

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**CRA 352 of 1987
(Via Video Conference)**

***Narayan Chandra Saha*
-vs.-
*State of West Bengal***

For the Appellant : Mr. Satadru Lahiri,
(Appointed by the Calcutta High Court
Legal Aid Services Authority)

For the State of West Bengal : Mr. Swapan Banerjee
Ms. Purnima Ghosh

Heard on : 02.06.2021 & 03.06.2021

Judgment on : 4th June, 2021.

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 30.07.1987 passed by the Learned Judge, Special Court, (under E.C. Act), Malda in D.E.B.G.R. Case No. 3 of 1986 (corresponding to T.R. No. 2 of 1986) wherein the learned trial Court was pleased to hold the appellant guilty for contravention of para 5(2) of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order 1982 and para 3(2) of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977 and convicted him for the

offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

The learned trial Court, thereafter, proceeded to sentence the accused for 6 (six) months and to pay a fine of Rs. 2,000/- i.d. to suffer R.I. for a further period of 3 (three) months for the contravention of para 5(2) of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order 1982 and also R.I. for 3 (three) months for para 3(2) of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977.

The genesis of the prosecution case is that on receipt of information relating to one Narayan Chandra Saha of Bibigram P.s. E.B. Dist Malda who was storing huge quantity of cement in his godown for clandestine business in cement without keeping proper account of the same, a raid was conducted to work out over such information. On 19.03.1986 at about 17.00 hours at the time of raid it was found that huge quantity of cement was stored for sale. It was alleged that seeing the police/raiding team the accused Narayan Chandra Saha fled away and did not return. The raiding party served a notice upon Smt. Bhakti Lata Saha wife of said Narayan Chandra Saha who received the same but the accused failed to produce any books of accounts from where it was reflected that the accused had the authority to deal with cement at the said godown. It was further alleged that no stock price board was displayed in the godown in respect of the same which was stored. As such it was alleged that the accused violated the provisions of para 9 of the West Bengal Licensing of Dealers of Cement and

Distribution of Levy Cement Order, 1982 and Para 3 of West Bengal Declaration of Stocks and Prices and Prices of Essential Commodities Order, 1977 and thus, rendered himself liable for prosecution under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. As a result of raid 450 bags of cement were seized from two godown in presence of two persons namely, Monoj Kumar Das and Adhir Kumar Saha who duly attested the same. Pursuant to such information English Bazar P.S. case no. 14 dated 19.03.1986 was registered for investigation under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. On completion of investigation charge-sheet was filed under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for contravention of para 5(2) of West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 (hereinafter, referred to as “Cement Control Order”) and for para 3(2) of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977 (hereinafter, referred to as “Declaration of Stock and Prices Order”).

The record of the case reflected that the accused pleaded not guilty to the charges and the prosecution examined 7 witnesses in support of the case while the defence examined 2 witnesses to rebut the prosecution evidence. Records also reflect that the accused was examined under Section 313 of the Code of Criminal Procedure prior to the defence evidence being examined and the learned trial Court on assessment of the evidence of the case arrived at the aforesaid finding of guilt and sentenced the accused accordingly (as stated above).

The prosecution in order to prove its case relied on the evidence of A.K. Som Choudhury (PW1) Sub-inspector of Police; Dwijendra Nath Pandey (PW2), Assistant Sub-inspector of police attached to English Bazar Police Station; Monoj Kumar Das (PW3), seizure list witness; Adhir Chandra Saha (PW4), seizure list witness; Biswajit Bagchi (PW5) Chief Inspector of Food & Supplies, Malda; K.B. Sarkar (PW6), Sub-inspector of Police and Bhupendra Chandra Das (PW7), Sub-inspector of Police attached D.E.B. Malda and the Investigating Officer of the case.

The witness of the defence were one Asit Kumar Sarkar (DW1), witness who claimed to be the owner of 480 bags of cement for the purpose of construction of his godown, and Madhusudan Poddar an employee of H.K Roy who deals with non levy cement from whom DW1 purchased 480 bags of cement.

