

AD. 12.
September 13, 2021.
MNS.

C.R.A. No. 476 of 1987

(Via Video Conference)

Sanatan Halder
Vs.
The State of West Bengal

Ms. Suchismita Dutta

...*Amicus Curiae*.

Ms. Sukanya Bhattacharyya,
Mr. Mirza Firoj Ahmed Begg

...for the State.

Learned *Amicus Curiae*, at the outset, points out that two alleged independent witnesses, who deposed as PW3 and PW5 respectively, turned hostile and specifically denied the allegations levelled against the accused. That apart, PW1 (the Officer accompanying the Investigating Officer in the raid) clearly contradicted his own statement in examination-in-chief, regarding the relevant details and particulars having not been displayed at the shop of the accused, in his cross-examination, where he used double negative expressions indicating that the legally required particulars were actually displayed in the shop.

That apart, it is contended that the quanta of goods seized varied between the First Information Report and the PW1's deposition, which hits at the root of the prosecution case.

Learned *Amicus Curiae* further contends that no suggestion was put to the accused, in his examination under Section 313 of the Code of Criminal Procedure, with regard to any offence having been

committed under paragraphs 4 and 12(1) and (2) of the Kerosene Control Order, 1968.

As such, placing reliance on the judgment rendered by the Supreme Court in *Sharad Vs. State of Maharashtra*, reported at AIR 1984 SC 1622, in particular paragraph 144 thereof, learned *Amicus Curiae* contends that in view of failure of the prosecution to put suggestions to the accused under the above provisions during the examination of the accused under Section 313 of the Code of Criminal Procedure, the said charge ought to have been completely excluded. However, the trial court convicted the accused on such charge as well.

It is further contended that, as per paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977, the particulars mentioned therein merely have to be displayed conspicuously at a place near the entrance of the shop, as far as possible. However, it is not stipulated in the said provision that such display has to be on a separate board and might very well to be on the wall or by any other mode as well. As such, the alleged charge against the accused, regarding no such board containing particulars having been displayed, is neither here nor there and was insufficient to incriminate the accused.

Learned counsel appearing for the State, on the other hand, argues that, apart from PW3 and PW5, the other prosecution witnesses corroborated the prosecution case. Moreover, all the officers of the police, who adduced evidence, also corroborated the prosecution case to the hilt. Hence, counsel argues, there is no

scope of doubt as regards the involvement of the accused in the offence.

However, upon hearing learned counsel for both sides, it is evident that all the counts on which learned *Amicus Curiae* argued are valid in law and on fact. Not only was there patent contradiction between the prosecution case and the evidence of PW3 and PW5, who are the alleged independent witness, there was also patent contradiction between the statements made by the PW1 himself in his examination-in-chief and in his cross-examination respectively, as regards the commission of the offence by the accused.

Moreover, the quanta of stocks seized, as mentioned in the First Information Report, do not tally with that as stated in the evidence of PW1.

That apart, as rightly argued by learned *Amicus Curiae*, the failure of the prosecution to put any suggestion regarding violation of paragraphs 4 and 12(1) and (2) of the Kerosene Control Order, 1968 in the examination of the accused under Section 313 of the Code of Criminal Procedure, vitiates the entire charge and had to be excluded from the proceedings.

The seizure or non-seizure of a particular 'board' containing particulars, *ipso facto*, is not material in the event the particulars as required under the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 are displayed in any conspicuous place towards the entry of the shop, on whatever medium. Hence, the charge against the accused on such count was also not proved at all, let alone beyond reasonable doubt.

The corroboration, *inter se*, of the officials of the investigation authorities and some of the alleged witnesses were also vitiated by the inherent contradiction in the several statements made by the PW1 in his examination-in-chief and cross-examination respectively, as well as between the quanta mentioned in the First Information Report and in the deposition of PW1. Hence, the entire prosecution case is vitiated and no credible charge was made out against the accused at all.

Accordingly, CRA 476 of 1987 is allowed, thereby setting aside the judgment and order dated November 10, 1987 passed by Judge, Special Court, Essential Commodities Act, Nadia, in E.C. Case No. 31 of 1987 (T. R. No. 28 of 1987) and acquitting the accused/appellant of all the charges alleged against him.

The appellant stand discharged from such charges, as well as from any condition or bond, which might have been furnished by the appellant in connection with bail, if any, obtained by the appellant before any court of law.

The assistance of the learned *Amicus Curiae* and learned counsel for the State was extremely helpful to the Court and both of them deserve a note of gratitude from the Court on such score.

(Sabyasachi Bhattacharyya, J.)