

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 33 of 1987

Nirode Chandra Sarkar @ Nirode Sarkar.

Vs.

The State of West Bengal.

For the Appellant : Mr. Navanil De,
: Ms. Ayantika Roy,
: Mr. Srinjan Ghosh.

For the State : Mr. N. P. Agarwal.

Heard on : 08.07.2022

Judgment on : 28.09.2022

Shampa Dutt (Paul), J.:

This appeal has been preferred against the judgment and order dated 22.12.1986 passed by the learned Judge, Special Court, Raigunj, West Dinajpur in Special Case no. 1 of 1986 convicting the appellant under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955 and sentencing him to suffer rigorous imprisonment for three months and pay fine of Rs. 100/- i.d. to suffer R.I. for seven days more. Period of imprisonment to be set off against substantive sentence and seized rice to be forfeited to the Government.

The Prosecution case is that on 07.01.1986 at about 7.30 A.M. the informant being accompanied by constable nos. 590 and 1037 performed duty of checking at Sonapur Ghat, the border of the District of West Dinajpur and Darjeeling. During such inspection, he found the accused with four bags of rice trying to shift those bags of rice in a truck for sale at Matigara Hat in the District of Darjeeling. Being challenged, he could not produce any permit or licence for dealing in rice violating thereby the provisions of para 3 of the West Bengal Rice & Paddy (Licensing and Control) Order, 1967 and as such the aforesaid bags of rice were seized.

The appellant was then charged under Section 7(1) (a) (ii) of the E.C. Act. The prosecution examined in all three witnesses. The defence examined two witnesses and the defence case was of false implication and innocence and also that the seized bags of rice was grown by the appellant in his own land and the

rice was meant for his own consumption. The seized bags of rice were seized while he was taking the rice after husking the paddy in a rice mill.

Mr. Navanil De learned lawyer for the appellant has argued that the impugned judgment and order under appeal and the conviction is totally without any basis and the prosecution could not prove the ingredients required to constitute the offence under Section 7(1) (a) (ii) of the E.C. Act for violation of para 3 of the West Bengal Rice and Paddy (Licensing and Control Order, 1967).

It is further submitted by the learned lawyer for the accused that the seized rice was been taken by the appellant after husking the paddy from the rice mill and the said paddy had been grown in his own field. The documents of which had been filed before the learned Trial Judge and the said rice was for his own consumption.

That the learned Trial Judge failed to take into consideration Section 10C and Section 14 of the Essential Commodities Act. The further case of the learned lawyer for the appellant is that **PW 3 who is the complainant in the present case also investigated the case, examined witnesses during investigation and submitted chargesheet on 11.03.1986 against the appellant**, which is totally against the principle of natural justice and has caused prejudice to the appellant. PW 3 admitted the said fact in his examination in chief before the Court and it is the evidence on record and the judgment under appeal being not in accordance with law is liable to be set aside.

Mr. N. P. Agarwal learned lawyer for the State submits that the appellant is a rice seller and the rice seized from his possession was meant for selling in course of carrying out of his business. The defence of the appellant that the rice for his own consumption is false, as no employee of the rice mill has been examined in support of the defence case. The judgment under appeal being in accordance with law, the appeal is liable to be dismissed.

Evidence on record

Prosecution witness no. 1 Kshitish Chandra Das and **prosecution witness no. 2 Sova Kanta Mishra** are both seizure witnesses. These witnesses have corroborated the evidence of **prosecution witness no. 3, A.K. Sen** the District Enforcement Officer of Panjipara on 07.01.1986. This witness is the officer who conducted the raid and seized the rice bags, filed the written complaint (Exhibit 2) and took up the investigation of the said case and on completion of investigation submitted chargesheet on 11.03.1986 against the appellant under Section 7(1) (a) (ii) of the E.C. Act. These witnesses denied that the accused told them that he was a producer of paddy and he cultivated the same on his agricultural land.

Defence witness no. 1 Yusuf Md. @ Md. Yunush and **Defence witness no. 2 Dhirendra Nath Das**, both have proved the deeds which were filed by the appellant in support of his contention that he had cultivated the paddy on his land for his own consumption. Both the witnesses have supported the defence

of the appellant and stated that the appellant did not process the rice for his business. It was for the personal consumption for the appellant and his family.