PW 1 Asit Kumar Som Choudhury is a Sub-inspector of Police attached to the District Enforcement Office, Malda. He deposed before the court that on 19.03.1986 he along with D.E.B. Inspector K.K Chakarvorty, S.I. Bhupendra Das, police Constable Deokant Jha, Sachin Das, A.S.I. D Pandey went to Bibigram within English Bazar police station at about 5/5-15 p.m. at the two godowns of the accused Narayan Chandra Saha. Seeing the raiding team the accused fled away but his wife was present throughout the search. On search 400 bags of cement were recovered from the eastern godown and 50 bags of cement from the western godown. According to the witness there were no stock and price board in the godown or the office and the wife of the accused failed to produce any document or account books in

respect of the said stock of cement in spite of notice being served upon her. The said 450 bags of cement were then seized under a seizure list which was attested by two independent witnesses. On cross-examination the witness stated that the raid was conducted for about 1-1½ hours and around 7.00 p.m. they left the godown. The witness also denied that there was no seizure of 450 bags of cement and same did not belong to the accused.

PW2, Dwijendra Nath Pandey, is a Sub-inspector of police attached to Malda Police Line. He deposed before the court that on 19.03.1986 he along with D.E.B. Inspector K.K Chakarvorty, S.I. Bhupendra Das, police Constable Deokant Jha, Sachin Das, Asit Kumar Som Choudhury, Sub-inspector of Police, Malda went to Bibigram within English Bazar police station at about 5/5-15 p.m. at the two godowns of the accused Narayan Chandra Saha. Seeing the raiding team the accused fled away but his wife was present throughout the search. On search 400 bags of cement were recovered from the eastern godown and 50 bags of cement from the western godown. According to the witness there were no stock and price board in the godown or the office and the wife of the accused failed to show any document or account books in respect of the said stock of cement in spite of notice being served upon her. The witness stated that the western godown had no entrance through the shop and they had to enter the eastern godown through the shop and the entrance of the shop was south facing. On cross-examination he stated that no cement was seized from the shop room and on enquiry from the wife of the accused he came to learn that the accused fled away on seeing the raiding party. The witness also stated that the

seizure of 450 bags of cement were carried out in the presence of two independent witnesses.

PW3, Monoj Kumar Das, is a cement dealer having his place of business at Bibigram within English Bazar town. The witness stated that on 19.03.1986 at about 5.30 p.m. police seized 450 bags of cement in his presence from the house of the accused Narayan Chandra Saha and at that time Adhir Chandra Saha and another shop keeper were present. According to him from the two rooms 450 bags of cement were recovered by the police and notice was served upon the wife of the accused Narayan Saha who was not present in the house. The wife of the accused could not produce any document or books of account. The witness stated that he signed the seizure list which was marked as Exbt.1/1. The witness Adhir Saha signed in his presence which was marked as Exbt.1/2. The wife of the accused also signed in his presence which was marked as Exbt.1/3. The witness also proved his signature in the zimmanama along with the signatures of Adhir Saha and the wife of the accused which were marked as Exbt.2/1, Exbt. 2/2 and Exbt. 2/3 respectively. In cross-examination the witness narrated that the wife of the accused told him that 400 bags of cement found in the godown belong to Asit Sarkar. There was a board containing entries in front of the godown wherefrom 50 bags of cement were recovered. The prosecution was permitted to re-examine the witness wherein he admitted that neither Asit Sarkar nor any of his family members were present at the time of seizure of 400 bags of cement. The witness further stated that he did

not see any document to indicate that the 400 bags of cement belonged to Asit Sarkar.

PW4, Adhir Ch. Saha is a dealer of cement and he claimed that in his presence 450 bags of cement were seized from the house of the accused Narayan Chandra Saha on 19.03.1986 at about 6.30 p.m.. He identified his signature in the seizure list which was marked as Exbt. 1/2. He also proved his signature in the jimmanama, which was marked as Exbt. 2/2. In his cross-examination, he stated that he was called by a constable namely Sachin and these bags were in two different godowns, in one godown there were 50 bags and in the other godown there were 400 bags.

