

AD. 4.
September 16, 2021.
MNS.

C.R.A. No. 249 of 1991

(Via Video Conference)

Narayan Chandra Mondal
Vs.
The State of West Bengal

Ms. Suchismita Dutta

...learned *Amicus Curiae*.

Ms. Shreyoshi Biswas

...for the State.

Although the appellant has expired during pendency of the appeal, the appeal is taken up for hearing since there is a fine component in the impugned sentence.

Learned *Amicus Curiae* points out that PW3, one of the independent seizure witnesses, specifically stated in his examination-in-chief that the mill-in-question was closed at the juncture of seizure and that the accused was not even present at that time, but was called from elsewhere (the market) at the behest of the Investigating Officer. It is further stated by PW3 that the rice, which was kept at the place of occurrence, belonged to PW3 and not the accused.

That apart, PW3 (who was subsequently declared hostile) also alleges that his signature, taken on the seizure list, was taken under force.

Learned *Amicus Curiae* places reliance on the judgment reported at *AIR 1975 SC 2198*, where the Supreme Court, in paragraph- 7 thereof, categorically opined that if the shop-in-question

is not open at the relevant point of time, there is no necessity for a board containing the necessary particulars to be displayed.

Since the mill was closed at the relevant juncture, it is contended that the same proposition as laid down by the Supreme Court is applicable to the present case as well.

That apart, there is corroborative evidence of the fact that the rice found at the site of seizure belonged to others, and not the accused and had been stored there due to a flood.

Moreover, the statement of the Investigating Officer (PW7), as regards samples of the articles having been recovered, as found in the *suo moto* complaint, has been contradicted in the cross-examination of PW7 himself.

Learned *Amicus Curiae* further contends that, although the complainant had alleged that the accused fled from the site when the said Officer reached the said place, such statement is patently contradicted by one of the independent witnesses, who was declared hostile subsequently.

Over and above, the learned *Amicus Curiae* categorically argues that Para- 3 of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 (in short "the 1967 Order") clearly takes within its purview the stock of the accused; but in the present case, the goods seized belonged to others, as per the admission of the independent witnesses themselves, and not to the accused, thereby taking the accused/appellant outside the mischief of the said provision.

Learned counsel appearing for the State controverts such submissions of learned *Amicus Curiae* and contends that there were sufficient materials on record to convict the appellant.

Upon going through the materials on record, it is seen that the submission made by learned *Amicus Curiae* have to be accepted in its entirety, since the discrepancies pointed out by learned *Amicus Curiae* in the evidence of the independent witnesses as well as the prosecution itself are glaring.

The proposition laid down in *AIR 1975 SC 2198* is squarely applicable in the present case as well, since the mill of the accused, by corroborative evidence, was shown to have been closed at the time of seizure.

That apart, as rightly argued by learned *Amicus Curiae*, para- 3 of the said 1967 Order is not applicable in view of several witnesses having admitted that the stocks found by the complainant belonged to others and not to the accused.

As such, it is clearly borne out by the materials on record that the conviction and sentence awarded to the appellant were based on no material at all and, as such, perverse.

Hence, C. R. A. 249 of 1991 is allowed, thereby setting aside the judgment and order dated July 24, 1991 passed by the Judge, Special Court (E.C.Act), Raiganj, District- West Dinajpur, in Special Case No. 6 of 1990 and acquitting the appellant posthumously of all the allegations levelled against him.

I would fail in my duty if I omit to note that the learned *Amicus Curiae*, who is a junior member of the Bar, extended invaluable and

competent assistance to the Court to come to the above decision.
Such effort on the part of the learned *Amicus Curiae* is appreciated.

(Sabyasachi Bhattacharyya, J.)