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CRA 478 of 1987

In the matter of: Jharu Lal Kundu

... Appellant

Ms. Priyanka Chowdhury

....Amicus Curiae.

Ms. Faria Hossain

....for the state.

After hearing learned *Amicus Curiae* as well as learned counsel for the State, it appears that the Trial Judge proceeded on an erroneous premise by overlooking the crucial evidence of several witnesses, which demolishes the prosecution case itself.

At the outset, the PW-1 categorically admitted in his cross-examination that no sketch map of the locality was prepared and there was a rate-cum-stock board which was written with chalk. The stock board, after seizure, was not properly covered with paper or sealed up. PW-1 further goes on to admit that no precautionary measure was taken so that the writings on the board may be erased after seizure.

The particulars of the rooms where the seized articles were found were not mentioned in detail in the seizure list as per the admission of PW-1 himself.

The PW-1 further admits in his witness that no weightment chart of the articles was made. The measurement

of the diesel, admittedly, was made with the help of a stick but it has not been mentioned in the written complaint as to how the diesel oil was measured. No list of measurement of diesel oil was also prepared.

PW-2, an independent witness, categorically stated that the rate-cum-stock board was found displayed in the shop of accused, on which price chart was given. PW-2, who was declared hostile by the prosecution, also identified the stock board which was marked as Exhibit-1. It is seen from the cross-examination of the said independent witness (PW-2) that the accused has cultivable land on which he grows rice, pulses, paddy, *til*, *chhola* etc. and also has a shallow machine which is run by diesel.

PW-3, another independent witness who also turned hostile, virtually corroborated the statements of the PW-2 on most counts.

That apart, the evidence of PW-6 is also not particularly corroborative of the prosecution case.

Rather, it appears from a comprehensive reading of the entire evidence of the witnesses that there was sufficient proof that the articles seized might have been intended to be used for agricultural purposes by the accused.

It further appears that a token of renewal of licence was marked as Exhibit-B and the relevant papers might have been deposited with the authorities.

In such view of the matter, there is inherent contradiction in the prosecution case and the charges against the accused were not established at all, either under paragraph 18(1) of the West Bengal Rice and Paddy (licensing and control order) 1967 or Section 3(2) of the West Bengal Pulses and Edible Oil Seed and Edible Oils Dealer 1978, under Para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1979 and /or paragraph 3(1)(5)(7) of the West Bengal Motor Spirits and HSD Oil (licensing control and manufacture) Order 1980.

In such view of the matter, the trial court proceeded on an entirely erroneous premise in convicting and sentencing the accused.

Accordingly, CRA 478 of 1987 is allowed, thereby setting aside the judgment and order dated October 30, 1987 passed by the Judge, Special court (E.C Act) Nadia, Krishnanagar E.C. Case No. 16 of 1987/T.R. No.24 of 1987.

The appellant is acquitted and discharged from custody, if he is at present under incarceration, as well as discharged from all conditions and bail bonds, if furnished by the appellant at any point of time for obtaining bail.

The extreme co-operation of learned counsel for the State as well as the invaluable help rendered by learned *Amicus Curiae* is appreciated by this court.

(Sabyasachi Bhattacharyya, J.)