10

petitioner further submitted that Constitutions of a Committee with a dead person was not a valid committee.

- xxix. Under Section 17A(6) of the said Act, if any trader failed to submit any return of turnover, the Secretary of a Regulated Market Committee should make the assessment of the fees payable to the best of his judgment and determined the sum payable after giving an opportunity of hearing to that trader. Although the petitioners were not liable to pay the fees under the provisions of the statute, even then assuming and not admitting the liability, the Secretary in this instant case, had made the prior assessment and determined the fees payable without giving the petitioners opportunity of hearing which was in clear violation of the mandatory provisions of the statute. The order of assessment did not disclose any basis and therefore it was not a speaking order and as such the same did not have any legal validity.
- xxx. The company procured raw materials like flour, sugar, skimmed milk, edible oil, cashew nuts, nuts, spices etc. from various suppliers across the State of West Bengal and also from various other States including the Howrah Zilla Regulated Market Committee area. The petitioners had the receipts of the fee paid for those goods. The Market Committee could not ask for payment twice in the same area.
- xxxi. Against the aforesaid assessment order dated 23/08/2011 passed by the respondent Howrah Zilla Regulated Market Committee, the petitioners preferred an appeal before the Secretary of the Howrah Zilla

Regulated Market Committee on 01/09/2011 stating all the grounds mentioned hereinabove and annexing all documents showing payment of market fees by the "seller" of "processed agricultural produces" purchased by the petitioner.

- xxxii. The petitioners again received a communication issued under memo no. 392/L&M dated 31/10/2011 by the Secretary of the Howrah Zilla Regulated Market Committee in the name of M/s SAJ Industries Pvt. Ltd. (which however did not have existence after its merger with M/s SAJ Food Products Pvt. Ltd.) and its Chairman whereby the appeal dated 01/09/2011 was preferred by the petitioners against an order dated 23/08/2011 which was treated as a 'letter' and without showing any reasonable cause and giving any opportunity of hearing to the petitioners in complete violation of the principles of natural justice, the petitioners were called to deposit the amount demanded in the notice dated 23/08/2011 as a last chance within 7 days from the date of receipt of the said notice.
- xxxiii. The petitioner, by a letter dated 04/11/2011, reiterated the fact that the petitioners possessed relevant Certificates from their suppliers towards their purchase of 'agricultural produce' used as 'raw materials' in the manufacturing of 'biscuit and bakery products' and the said certificates confirmed that the suppliers had been paying market fees regularly against the agricultural produce sold to petitioner no.1. In terms of the proviso to Section 17A(1) of the said Act, market fees could

not be collected more than once and as such, the respondent authorities concerned could not demand market fees for the same agricultural produce once from the seller and again from the purchaser i.e., the petitioner no.1 for purchasing the same agricultural produce from such seller. The certificates were enclosed with the said letter.

xxxiv. The petitioners, further by a letter dated 04/11/2011, informed the respondent authorities concerned that M/s SAJ Industries Pvt. Ltd had merged with M/s SAJ Food Products Pvt. Ltd. with effect from 1st March, 2011 which had been approved by the Hon'ble High Court at Calcutta by an order dated 31.01.2011, and as such, M/s SAJ Industries Pvt. Ltd. had no existence with effect from 1st March, 2011. The original license bearing no. 2819/60 issued in the name of M/s SAJ Industries Pvt. Ltd. was submitted under the cover of the aforesaid letter with a request to renew the same and change the name to M/s SAJ Food Products Pvt. Ltd., but no step was taken by the respondent authorities concerned to that effect. As such, the petitioners, by another letter dated November 28, 2011, requested the respondent authorities concerned to inform the amount of renewal fees the petitioners required to deposit for renewal of the said license so that the same may be deposited immediately.

xxxv. Being aggrieved by and dissatisfied with purported order issued under memo no. 392/L&M dated 31.10.2011 by the Secretary of the Howrah Zilla Regulated Market Committee whereby the appeal preferred by the

petitioners under Section 17D of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 against an order passed under Section 17A of the said Act had been redundant without giving an opportunity of hearing to the petitioners in complete violation of the principles of natural justice as also the purported suo-moto assessment deduced by the respondent Howrah Zilla Regulated Market Committee under memo no. 314/1/L & M dated 23.08.2011 under the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 without any basis and/or reason thereof, the petitioners preferred Writ Petitions under Article 226 of the Constitution of India before the Hon'ble High Court at Calcutta being W.P. no. 20452(w) of 2012 on the grounds mentioned in the said petition for the following amongst other reliefs:-

- a. *"An order or orders and/or direction or directions declaring that "biscuits and bakery products" which were being manufactured by the petitioners from processed agricultural produce did not fall within the meaning of 'agricultural produce' as defined under Section 2(1)(a) of the said Act, 1972.*
- b. *A Writ and/or or orders and/or directions in the nature of mandamus directing the respondents and each of them to forbear from collecting levy fees on "biscuits and bakery products" which were being manufactured by the petitioners from processed*

1/23

agricultural produce in purview of the provision of the said Act, 1972.

