

15.09.2021
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CRA 402 of 1986

In the matter of: Gobinda Chandra Kar

.... appellant

Ms. Priyanka Chowdhury

.... *Amicus Curiae*

Ms. Faria Hossain

.... for the State

Learned *Amicus Curiae* contends that it was only established by the prosecution that a quantity of kerosene oil and urea were kept outside the shop room of the appellant, which were covered by *sal* leaves. Moreover, the accused produced an appropriate receipt to establish purchase of a Kirloskar pump for carrying on his agriculture.

As such, it is submitted by learned *Amicus Curiae* that no violation of Para-4 of the West Bengal Kerosene Oil Control Order, 1968 and/or Para-5 of the Fertilizer Control Order, 1957 were proved by the prosecution, sufficient to convict the appellant.

Learned counsel appearing for the State points out the 43 kgs. of kerosene and 41 kgs. of urea were discovered in front of the shop room of the appellant. Such case was corroborated by several independent seizure witnesses as well.

It is further submitted by learned counsel for the State that admittedly, the accused/appellant had been carrying on a business of kerosene oil previously, without authority, though his permission of licence was stopped from July 19, 1983.

As such, learned counsel for the State submits that the court below was justified in arriving at the conclusion that the guilt of the appellant under the charges levelled against him was proved beyond reasonable doubt.

It is apparent from the impugned judgment that the trial court proceeded on the premise that a prudent man might suspect that the accused persons were carrying on business of kerosene oil without authority. It was further assumed by the trial court that it does not appeal to reason that the accused person will allow his costly pump set to deteriorate by operating the same by kerosene oil instead of diesel. The court below also relied on the witness of D.W.2, a mechanic, who had stated that the machine was to be operated by diesel. However, such findings are based entirely on conjecture and surmise.

The test of a "prudent man" is often qualified by the financial means and other circumstances of the person concerned. Urban prudence need not be equated with that of a rural person as well as a person of limited means, as against an affluent person. Prudence is a creature of means and, as such, cannot be put in a straightjacket formula. Whether it was prudent for the accused person to run his costly pump set on kerosene oil or on diesel is a matter which is entirely within

the domain of conjecture and could not form the basis of conviction. The Trial Judge went into irrelevant considerations of the West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 to indicate that the same required high speed diesel oil for operating an agricultural pump set or a machine may get his requirement of high speed diesel oil for registration with the District Magistrate, who may thereupon issue a supply card.

However, the mere existence of the provision for such supply of diesel on paper need not essentially indicate beyond doubt that the appellant had an option or the financial means of running his machine on diesel and not on kerosene oil. Hence, it cannot be said, under any circumstances, that the alleged guilt of the appellant was proved beyond reasonable doubt.

Moreover, the kerosene oil and urea were found to be covered by impromptu *sal* leaves and not a permanent cover, which is also an indicator that the same was not intended for sale, which is evident from the packaging of the goods found at the site. The oil and urea were lying outside the shop and, as such, there is no reason to unnecessarily attribute the intention to the appellant of selling such goods on commercial basis.

In view of the receipt of purchase of a Kirloskar pump by the accused having been produced, sufficient doubt arises as to whether the appellant had stored the kerosene oil and urea

for the purpose of sale at all, which absolves the appellant from the charges.

Accordingly, CRA 402 of 1986 is allowed, thereby setting aside the impugned judgment and order of conviction dated August 29, 1986 passed by the Judge, Special Court (Under E.C. Act) at Bankura in C.S.G.R. No.31 of 1985/29 T of 1985.

The appellant stands acquitted and shall be discharged from custody, if he is in incarceration at present, as well as stands discharged from all conditions and bonds, if furnished by the appellant in connection with any order of bail.

The excellent assistance provided by the learned *Amicus Curiae* on her maiden appearance is appreciated by this court.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)