

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 227 of 1990

Birendra Prasad Shaw

Vs.

The State of West Bengal.

For the Appellant : Mr. Biplab Mitra,
Mr. Swapan Mallick.
Ms. Sudeshna Das.

For the State : Mr. Narayan Prasad Agarwal,
Ms. Manisha Sharma.

Heard on : 30.06.2022

Judgment on : 11.08.2022

Shampa Dutt (Paul), J.:

This appeal has been preferred against judgment and order dated 12.04.1990 passed by Sri S. Raha the Learned Judge, Special Court (E.C. Act), Alipore, South 24 Parganas in Special Case No. 7 (7) 87 convicting thereby the appellant under Section 7(1)(a)(ii) of the Essential Commodities, 1955 for violation of para 3 of the West Bengal Sugar Dealer Licensing Order, 1980 and sentencing him to suffer imprisonment for three (3) months and to pay fine of Rupees Five Hundred and in default to suffer imprisonment for a month and further directed that the articles seized be confiscated to the State.

The prosecution case is that on 07.07.1987 the grocery shop of the accused Jagannath Shaw was inspected by the D.E.B. staff in order to work out a source information. At that time accused Jagannath Shaw was not present but his son appellant/accused Birendra Prasad Shaw was in charge of the shop. On inspection 10 quintals 73 kgs of sugar in 13 bags were found in the shop for which no license or authority or document could be produced by the accused Birendra Prasad Shaw. The stock and rate board was also found blank in respect of stock and rate. Accordingly charge u/s 7(1)(a)(ii) of Act X/55 for violating paragraph 3 of West Bengal Sugar Dealer Licensing Order, 1980 and para 3(2) of West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 was leveled against the accused persons who pleaded not guilty.

The prosecution examined seven witnesses.

The defence case was of false implication and innocence.

On conclusion of trial the appellant was convicted as referred above.

Mr. Biplab Mitra, Ld. Lawyer for the appellant has argued that **the complainant (PW 7) in this case also investigated the case** and submitted chargesheet and the said Act is against the principle of natural justice and caused prejudice to the appellant. He has further submitted that PW 1 did not know the quantity of the articles seized and also has stated that the articles seized were not weighed in his presence. It is further submitted that PW 2, (seizure witness) has stated that seizure was complete before he arrived and he put his signature as per direction of the D.E.B. Officer. No seizure or weighment of the sugar was done in his presence and as such neither the seizure list nor the quantum of sugar seized was proved by the prosecution. Measuring scale and weights were also not seized. The seized articles were not produced before the court by the prosecution. The independent witnesses being PW 1, 2 and 3 have not supported the prosecution case. That the Trial Judge erroneously did not take into consideration the provisions of West Bengal Sugar (temporary provisions regarding price control and restriction on sale) Order, 1980 which indicates that in a business of grocery as in the present case, no license is necessary for purchase/store of sugar under the West Bengal Sugar Dealer Licensing Order, 1980. It is further submitted that storage of food grains is not an offence under Section 7(1)(a)(ii) of the Essential

Commodities Act, as in the present control order there is no provision for raising a statutory presumption that storage beyond limit would mean that the same was for the purpose of sale. The Ld. Trial Judge wrongly assessed the evidence and came to an erroneous finding and convicted the appellant. As such the order of judgment and conviction should be set aside and the appellant should be acquitted of all charge as framed.

Mr. Narayan Prasad Agarwal, Ld. Additional Public Prosecutor has submitted that there is absolutely no reason to disbelieve the prosecution witnesses. It has been further submitted that the Ld. Trial Judge rightly held that sugar found in the godown of the grocery shop of Jagannath Shaw was 10 quintals 73 kgs on 07.07.1987. The stock and rate board though has not been produced before the court but there has been a violation of para 3 of West Bengal Sugar Dealer Licensing Order, 1980. It is stated that the Ld. Trial Court rightly held that the appellant was found present in the shop and was conducting the business and as such he was found guilty of violating the provisions of para 3 of the West Bengal Sugar Dealer Licensing Order, 1980 and was rightly found guilty and convicted under Section 7(1)(a)(ii) of the Act of 1955 and sentenced accordingly. The appeal is thus liable to be dismissed.

Evidence on record

Prosecution witness no. 1 Sukumar Prosad Shaw on oath has stated that he is a person who was given the Zimma of the seized articles. His signature has been marked Exhibit 1. But he could not tell the exact quantum

of sugar seized and on being cross examined has stated that the **articles were not weighed in his presence** and has stated that only 13 bags of sugar was in his Zimma. But he has not brought the articles to court.

Prosecution witness no. 2 Mojammel Haque is a seizure witness, his signature has been marked Exhibit 2, his signature on the weighment chart (Exhibit 3). Extract of rate and stock board (Exhibit 4). This witness also does not remember the quantum of seized sugar and on being cross examined has stated that he **put his signature as per the asking of the D.E.B. Officer.**

Prosecution witness no. 4 Paresh Nath Giri is watcher constable bearing no. 5479 of D.E.B., South 24 Parganas. He accompanied S.I. S.K.Ganguly for the said raid and has stated that more than 10 quintals of sugar was seized from the shop of the appellant. It is seen that this witness though has stated that he was part of the raiding team. Surprisingly he is **not a seizure witness** to the seizure in this case.

Prosecution witness no. 5 Shri Bimal Chandra Biswas is the Recording Officer.

Prosecution witness no. 6 S.I. K.P.Banerjee accompanied S.I. S.K.Ganguly and other police personnel for the raid and they found the appellant running the shop where 10 quintals and 73 kgs of sugar was found without any valid papers. This witness states that S.I. S.K.Ganguly conducted the inspection, weighed the sugar and seized the articles, gave it in Zimma. Surprisingly, this witness is also **not a seizure witness** to the alleged seizure as stated by him.