- c. A Writ and/or order or orders and/or directions in the nature of mandamus directing the respondents and each of them to forbear from giving effect to and/or further effect to and/or cancel, rescind, recall, set aside the impugned assessment made in terms of the order issued under memo no. 314/1/L&M dated 23.08.2011 by the Secretary of the Howrah Zilla Regulated Market Committee as also the notice issued under memo no. 392/L&M dated 31.10.20211 or any subsequent action in relation thereto.
- d. A Writ of and/or in the nature of Certiorari directing and/or commanding the respondent authorities concerned and/or their men, servants, agents, subordinates and/or assigns to forthwith produce all documents and files connected with the instant case before this Hon'ble Court so that conscionable justice may be administered after perusal of the same.
- e. A Writ of and/or in the nature of Prohibition prohibiting the respondent concerned from taking any step or further step on the basis of or in terms of the order issued under memo no. 314/1/L&M dated 23.08.2011 by the Secretary of the Howrah Zilla Regulated Market Committee as also the notice issued under

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memo no. 392/L&M dated 31.10.2011 or any subsequent action in relation thereto.

- f. Rule NISI in terms of prayers (a) to (e) above.
- g. Injunction restraining the respondent concerned from taking any step or further step on the basis of and/or in terms of the order issued under memo no. 314/1/L&M dated 23.08.2011 by the Secretary of the Howrah Zilla Regulated Market Committee as also the notice issued under memo no. 392/L&M dated 31.10.2011 or any subsequent action in relation thereto.
- h. Ad-interim orders in terms of prayer (g) above.
- i. Costs and other incidentals to this application.
- j. Such other or further order or orders, direction or directions as Your Lordships may deem fit and proper."

xxxvi. Meanwhile the respondent authorities concerned proceeded against M/s SAJ Industries Pvt. Ltd. (which however was not in existence after its merger with M/s SAJ Food Products Pvt. Ltd.) and its Chairman under Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act by filing a complaint case in the Court of the Learned Judicial Magistrate, 4th Court at Howrah in Complaint Case No.28C of 2012. The petitioners were the accused persons in the aforesaid complaint case.

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- xxxvii. The aforesaid complaint case was filed before the Learned Chief Judicial Magistrate at Howrah on 16.01.2012, who by an order dated 16.01.2012 took cognizance of the matter and transferred the same to the Court of the Learned Judicial Magistrate, 4th Court at Howrah for disposal.
- xxxviii. In connection with the aforesaid complaint case, on 12.10.2012 all the accused persons appeared through their Learned Advocate and the accused persons no. 2 to 6 filed their respective petitions under Section 205 of the Code of Criminal Procedure for dispensing with their personal appearances. The accused Arpan Pal surrendered and applied for bail along with a letter of authorization and prayed for representing the accused no. 1 company under Section 205 of the Code of Criminal Procedure and the same was allowed.
- xxxix. It had been further submitted that when the very basis of the applicability of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 to levy fees on 'biscuits and bakery products' manufactured by the petitioners from processed agricultural produce, as also the very basis of the order passed under Section 17A of the said Act were under challenge in the aforesaid Writ Petition pending before the Hon'ble High Court at Calcutta, under the said circumstances, the instant proceedings under Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act ought to have been stayed

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awaiting the final decision of the aforesaid writ petition. Otherwise the entire premise and purpose of the aforesaid writ petition would become infructuous.

- xl. Moreover, the petitioners submitted that if the instant proceedings under Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act were allowed to continue and any penal order passed therein, the same would also render the aforesaid pending writ petition infructuous thereby occasioning a severe loss and injury to the petitioners for no fault on their part.
- xli. The Learned Trial Court erred in applying the order dated 26.02.2013 passed by His Lordship The Hon'ble Justice Kanwaljit Singh Ahluwalia (as His Lordship then was) in C.R.R. no. 2683 of 2009 in the facts and circumstances of this instant case, which, on the face of it, required the Learned Trial Court to stay all further proceedings of the instant complaint case till disposal of the aforesaid writ petition for the ends of justice.
- xlii. The Learned Trial Court, while taking cognizance of the matter, failed to appreciate that reference was drawn to sub-Section 2(i) of Section 17 of the said Act according to which, the petitioner, being a "manufacturer" and not a "licensed trader", could not be made liable to pay fees to the Market Committee.