PW5, Khiti Bhusan Sarkar, is Sub-inspector of Police, who was attached with English Bazar Police Station on 19.03.1986. He stated that on 19.03.1986 he received a written complaint from S.I. Bhupendra Chandra Das of D.E.B., Sadar against the accused Narayan Chandra Saha U/s 7(1)(a)(ii) of the E.C. Act and on receipt of the complaint he started E.B.P.S case No. 14 dated 19.03.1986 and drew up the formal FIR. He identified the formal FIR along with his signature and endorsement, which was marked as Exbt.3. He also identified the complaint, which was signed by Bhupendra Chandra Das, which was marked as Exbt. 4, as also his signed endorsement, which was marked as Exbt.4/1. In cross-examination, he stated that he drew up the formal FIR and neither seizure lists were prepared by him nor any seized articles were produced before him.

PW6, Biswajit Bagchi, was the Chief Inspector of Food and Supplies at the relevant period of time on 19.03.1986. He deposed that on 04.04.1986 he received a letter from one S.I. B.C. Das seeking certain information, which information was furnished in the reverse of the said letter. He identified his signature below the information furnished. The information and the signature was collectively marked as Exbt.5/1. The contents of the information was that Narayan Chandra Saha is a licensed dealer of non-levy cement and his place of business is Bibigram, Word No. XIV, holding No. 94/97, English Bazar Municipality. The information also stated that license No. CMLD/DM3176 dated 17.11.1984 was valid upto 31.03.1986 and the said license was obtained in normal course of official business which was issued from the Office of the District Magistrate. The said license was marked as Exbt.6. In cross-examination, he stated that he never went to the godown of accused for any enquiry either before or after the occurrence.

PW7, Bhupendra Chandra Das is D.E.O. Malda. He stated that on 19.03.1986 he along with S.I. A.K. Som Choudhury, Constable Deokanta Jha and Constable 258 Sachin Das checked the cement godown of the accused Narayan Chandra Saha at Bibigram (Ghosh para) within the jurisdiction of English Bazar Police Station. Seeing the police party the accused fled away and they found many bags of cement stored in the godown. The wife of the accused was served with a notice, who signed the same, which was marked as Exbt.7. The wife of the accused namely, Bhakti Lata Saha could not produce the license and books of the accounts of the business and there was no stock and price board in either of the godown.

Two local witnesses namely Monoj Kumar Saha and Adhir Saha were called and in their presence and in presence of the wife of the accused the godown was searched when 400 bags of cement was recovered from the eastern godown and 50 bags of cement from the western godown. Seizure list, accordingly, was produced by him, which was marked as Exbt.1 and the signatures which were made in his presence were marked as Exbt. 1/1, Exbt.1/2 and Exbt.1/3. The said cement was handed over to one Rajendra Prosad and the jimmanama was also prepared by him, which was marked as Exbt.2. The witnesses also signed in the said jimmanama which was marked as Exbt. 2/1, Exbt. 2/2 and Exbt. 2/3. He thereafter lodged FIR with English Bazar Police Station, the written complaint which contained his signature was identified by him and was marked as Exbt. 4. On 20.03.1986 the case was endorsed to him by S.P., D.E.B for investigation. He also applied to the Collector on 21.03.1986 for confiscation of the cement. The total value of the said cement was assessed as Rs. 31,500/-. The letter dated 04.04.1986 addressed to the Controller Food and Supplies, was marked as Exbt. 5. The information which was received by him as communicated, was marked as Exbt. 5/1. The witness also submitted that he examined witnesses in connection with the case on 04.04.1986. After completion of investigation he submitted charge-sheet under Section 7 (1)(a)(ii) of the E.C. Act. In cross-examination, he stated that he had no idea regarding brand and variety of the cement which was seized or the brand and variety of the cement which was seized from the two godowns were same or not. He also denied that the witness Monoj Kumar Das during his examination stated regarding the presence of the stock and prices board or

that 400 bags of cement which were recovered belonged to one Asit Sarkar. The witness also expressed his ignorance regarding the fact that Asit Kumar Sarkar got back 400 bags of cement after the hearing of the confiscation proceedings as per the order passed by the Additional District Magistrate.

