

AD. 9.
September 14, 2021.
MNS.

C. R. A. No. 438 of 1989

(Via Video Conference)

Dhirendra Nath Jana and another
Vs.
The State

Mr. Dipankar Dandapath

...*Amicus Curiae*.

Mr. Saswata Gopal Mukherjee,
Ms. Faria Hossain

...for the State.

Learned *Amicus Curiae* contends that there are patent and inherent discrepancies between the prosecution witnesses not only as regards the time, when the alleged seizure was made, but also as regards the quantity seized, as well as whether actually any display board was found from the shop-in-question.

It is contended that although the complaint indicated that 56 bags of Gur (cattle products) weighing about 50 kgs. each and 24 packets of 'Nishadal' weighing 25 kgs. each were recovered and there was no board displaying the particulars, as required in law, was found in the shop premises and the PW1 more or less corroborated such evidence, it is categorically denied by PW2, the alleged Zimmadar, in whose custody the seized goods were allegedly kept, that any such article was kept with the Zimmadar, although he admitted signing on the Zimmanama.

That apart, two of the local independent witnesses were declared hostile, who categorically denied the allegations levelled against the accused persons, specifically stating that a board actually

existed in the shop, on which the particulars of the cattle fodder were written.

PW4, the other police personnel who was a party to the raid, on the other hand, stated that 20 basta (gunny bag) of Gur was seized. That apart, PW6, one of the other constables who was a party to the raid, stated that Gur (cattle fodder) was kept in some tins. As such, it is contended that there is gross contradiction in the prosecution evidence itself.

That apart, PW6, the constable referred to above, also admitted that a board was actually taken from the grocery shop, but merely denies that it contained the details and particulars as required in law. However, it is submitted that such board was never exhibited by the prosecution.

By placing reliance on the impugned judgment of conviction, learned counsel further contends that there was no objective satisfaction recorded by the trial court regarding the commission of the alleged offences by the accused persons specifically.

Learned counsel appearing for the State contends that there is nothing on record to show any enmity between the police personnel and the accused persons, which could have induced the police to conduct the raid with any *mala fide* intention.

Moreover, learned counsel submits that there is substantive corroboration between the evidences of PW1, PW4 and PW6. The minor discrepancy among the depositions of the other witnesses is within the normal margin of error due to the lapse of about one year between the date of the raid and the date of deposition. As such

discrepancies are only natural, it is argued, those only prove the veracity and truth of the depositions.

It is further contended by learned counsel for the State that even the witnesses who were declared hostile admitted that the accused persons were carrying on business of cattle fodder, which corroborates the prosecution case.

Upon hearing counsel, a mere glance at the deposition of the prosecution witnesses makes it clear that there was evident inherent contradiction within such deposition. Not only the number of containers recovered, but also the quantum of the articles was recovered and/or even the nature of containers, as stated by the prosecution witnesses, did not tally with each other. Varied versions of the same event have come out from different prosecution witnesses.

While one of the witnesses mentioned bags, another mentioned tin containers, while others differed on the count of bags recovered.

That apart, PW6, a part and parcel of the raiding party, clearly admitted in his cross-examination that a board was actually recovered from the shop, but sought to explain away such admission on the count that the board did not contain any particulars as required under law. However, not only was such evidence squarely contradictory to the evidence of the other police officers who were produced as prosecution witnesses, regarding non-existence of any rate board at the locale, it is clear from the allegations made by the different prosecution witnesses that there were discrepancies in the description

of the containers containing such articles, which vitiate the veracity of the prosecution witnesses to the root.

That apart, the judgment of the court below, unfortunately, does not record a single sentence of satisfaction regarding the commission of the offences actually alleged against the accused persons, that is, under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. From the materials on record, there is no corroboration and/or sufficient evidence to incriminate the accused persons on the charges levelled against them. Although it is doubtful whether the appellant no. 1, who would be near about a century old now, if at all alive, and the appellant no. 2, being a septuagenarian at present, even if posthumously, the conviction and sentence ought to be decided, if not for any other reasons, but to remove the stigma on such accused persons.

In view of the above discussions, the conviction and sentence of the accused persons was patently *de hors* the law and without jurisdiction and have to be set aside.

Accordingly, C.R.A. No. 438 of 1989 is allowed, thereby setting aside the conviction and sentence awarded by the impugned judgment and order dated September 19, 1989 passed by the Judge, Special Court (E. C. Act), Hooghly, acquitting the appellants of all the allegations made against them.

Although the accused persons might have undergone the sentence awarded long back, in the event they are enlarged on bail at present, the appellants are discharged from all conditions and bonds furnished by them, if any, in connection with such bail.

The *pro bono* assistance provided by the learned *Amicus Curiae* is appreciated by this Court.

(Sabyasachi Bhattacharyya, J.)