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- xliii. The Learned Trial Court, while taking cognizance of the matter, failed to appreciate that the petitioners were served with an assessment order issued by the respondent authorities concerned under memo No. 339/L & M dated 12.09.2011 whereby a suo-moto assessment was sought to be made by the respondent Howrah Zilla Regulated Market Committee under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, assessing the liability of the petitioners to the tune of Rs. 50,00,000/- (rupees fifty lacs) for the period from 08.11.2007 to 23.08.2011 without any cogent reasons.
- xliv. The Learned Trial Court, while taking cognizance of the matter, failed to appreciate that the petitioners, by a letter dated 24.09.2011, reiterated the fact that the petitioners possessed relevant Certificates issued by suppliers against purchase of "agricultural produce" using the 'raw materials' in the manufacturing of "biscuit and bakery products" and the said certificates confirmed that the suppliers had been paying market fees regularly against the agricultural produce sold to petitioner no.1. In terms of the proviso to Section 17A(1) of the said Act, market fees could not be collected more than once and as such, the respondent authorities concerned could not demand market fees for the same agricultural produce once from the seller and again from the purchaser (in this case, the petitioner no.1) for purchasing the same agricultural produce from such seller. The certificates were enclosed with the said letter.

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- xlv. The Learned Trial Court, while taking cognizance of the matter, failed to appreciate that under Section 17(1) of the said Act, Howrah Zilla Regulated Market Committee should levy fees on any 'agricultural produce' sold in the market area. The proviso to Section 17(1) provided that no fee should be levied in the same market area more than once, in relation to the same 'agricultural produce' irrespective of the number of transactions.
- xlvi. The Learned Advocate for the petitioners submitted that the instant revisional application should be allowed and the proceedings before the Trial Court should be quashed as the Trial Court has committed an error in passing the impugned order.
3. Learned Advocate for the opposite party/respondent submitted that:-
- i. Once a trade license was obtained by any person under the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972, the licensee was bound to produce returns for products purchased or sold to the appropriate authorities within a week from such transaction.
 - ii. It had been a settled provision that a trade licensee was mandatory for the purpose of conducting business. As such there was no dispute as to whether a manufacturing company such as the Petitioners could be classified as a trader within the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972 or not.

Petitioner no. 1 company had been a trader having obtained a trade license from the concerned authorities.

- iii. It was further submitted that, in the said license it was clearly stated that the licensee should abide by the provisions of West Bengal Agricultural Produce Marketing(Regulations) Act 1972, the West Bengal Agricultural Produce Marketing(Regulations) Rules 1982 and the bye-laws made by the Howrah Zilla Regulated Market Committee.
- iv. In Clause 4 of the of the issued license, it was clearly mentioned that the licensee was to abide by the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Rules 1982, particularly Rule 7, i.e. terms and conditions of the license.
- v. Under Section 17(1) and 17(2)i) of the said Act of 1972, it was clearly stated that a licensee was to pay fees for the agricultural produce purchased or sold within a week from the date of transaction.
- vi. Under Section 17A of the said Act of 1972 it was clearly stated that a licensed trader should submit return to the concerned authorities in a timely manner. If any licensee failed to comply with the same, the concerned authority should give the licensee an opportunity to be heard. If the said licensee failed to attend the hearing or was unable show sufficient cause, the concerned authority should direct the licensee to pay a penalty in addition to the market fee.

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- vii. The market fees or returns sought for by the opposite parties were not on the finished product of the petitioner but the purchased agricultural product.
- viii. In accordance with the provision as laid down in Section 17(1) of the said Act of 1972, all licensees were liable to pay market fee or furnish return for all agricultural product bought or sold. As such the payment of market fees and submission of returns to the concerned authorities by the licensee was not just limited to sell of agricultural products as defined under Section 2(1) of the said Act but also upon the purchase of agricultural products.
- ix. The petitioners were aware of their rights under the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972 and the West Bengal Agricultural Produce Marketing (Regulations) Rules 1982, and were to be directed to furnish return and pay market fee for the agricultural produce purchased by the petitioner.
- x. It had been an admitted fact that the petitioner had been purchasing agricultural produce from several market areas, as such the Petitioners were liable to pay market fees for the Agricultural Produce purchase.
- xi. The petitioner had obtained trade license as mentioned above from the concerned authorities for trading and marketing agricultural produce.