In this Case, we find that the DW1, namely Asit Kumar Sarkar stated before the Court that he purchased 400 bags of cement and stored them in holding No. 93/95, Word No. 14, English Bazar Municipality in a godown at (Ghosh para) Bibigram. He also stated that he purchased the said cement from H.K. Roy of Hyderpur. He is a dealer of non-levy cement and the said purchase was made on two dates i.e. 13.03.1986 and 19.03.1986 for 280 bags and 200 bags respectively. According to him, 80 bags of cement were already used for reconstruction of godown which carried on business of wheat and wheat products. He produced two cash memos for purchase of cement on 13.03.1986 and 19.03.1986. He also stated that after the confiscation proceeding was initiated, he appeared before the collector for return of cement to him and by his order Additional District Magistrate, Malda returned the cement to him. As such those 400 bags of cement belong to him and not to the accused, Narayan Chandra Saha. In cross-examination, this witness stated that holding No. 93/95 was owned by Parimal Kr. Saha, who is his business partner. On 19.03.1986 he used to reside with his wife, parents and children in the house which is at a distance of about 50 yards from the Holding No. 93/95.

DW2, Madhusudan Poddar is an employee of H.K. Roy who deals in non-levy cement at Hyderpur, P.S. English Bazar. This witness proved the

writings and signatures in the cash memo, which were marked as Exbt. C and Exbt. C/1. He also brought the cash memo book containing the counter foils of Exbt. C and Exbt. C/1. The counter foils are carbon copies and they were marked as Exbt. D and Exbt. D/1. In the cross-examination, he stated that he is an employee of H.K. Roy for the past 5 years and he denied that 480 bags of cement never supplied to Asit Kumar Sarkar.

I have considered the entire evidence relied upon by the prosecution and the defence and also considered the examination of the accused under Section 313 of the Code of Criminal Procedure wherein specific plea has been taken by the accused that 400 bags of cement which were seized in connection with the instant case did not belong to him and belonged to one Asit Kumar Sarkar. The accused categorically also stated that only 50 bags of cement belong to him. The witness also stated that he was not there in the house and his wife had no idea regarding the business which was carried on by him.

On an appreciation of the totality of the facts of the instant case I find that the fact of 450 bags of cement which were seized from two godowns were corroborated by the prosecution witness No. 1, 2 and 7, as such the factum of seizure has been proved, although, the prosecution witness No. 3 and 4 (who were independent seizure list witnesses) very weakly supported the prosecution case. In this case the subject matter is regarding the contravention of the "Cement Control Order" and "Declaration of Stock and Prices Order". In order to prove such contravention, the prosecution was duty bound to prove that the 450 bags of cement belonged

to the accused Narayan Chandra Saha. The evidence of the Investigating Officer reflects that he initiated confiscation proceedings before the Collector but gave an evasive reply in the cross-examination regarding 400 bags of cement which were returned to one Asit Kumar Sarkar by the Additional District Magistrate, Malda who presided over the confiscation proceedings. The Lower Court record reveals that the certified copy of the order passed by the Collector has been relied upon wherein the contention of the witness has been verified and 400 bags of cement were released in favour of Asit Sarkar on a bond of double amount of the price of cement i.e. Rs. 56,000/-. The said Asit Sarkar was examined as DW1 who produced relevant memos by which he purchased the said 400 bags of cement for the purpose of construction of his warehouse/godown. The factum of claim of Asit Sarkar regarding the ownership of 400 bags of cement were endorsed by the Learned Additional District Magistrate and the said ownership was never challenged before any forum thereafter. The denial and evasive reply of the Investigating Officer at whose instance the confiscation proceedings were initiated, therefore, demolishes the claim of the prosecution that all the bags of cement which were seized belonged to the accused Narayan Chandra Saha.

Taking into account, the evidentiary value of the witnesses who supported the prosecution case for the purpose of establishing contravention of the control orders, I am of the view that it would be unsafe to rely on their testimony for arriving at a conclusion of guilt so far as the present accused/appellant is concerned. As such the order of conviction and

sentence dated 30.07.1987 passed by the Learned Judge Special Court (under E.C. Act), Malda in D.E.B.G.R. Case No. 3 of 1986 (corresponding to T.R. No. 2 of 1986) arising out of English Bazar Police Station Case No. 14 dated 19.03.1986, under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 is hereby set aside.

The appellant is thus, acquitted of the charges, if he is on bail he shall be discharged from the bail bonds.

Accordingly, CRA 352 of 1987 is allowed.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR forthwith to the Court below.

All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)