

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

**CRA 368 of 1988
(Via Video Conference)**

Mrinal Kanti Biswas & Anr.

-vs.-

State of West Bengal

For the Appellants : Mr. Navanil De,
(Appointed by the Calcutta High Court
Legal Aid Services Authority)

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

Heard on : 03.06.2021

Judgment on : 25th June, 2021.

Tirthankar Ghosh, J:-

The present revisional application has been preferred against the judgment and order dated 18.07.1988 passed by the Learned Judge, Special Court (E.C, Act), Nadia, in connection with E.C. Case No. 14/1988 (corresponding to T.R. No. 30/1988) wherein the Learned Trial Court was pleased to hold the appellant guilty for commission of offence punishable under Section 7 (i) (a) (ii) of the Essential Commodities Act for violating the provisions of para 3(3) of the West Bengal Pulses, Edible Oil Seeds Order,

1978 and sentenced the petitioner to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- i.d. to suffer R.I for 3 months.

The prosecution case in brief is that on or about 20.04.1988 in between 11.30 am to 12.30 pm the complainant, D.E.O, Santipur along with other officers and witnesses inspected the godown of the appellant No.1 when it was found that the appellant No. 2 was dealing with business in the shop and on query the appellant No. 2 failed to produce any licence or permit for the business of the said articles. It has been alleged that the Chhola and Arahar in huge quantity beyond permissible limit were stored in the godown of the appellant No.1 and no stock register, sale register or cash memo book in support of the same were available or could be produced by the appellant. Further, the rate-cum-stock board was not maintained in the said shop. Accordingly, the articles found in the shop were seized under a proper seizure list and was kept in the jimma of a third person and the case was started for violation of the Government Orders.

On completion of investigation, Police Authority filed a report under Section 173 of the Code of Criminal Procedure. The Learned Special Court after taking cognizance of the offence was pleased to examine appellants under Section 251 of the Code of Criminal Procedure to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon PW1, Dhirendra Nath Raha; PW2, Manaranjan Roy; PW3, Dilip Majumdar; PW4, Kartik Chandra Sen and PW5, Amit Kumar Choudhury. The prosecution also relied

upon four documents which were marked as Exhibits being the two seizure list, complaint and the formal FIR. The appellants were thereafter, examined under Section 313 of the Code of Criminal Procedure and the Learned Trial Court thereafter, called upon the defence to produce its witnesses.

PW1, Dhirendra Nath Raha, in his examination-in-chief deposed that he is a Sub-inspector of police and on 20.04.1988 he along with other officers and personnel of D.E.O. had been to Tangra Bazar and inspected the grocery shop of accused Manaranjan Biswas (to be read as Mrinal Kanti Biswas). At that time the other accused was present in the shop dealing with business. According to him on demand by the D.E.B Officer the accused failed to produce any register or licence relating to his business and no rate-cum-stock board was found displayed in the shop of the accused. Lastly, he submitted that the D.E.O Officer seized the articles found in the shop of the accused and the seized articles were kept in the Jimma of a third person.

In cross-examination, the witness denied of having not accompanying the raiding party or that the appellant No. 2 was at his own grocery shop.

PW2, Manaranjan Roy, deposed that he is a resident of Tangra Bazar, P.S. Hanskhali. The witness was declared hostile. The witness identified his signature in the seizure list which was marked as Exbt.1 and he also deposed that he signed the seizure list after the seizure of the articles in the shop after preparation of the seizure list.

In Cross-examination, he stated that the appellant and his father owns 25/30 bighas of land and the articles which were seized was from the

residential quarter of the appellant No. 1 and the same were never weighed. He added that the appellant No. 2 is the cousin of the appellant No. 1 and used to stay at the appellant No. 1's house.

PW3, Dilip Majumdar; is also resident of Tangra Bazar within P.S Hanskhali. He also identified his signature as a witness in the seizure list which was marked as Exbt.1/1. This witness also stated that he signed on the seizure list after preparation of the same and recovery of articles at the shop of the appellant No. 1.

In cross-examination, he stated that the seizure list was not signed by him after perusing the same and reiterated the facts in the same manner as PW2.

PW4, Kartick Chandra Sen, was Sub-inspector of Police attached to D.E.B, Nadia. He deposed that on 20.04.1988 he along with other officials inspected the grocery shop of the appellant Mrinal Biswas and stated that Subhas Adya (appellant No. 2) was the employee of the appellant No. 1 and was present at the shop. On query the appellant No. 2 failed to produce any licence, permit or any document or any register in support of running his business. He also stated that the rate-cum-stock board was not displayed at the shop and as such the articles found in the shop were seized by preparing seizure list. The witness further stated that he prepared the seizure list and the same was also signed by him which was marked as Exbt. 1/ 2 and the signature was marked as Exbt. 1/3. He added that weighment of the articles were made but no weighment chart was prepared.