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- xii. The opposite party i.e. the concerned authority did not claim market fees for the sale of agricultural produce but for payment of market fees for the agricultural produce purchased.
- xiii. It was further submitted that the stand taken by the petitioners in this instant criminal revision could have been taken before the Trial Court itself. Instead the petitioners opted to file the instant petition to stall the process and to evade the market fees and the subsequent penalty which was due and payable by the petitioner and therefore the instant revisional application should be quashed.
4. The instant criminal revisional application has been filed with the following prayer:-

"In the circumstances as aforesaid, it is most humbly prayed that Your Lordship would graciously be pleased to issue a Rule calling upon the opposite party to show cause as to why the impugned order dated 01.04.2013 passed by the Learned 4th Court of Judicial Magistrate at Howrah rejecting the prayer for stay of all further proceedings of Complaint Case No. 28C of 2012 (T.R. No. 31 of 2012) (Sk. Firdos Ur Rahaman Vs. M/s Saj Industries Pvt. Ltd.) under Section 34(5) and 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17 of the said Act should not be set aside and/or quashed and also as to why all further proceedings of Complaint Case No. 28C of 2012 (T.R. No. 31 of 2012) (Sk. Firdos Ur Rahaman Vs. M/s Saj Industries Pvt. Ltd.) pending before the Learned 4th Court of Judicial Magistrate at Howrah under Section 34(5) and 34(7) of the West

12

Bengal Agricultural Marketing (Regulation) Act, 1972 should not be set aside and/or quashed and/or stayed till the disposal of W.P. No. 20452(w) of 2012 pending before this Hon'ble Court and after perusing the records and hearing the parties, and if any insufficient cause is shown, make the Rule absolute and to pass such other or further order or orders as Your Lordships may deem fit and proper. And Your petitioner further prays that pending hearing of the Rule all further proceedings of Complaint Case No. 28C of 2012 (T.R. No. 31 of 2012) (Sk. Firdos Ur Rahaman Vs. M/s Saj Industries Pvt. Ltd.) under Section 34(5) and 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 pending before the Learned 4th Court of Judicial Magistrate at Howrah may be set aside and/or quashed and/or stayed till the disposal of W.P. No. 20452 (w) of 2012 pending before this Hon'ble Court or till the disposal of the Rule, and Your petitioner shall not be arrested without leave of the Court."

5. The Criminal Procedure Code does not define the word 'Cognizance'. Lexicon, Webster's Dictionary, (1988) defines the word cognizance as, "*The range of mental observation or awareness, the fact of being aware, knowledge (Law), the powers given to a Court to deal with a given matter, jurisdiction.*"
6. Black's Law Dictionary defines the word 'Cognizance' as:

"Cognizance:- Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it."

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Cognizance in, general means 'knowledge' or 'notice', and taking cognizance of offence means taking notice, or becoming aware of the alleged commission of an offence. The court takes cognizance of the offence before proceeding with the process of trial. It is the application of judicial mind by the Learned Magistrate with regard to the possibility of an alleged offence to initiate legal proceedings and to conduct trial.

7. In **Ajit Kumar Palit v. State of West Bengal, AIR 1963 SC 765**, Supreme Court has held :-

"19.The "word cognizance" has no esoteric or mystic significance in criminal law or procedure. It merely means - become aware of and when used with reference to a Court of Judge, to take notice of judicially."

8. In **Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64** Apex Court has observed that :-

"34.... though, the term 'cognizance' has not been defined either in the 1988 Act or the Cr.P.C, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially."

9. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence, (**State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684**). Cognizance means jurisdiction or the exercise of jurisdiction or

power to try and determine causes. In common parlance it means taking notice of (***State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 33.***)

10. In ***R.R. Chari v. State of U.P., AIR 1951 SC 207*** the Hon'ble Apex Court held that :-

"14..."taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence."...

11. It was further held that:-

"16...Before it can be said that any Magistrate has taken cognizance of any offence under S.190 he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter."

12. In ***Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654***, the Hon'ble Apex Court held that :-

"8. ...Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence for the purpose of proceeding to take subsequent steps towards inquiry and trial..."