Sl no.	Exhibit	Description
1	Exhibit 1 series	Seizure list.
2	Exhibit 2 series	Written complaint.
3	Exhibit 3	FIR.

Analysis of evidence

Ld. Lawyer for the appellant has relied upon a ruling ***Bhagwan Singh Vs. The State of Rajasthan, cited in AIR 1976 Supreme Court 985***, wherein the Court held:-

“Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial Court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from the Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information Report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of

*the conviction. **The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant. This is an infirmity which is bound to reflect on the credibility of the prosecution case.***

Admittedly **prosecution witness no. 3 A.K. Sen** on the date of incident (07.01.1986) was posted as District Enforcement Officer, Panjipara. In his evidence on oath before the Trial Court he has categorically stated that he conducted the raid in the present case and on completion of the inspection, raid, seizure, he filed the written complaint in his own hand writing, signature marked Exhibit 2 series. Thus, he is the complainant in this case. He has also further stated that he took up the charge of the investigation in this case, conducted the investigation and submitted chargesheet in this case. As such it is found that the **complainant himself without any orders of his superior officer took up the investigation of a case in which he is the complainant** and the said conduct is totally against the judgment of the Supreme Court as referred above, wherein the court clearly held that **“this was an infirmity which was bound to reflect on the credibility of the prosecution case”**.

No articles allegedly seized was produced before the Court during trial. There is no material exhibit in the present case. Though prosecution witness no. 1 and 2 are seizure witnesses in this case they could not say the weight of the bags of rice. They do not know if the accused has agricultural land or not. PW 2 has admitted that there is a husking mill at Sonapur Hat and admits **that the residence of the appellant is behind Sonapur Hat.**

As such this supports the defence of the accused that the rice was his personal consumption and that he had taken the paddy for husking to the mill. Defence witness no. 1 has proved Exhibit A series, which are the deeds relating to the land of the appellant. Defence witness no. 2 has also corroborated that the appellant has agricultural land where he cultivates rice. This witness has further proved further deeds relating to the appellants other agricultural land (Exhibit B, C and D) all these lands are the agricultural lands of the appellant.

The seizure witnesses in this case admittedly do not know the weight of the rice bags.

The materials on record show that the prosecution could not prove that the said rice was being sold as the bags of rice were seized from the accused in front of his residence as stated by PW 1 the prosecution witness. The rice was admittedly not seized from the shop of the accused nor was the accused/appellant found selling the said rice. The defence witnesses and Exhibit A to D have proved that the appellant has agricultural land and that he thus cultivates those lands with paddy for his own consumption.

The learned Trial Judge without proper appreciation of the evidence on record both oral and documentary has interpreted the same in favour of the prosecution and thus against the defence and convicted the appellant, in spite of the fact that the Trial Judge found that deeds filed showed that the appellant is also owner of agricultural land and without proper appreciation convicted the accused.

The Trial Judge also erroneously did not consider the fact that the complainant PW 3 himself was the Investigating Officer and also submitted the chargesheet and in

such circumstances his interest would always be that the case ended in the conviction of the appellant, which is totally against the principle of natural justice.

Conclusion

The incident in this case occurred **on 07.01.1986 (37 years ago)**.

Considering the facts and evidence as discussed above, it is found that the investigation in this case was conducted in a biased manner with the purpose to see that the appellant is convicted **as the Investigating Officer himself is the complainant**. This has thus vitiated the trial and has also caused serious miscarriage of justice as the principle of natural justice has not been followed and on this ground alone the order of conviction and sentence should be set aside and as per the lines of the Supreme Court in **AIR 1976 Supreme Court, 985, Bhagwan Singh Vs. State of Rajasthan** “**this was an infirmity which was bound to reflect on the credibility of the prosecution case**”.

In addition the evidence on record also do not justify the order of conviction as the prosecution has clearly not proved, their charge against the appellant by way of either oral or documentary evidence before the Trial Court and as such these facts do not justify the order of conviction and accordingly the impugned judgment is thus liable to be set aside.

The appeal thus stands allowed. The appellant is accordingly acquitted of all charge and discharged/released from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)