Quantities in the bags contained full in capacity. The witness also signed the seizure list and the appellant No. 2 received a copy of the seizure list by signing the same which was marked as Exbt. 1/ 4. The articles, which were seized, were kept in the custody (Jimma) of one Manaranjan Roy. The said jimma was marked as Exbt. 2 and the signature was marked as Exbt. 2/1. The written complaint was lodged at the police station after arresting the appellant No. 2 which was marked as Exbt.3 and the signature as Exbt. 3/1. On completion of investigation, the witness submitted charge-sheet before the Court against the present appellant. The witness thereafter, described the manner in which he examined the different witnesses in connection with the instant case.

In cross-examination, the witness denied of not weighing the raw-materials. The witness denied of not having seen the appellant No. 2 in the shop. The witness expressed his ignorance regarding the quantity of land which was owned by the appellant No. 1 or his family member.

PW5, Amit kumar Choudhury, is a Sub-inspector of Police attached to Hanskhali Police Station; who deposed that he was a Duty Officer of the police station at the relevant point of the time and as such he prepared the formal FIR with his own handwriting and signed the same. The formal FIR was marked as Exbt. 4 and the signature of the witness was marked as Exbt. 4/1. He stated that after the same was prepared Hanskhali Police Station Case No. 7 dated 20.04.1988 was registered for investigation.

Mr. Navanil De, Learned Advocate, appearing for the appellant stated that the violation complained of by the prosecution has not been proved and the materials are wanting for convicting the appellants. Learned Advocate submits that the subject matter being recovery of pulses were not a part of a commercial transaction but were agricultural produce and the Investigating Authority vindictively implicated the petitioner in the instant case. He emphasized that in order to convict, the Court must have materials at least to hold the appellants guilty of the offence and thereafter, sentence them. Learned Advocate criticizes the order of the Trial Court and submitted that the Trial Court arrived at a perverse finding which was bereft of any material particulars.

Mr. Swapan Banerjee, Learned Advocate appearing for the State of West Bengal, supports the judgment and order of conviction and sentence passed by the Learned Trial Court and submitted that the Essential Commodities Act has repercussions so far as the availability of necessary goods in the market are concerned and it is related with the society at large. He adds that the evidence so collected by the prosecution would go to show that the appellants were operating business without any valid licence and were storing goods in violation of control order. Further, documents relating to regular transaction were not available which shows that the appellants have no respect for law and were not lawfully carrying on the business and as such are liable to be punished.

In this case, the prosecution has relied upon 5 witnesses out of the said 5 witnesses, the prosecution witness No. 2 and 3 were seizure list

witnesses who did not support the prosecution case and in fact diluted search and seizure by stating that the goods were seized from the residential quarter and not from any shop and the same were never weighed. PW5 is a formal witness who has simply filled up the formal part of the F.I.R as he was the Duty Officer at the relevant point of time, the said witnesses has candidly stated before the Court that he did not witness the search and seizure and has no personal knowledge regarding the case. Thus, the two witnesses whose evidence are to be considered are PW1 and PW 4 and the 4 documents which were relied upon by the prosecution in evidence. The 4 documents so relied upon are the 2 seizure list, the complaint and the formal F.I.R. Complaint and formal F.I.R would be of evidentiary value only when the said seizure list can be accepted to be sacrosanct. In this case, the 2 seizure list witnesses were declared hostile. It is a settled principle of law that the evidence of a hostile witness can be relied upon. However, in this case, the part of the evidence where the seizure list was marked as exhibit in the cross-examination by the prosecution, it is seen that the witness has stated the seizure list was signed after the same was prepared by the Investigation Officer and in cross-examination by the defence he has said that the articles were recovered from the residential quarter of the accused and the accused and his father possessed about 25/30 bighas of land. Similarly, PW3 while proving his signature in the seizure list stated that pulses of different types were recovered from the residential quarter of the accused and the family had 25/30 bighas of land. The PW3 emphasized that the land belonging to the accused and his father were adjacent to his land.

In this case, we do not find that the prosecution in evidence has been able to prove the place of seizure as to whether the same happens to be a shop or a place where the agricultural products are kept. No evidence has been taken from the responsible officials of the Government as to whether there was any Trade Licence for carrying out any shop or from the concerned department of the Government regarding the place of ownership of the shop premises or if the same was rented a statement of the landlord. The person on whose Jimma the goods were kept was also not examined, neither any customer was examined to show that any commercial activity was carried on at the premises where the raid was conducted.

I have considered the evidence and appreciated the same in its totality and having regard to the materials which have been relied upon by the prosecution, I am of the view that both the oral evidence as well as documentary so relied upon are insufficient to arrive at a finding regarding the seizure as well as the business being carried out at the shop premises so alleged. Having regard to the same I am further of the view that it would be unsafe to rely upon such evidence and come to a finding of guilt.

As such the judgment and order dated 18.07.1988 passed by the Learned Judge, Special Court (E.C. Act), Nadia, in connection with E.C. Case No. 14/1988 (corresponding to T.R. No. 30/1988) calls for interference by this Court and the same as such is set aside.

Accordingly, the petitioners are acquitted from the charges, if they are on bail and they should be discharged from their bail bonds.

Accordingly, CRA 368 of 1988 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.)