13. In ***Kishun Singh & Ors V. State of Bihar (1993) 2 SCC 654*** the following was held by the Apex Court :-

"7. ...Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Trial

13

Court takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. Mere application of mind does not amount to taking cognizance unless the Trial Court does so for proceeding under Sections 200/204 of the Code."

14. In **Anil Saran V. State of Bihar, (1995) 6 SCC 142** the Hon'ble Apex Court held that:-

"5. ...Though the Code defines "cognizable offence" and "non-cognizable offence", the word 'cognizance' has not been defined in the Code. But it is now settled law that the court takes cognizance of the offence and not the offender. As soon as the Trial Court applies his judicial mind to the offence stated in the complaint or the police report etc. cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence. Whether the Trial Court has taken cognizance of offence on a complaint or on a police report or upon information of a person other than the police officer, depends upon further steps taken pursuant thereto and the attending circumstances of the particular case including the mode in which case is sought to be dealt with or the nature of the action taken by the Magistrate..."

PB

15. Both the Learned Advocates representing the distinct parties agitated the issues concerning the merit of the complaint case as aforesaid which could not be considered at the time of taking cognizance pending trial, prejudging an issue or issues in question prior to the appreciation of both oral and documentary evidence. In the instant case, the petitioners could not expect the Learned Magistrate to come to a conclusive decision that the petitioners had been wrongly implicated at the time of taking cognizance of the offence only.
16. The contents of the complaint prima facie convinced the Learned Magistrate of the commission of an offence on application of judicial mind, who thereafter proceeded to pass necessary orders in order to determine the role and implication of the alleged offender. The Learned Magistrate had taken cognizance of an 'offence' alleged to have been committed based on the assessment of the complaint on application of judicial mind and the Learned Magistrate could not be expected to decide the guilt of the petitioners or extricate the same at such a preliminary stage, without following the statutory legal provisions which would ultimately decide the allegations either in favour or against the petitioners resulting in acquittal or conviction of the same.
17. The Learned Trial Court by dint of an order dated 01.04.2013 rejected the prayer for stay for all further proceedings of Complaint Case No. 29C of 2012 arising out of T.R. No. 31 of 2012 under Sections 34(5) and 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972.
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The petitioners herein did not submit an Order passed by the Hon'ble Court at Calcutta dealing with W.P. No. 20452 (w) of 2012 granting a stay of the further proceedings relating to Complaint Case No. 29C of 2012 (T.R. No. 31 of 2012) pending before the Learned 4th Court of Judicial Trial Court at Howrah.

19. The Learned Trial Court allowed the petition under Section 205 of the Cr.P.C. regarding representation of the accused no. 1 company through their Joint Managing Director namely Arpan Pal. The Learned Trial Court also allowed the prayer for bail of the accused persons. The Learned Trial Court also allowed the prayer of the accused persons under Section 205 of the Code of Criminal Procedure for dispensing with their personal appearances for the interest of justice with the following conditions: (1) They would not challenge their identity during their trial; (2) They would be represented through their Learned Advocate; (3) They should remain present on the dates of their plea, examination under Section 313 Cr.P.C., judgment and other dates as and when called for regarding the case till further order. However, the Learned Trial Court rejected the prayer for dispensation of the personal appearance of the Joint Managing Director Sri Arpan Pal having already allowed his prayer for representing the accused no.1 company under Section 205 of the Cr.P.C. The Learned Trial Court was pleased to fix the matter next on 01.04.2013 for plea.
20. The petitioners stated on the next date, i.e., on 01.04.2013, the accused petitioners moved an application praying for time on the ground of pendency

of the aforesaid writ petition being W.P. no. 20452 (w) of 2012 before the Hon'ble High Court at Calcutta on the self same issue which was appearing in the monthly list of April, 2013 before the High Court at Calcutta, in view of an order dated 26.02.2013 by the High Court at Calcutta in C.R.R. no. 2683 of 2009, since there was no stay in the aforesaid writ petition passed by the Hon'ble High Court, the Learned Trial Court was pleased to reject the prayer for stay of the proceeding though allowed the petition seeking an adjournment and fixed 16.05.2013 as the next date for taking plea in connection with the matter.