Prosecution witness no. 7 S.K.Ganguly was the S.I. of police attached to E.B. West Bengal on 07.07.1987. He was posted at D.E.B., South 24 Parganas. He led the raid on the said date.

On serving a copy of notice demanding production of books of account in respect of the sugar (Exhibit 6) upon the appellant he found 10 quintals 73 kgs of sugar in 13 bags inside the shop. This witness has stated that the sugar was seized in presence of witnesses as the appellant could not produce any books of account or license. He has further stated that the seizure was made after weighment inside the shop with the weighing scale of the shop and preparation of a weighment chart in presence of witnesses. He has proved the seizure list (Exhibit 2/2), weighment chart (Exhibit 3/2). He also has stated that sugar and trade license and one blank black, red and stock board was seized (Exhibit 4/2). This witness has proved the **written complaint filed by him (Exhibit 5/2)**. He has categorically stated in his evidence that **he took charge of the investigation in this case** and conducted the said investigation and also **submitted chargesheet** against the appellant and his father Jagannath Shaw the owner of the shop (acquitted). On being cross examined he has stated that he examined witnesses in this case and has also admitted that the case was **not endorsed to him for investigation by any superior officer**. None of the articles or documents allegedly seized was produced before the court.

**LIST OF DOCUMENTS/ARTICLES ADMITTED IN EVIDENC ON BEHALF OF
COMPLAINANT/APPLICANT/ACCUSED/OPPOSITE PARTY.**

Distinguishing mark or number.	Description of documents/articles.	Date of admission	Whether admitted after or without objection	Remarks
Exhibit 1	Signature on the carbon copy of the Jimbanama.	09.02.1990	Without objection	PW 1
Exhibit 2	Signature on the seizure list.	09.02.1990	-Do-	PW 2
Exhibit 3	Signature on the weighment chart.	09.02.1990	-Do-	PW 2
Exhibit 4	Signature on the extract of stock board (copy).	09.02.1990	-Do-	PW 2
Exhibit 3/1	Signature on the weighment chart.	09.02.1990	-Do-	PW 3
Exhibit 2/1	Signature on the seizure list.	09.02.1990	-Do-	PW 3
Exhibit 4/1	Signature on the extract of stock board (copy).	09.02.1990	-Do-	PW 3
Exhibit 5	F.I.R.	12.03.1990	-Do -	PW 5
Exhibit 5/1	Endorsement on the written complaint.	12.03.1990	-Do-	PW 5
Exhibit 6	Notice (carbon copy)	22.03.1990	Without objection	PW 7
Exhibit illegible (tone condition)	Seizure list	-Do-	-Do-	PW 7
Exhibit 3/2	Weighment chart	-Do-	-Do-	PW 7
Exhibit 4/2	Extract of stock and rate board	-Do-	-Do-	PW 7

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. 7 S.I. S.K.Ganguly** on the date of incident (07.07.1987) was posted at D.E.B., South 24 Parganas. In his evidence on oath before the 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 handwriting and signature marked Exhibit 5/2. 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 investigation and submitted chargesheet without any endorsement of any superior officer endorsing the case to him for investigation. 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 to above. Wherein the court clearly held that **"this was an infirmity which was bound to reflect on the credibility of the prosecution case"**.

In the present case it is further seen that no article allegedly seized was produced before the court.

Prosecution witness no. 1 who was given the seized article on Zimma has deposed that the articles were not weighed in his presence and that he was given only 13 bags of sugar in his Zimma.

Prosecution witness no. 2 though is a seizure witness. He does not remember the quantum of the seized sugar and has admitted that he put his signature on the seizure list as per the asking of the D.E.B. Officer (PW 7).

Prosecution witness no. 4 and **Prosecution witness no. 6** have stated that they accompanied the complainant for the raid, where sugar was seized from the shop of the appellant but they are not seizure witnesses.

As such it is found that the seizure witnesses in this case do not know the quantum of the sugar seized and PW 2 has signed as per direction of the complainant PW 7. The witnesses who allegedly accompanied the complainant during the raid and who stated about the quantity of sugar seized are not seizure witnesses. As such the oral evidence adduced in this case is not substantiated by documentary evidence and the evidence adduced in court is not of any substantial value considering the nature of the evidence as discussed above.

The prosecution could not prove the seizure of the quantity seized as alleged nor could they prove before the court through the witnesses as to the quantity seized because of the fact that the witnesses who stated about the quantity seized are not seizure witnesses and the witnesses who are seizure witnesses have stated that they did not see the quantum of the sugar seized. **As such there is absolutely no witness in support of the prosecution.** Admittedly the alleged owner was acquitted by the Trial Court. It is the appellant who was allegedly in the shop at the time of alleged raid has been

convicted. It is seen from the judgment under appeal that the Trial Judge found no reason to disbelieve the witnesses including the complainant-cum-investigating officer. It is totally on the uncorroborated oral evidence of the witnesses on which the Trial Court has relied. Though the witnesses have not supported the seizure, the Trial Judge held the quantum as stated by the complainant as true and without any proper analysis of the evidence on record before the Trial Court without any proper reasoning, came to the finding that there has been a violation of para 3 of the West Bengal Sugar Dealer Licensing Order, 1980 by the appellant/accused. The Trial Court also came to the finding that the acquitted accused was not actively concerned in running the business and was thus entitled to acquittal.

Conclusion

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 suffers from inherent illegality and 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.)