

11.11. 2022
item No.04
n.b.
ct. no. 551

CRA 183 of 1989

Prakash Chandra Poddar
Vs.
The State of West Bengal

Sk. Hasan Salahuddin Ahmed
.....for the appellant.

Mr. Narayan Prasad Agarwal,.
Mr. Pratick Bose
... for the State.

This is an appeal under Section 374(2) of the Code of Criminal Procedure read with Section 12AA of the Essential Commodities Act, 1955, against an order conviction under Section 7(1)(a)(ii) of Act X of 1955 for violation of para 3(1) and (2) of the West Bengal Imported Vegetable Oils (Prohibition of unauthorized Sale) Order 1984 to suffer R.I. for one year and to pay a fine of Rs.1000/- i.d. to suffer six months R.I., passed by the Learned Special Court(E.C. Act) Barasat, North 24-Parganas on 21.3.1989 in Special Case No. 19 of 1987 arising out of Barasat P.S. Case No.23(2)/87.

The prosecution case in a nutshell was on 8.2.1987 at about 10.30 a.m. one police personal D. K. Dutta, D.E.O. Naihati, Santanue Chatterjee S.I. of police Barasat P.S., D.B. Das S.I. D.E.B, North 24- Parganas raided the grocery shop of the appellant at Champadali More, Barasat and seized 10 sealed tines of imported refined rapeseed oil and the appellant

fail to produce any licence or permit. Accordingly, police seized the rapeseed oil by preparing a proper seizure list in presence of witnesses. Thereafter, arrested the appellant and placed them in the Thana.

Mr. D. B. Das, S. I. Police conducted the investigation of this case and after completion of investigation, he submitted charge sheet against the appellant. The trial was conducted before the Learned Court below. Prosecution has examined eight witnesses to bring whom the charge against the appellant. The defence has examined none: after examination of the PWs, the appellant was examined under Section 313 of the Code of Criminal Procedure.

After hearing both the parties learned Special Judge passed the impugned order convicting the present appellant on the above mentioned sentences. Being aggrieved by and dissatisfied with the impugned judgment and sentences the instant appeal has been preferred.

Learned advocate for the appellant submitted before this Court that the impugned order passed by the learned Court below suffers illegality and the judgment and sentence is without basis. He further argued that the order of sentence passed by the learned Court below is not on the basis of proper appreciation of evidences. He argued that the prosecution has examination eight witnesses among them the PW 2, PW 3 and PW 6 are the seizure witnesses who specifically stated before the learned Court below that the Rapeseed tins were seized near a Culvert. The place of occurrence is a crowded place

and a bus stand; many persons get down from Bus to proceed Bongaon/Basirhat. The seizure witnesses i.e. PW 2, PW 3 and PW 6 never stated that the tins were seized from the shop room of the appellant. But the learned Court below has disbelieved their statement. He further pointed that the appellant during his statement recorded under Section 313 of the Code of Criminal Procedure specifically stated that the seized tins were recovered from the Culvert near Champadali More. He again pointed that the learned Court below has not gone through the evidences properly and come to an erroneous finding. He again argued that there are miscarriage of justice as the evidence of seizure witnesses were not believed by the learned Court below. The admissibility of evidence of police witnesses cannot be basis of a conviction. He prayed the acquittal of the appellant.

Learned advocate appearing on behalf of the State raised strong objection and submitted before this Court that the learned Court below has scanned all the evidences before him and his finding as mentioned in the impugned judgment is proper. He again argued that the learned Court below has nothing to disbelieve police witnesses, thus the order and judgment of learned Court below suffers from illegality. He again pointed out at his usual fairness that the evidence of seizure witnesses were need be looked into at the stage. He also argued that the appellant is suffering mental agony since last 35 years during the pendency of the instant appeal.

Heard learned advocates perused the impugned order also perused the seizure list and other connected exhibits in the LCR. I have also perused the FIR, it appears that the seizure witnesses i.e. PW 2. P.W. 3 and PW.6 admitted their presence at the time of seizure, their signature over the seizure list prove that they were at the place of occurrence at the time of seizure. They corroborates each other and unequivocally stated that the rapeseed tins were seized from Calvert not from the shop room of the appellant. The prosecution did not declare them hostile and no such cross-examination advanced, so that the statement of the seizure witnesses cannot be believe. In the circumstance, the place of seizure appears to me doubtful. It is true that the seizure has been made and chemical examination has done to prove the seizure of rapeseed oil but it is doubtful whether the tins of rapeseed oil are seized from the shop room of the appellant or near a Calvart of Champadali More.

The offences under Section 7(1)(a)(ii) of the Essential Commodities Act is only based upon the seizure and the place of seizure. In this particular case, the place of seizure is doubtful. The evidences seizure witnesses not support the prosecution case. The police witnesses stated in support of the prosecution case to which they were duty bound.

Considering the circumstance, I am of clear view that the prosecution has failed to proof the seizure before the learned below. In this circumstances, as the doubt has been raised so principally the benefit of doubt goes in favour of the

appellant. I am of the view, the prosecution has filed to prove the case against the appellant and bring home the charge against the present appellant beyond reasonable doubt. Thus, the order of conviction passed by the learned Court below cannot be sustained at this stage.

The appeal got merit, accordingly, it is liable to allowed.

In result thereof the instant appeal is allowed. The order of conviction passed by the learned court below against the appellant in special case no.19 of 1987 arising out of Barasat P. S. Case No. 23(2) of 1987 is hereby set aside.

The appellant is acquitted from this case.

The appellant is on bail, he be set at liberty at once.

The appellant is hereby also released from his bail bonds. The sureties are also released.

The copy of this order be forwarded to the learned Court below in his information and necessary action.

The appeal is disposed of.

Any order of stay by this Court is also hereby vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Subhendu Samanta, J.)