21. By virtue of the previous orders passed by the Learned Trial Court as aforesaid, sufficient opportunity was granted in favour of the petitioners herein allowing the prayer for bail as well as the application under Section 205 of the Cr.P.C. subject to certain conditions, specifically to be present before the Court on the date of recording of plea.
22. Mere filing of an application or a petition before the Higher courts being aggrieved by the order of a trial court in a particular case shall not debar the trial court from proceeding with the hearing of that case pending before it, unless an order of stay on further proceedings of such a case has been granted by the Higher courts. In innumerable cases, it has been noticed that the trial courts do not proceed with the hearing of such cases pending before it and mechanically record daily orders stating "*awaiting orders from the Hon'ble High Court.*"

23. It has been observed that in majority of such cases, either the petitioners after filing criminal revisional application have not pursued with the hearing of same or have obtained an order of stay from the concerned Higher Courts for a certain period which has eventually lapsed with time. Moreover, the Trial Court is not informed of the current status of such revisional applications pending before the concerned Higher Courts. Based on an application or a mere submission by the Learned Advocate of the disputant that the matter is pending before the High Court or the Supreme Court, the Trial Court, instead of proceeding with the hearing of such criminal cases fixes another date stating "awaiting order" from the Higher Courts without enquiring about the actual status of the revisional application before the Higher Courts whereby the rate of pendency before the Higher Courts as well as the District Judiciary gets augmented over the years.

24. In the aforesaid context reference is drawn to a communication being No. 4908-RG dated 17th October, 2012 which is replicated as follows:

"No. 4904-RG

October 17, 2012

To

- (1) All The District Judges of West Bengal (Darjeeling, Jalpaiguri, Cooch Behaar, Uttar Dinajpur, Dakshin Dinajpur, Malda, Murshidabad, Burdwan, Bankura, Birbhum, Paschim Midnapore, Purba Midnapore, Howrah, Hooghly, Purulia, Nadia, South 24- Parganas, North 24- Parganas).**
- (2) The District & Sessions Judge, A & N Islands,**
- (3) The Chief Judge, City Sessions Court, Calcutta,**
- (4) The Chief Judge, City Civil Court, Calcutta,**
- (5) The Chief Judge, Presidency Small Causes Court Calcutta,**

YB

(5) The Chief Metropolitan Magistrate, Calcutta.

Sub: Hearing of any matter not to be adjourned only because of pendency of Appeal/Revision before the Hon'ble High Court, unless stay order is passed by the Hon'ble Court.

Sir,

It is brought to the notice of Hon'ble Judges of the High Court that Judicial Officers are not proceeding with the trial of the case only because of pendency of Appeal/Revision in connection with the said case before the Hon'ble High Court, even when no stay order has been granted by the Hon'ble Court.

I am directed by the Hon'ble Justice Kanwaljit Singh Ahluwalia by the order of His Lordship on 25.09.2012 in CRR No. 3605 of 2007 (In Re: Sukhendu Das) to communicate to all Judicial Officers working under your administrative control that the Judicial Officers will not adjourn any matter simply because connected petition is pending before the Hon'ble High Court, unless and until stay order is granted by the Hon'ble High Court.

Accordingly, I am directed to request you to circulate the order of His Lordship Hon'ble Justice Kanwaljit Singh Ahluwalia to all Judicial Officers working under your administrative control for favour of information and necessary action.

Thanking You,

Yours faithfully,
Sd/-
Registrar General"



25. The Trial Court had complied with the aforesaid directions of this Hon'ble Court as cited in the impugned order. The Learned Trial Courts in the District Judiciary shall insist on submission of an order from the Higher Courts granting stay of further proceedings pending before such courts either till disposal or for a limited period, within a reasonable time, recording the same in the order-sheet, failing which shall proceed with further hearing of such cases for expeditious disposal. The Learned Trial Court/Learned Judicial Magistrate shall also direct the disputants to submit the copy of the recent orders passed in respect of such cases pending before the Higher Courts on each and every date fixed by it in order to be informed of the status of further proceedings, extension of the interim order of stay etc.
26. In the instant case, the Learned Trial Court was justified in rejecting the prayer of stay of further proceedings in absence of an appropriate direction by the Hon'ble High Court to stay further proceedings of the instant complaint case. It has been submitted by the Learned Advocates for both parties that W.P. No. 20452 (w) of 2012 has not yet obtained finality.
27. In view of the above discussions, the instant criminal revisional application is dismissed.
28. The Learned Registrar General is to take necessary steps in circulating a copy of this order to all the Judges of the District Judiciary in West Bengal for information.
29. There is no order as to costs.

YB

30. Let the copy of this judgment be communicated to the Learned Registrar General, the Learned Trial Court and the concerned police station for necessary action.
31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)