

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 316 of 1988

Sri Kanai Lal Das

Vs.

The State of West Bengal.

For the Appellant : Mr. Himangshu De,
Mr. Navanil De,
Mr. Rajeshwar Chakraborty,
Mr. Srinjan Ghosh,
Mr. Subhrajit Dey.

For the State : Mr. Prasun Kumar Dutta,
Mr. Md. Kutubuddin,
Mr. Santanu Deb Roy.

Heard on : 23.08.2022

Judgment on : 14.11.2022

Shampa Dutt (Paul), J.:

The appeal is against an order and judgment dated 29.06.1988 passed by the learned Judge Special Court, Midnapore (E.C. Act) convicting the appellant under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955 and sentencing him to suffer simple imprisonment for 3 months and to pay a fine of Rs. 1000/- in default, simple imprisonment for 1 month, in D.E.B.G.R. Case No. 19 of 1984 for violation of Paragraphs 3(A) and 21 of the West Bengal Fertiliser Control Order, 1957.

The prosecution case in short is that on 07.07.1984 one Sri M.K. Basu, District Enforcement Officer, lodged a written complaint with the Officer-in-charge, Binpur Police Station to the effect that on the said date he along with other Police officials and under the supervision of D.S.P., D.E.B. Midnapore inspected the Fertiliser godown of the appellant from 9.00 hours to 11.00 hours. During the inspection he found different types of Fertiliser inside the godown but there was no Stock-cum-Rate board. On demand the appellant failed to produce any books of accounts and records relating to the business of Fertiliser and the following Fertiliser was found inside the godown:-

- (1) 41 bags of Sulphate 15:15:15 containing 50 kg each.
- (2) 2 bags of Super Phosphate containing 100 kg each.
- (3) 1 bag of Super Phosphate containing 50 kg.
- (4) 44 bags of Suphala 20:20 containing 50 kg each.

Upon receipt of this complaint. Binpur P.S. Case No. 4 dated 07.07.1984 under Section 7(1) (a) (ii) of the E.C. Act for the violation of para 3(A) and para 21 of the Fertiliser Control Order, 1957 was started against the appellant.

After completion of the investigation, Police submitted charge sheet, being no. 57 dated 14.9.84 for the offence under Section 7(1) (a) (ii) of the E.C. Act for the violation of para's 3A (a) & (b) and 21 of the Fertiliser Control Order, 1957.

The appellant pleaded 'not guilty' when he was examined under Section 251 of the Code of Criminal Procedure. On completion of trial, he was convicted and sentenced as above.

Mr. Himangshu De, learned Senior Advocate has argued that the judgment under appeal is not in accordance with law. That the learned Trial Judge's appreciation of evidence was not in accordance with law and an erroneous judgment has been passed.

Mr. De has further argued that the incident in this case being dated 07.07.1984, Fertilisers (Control) Order, **1957** is applicable. He has relied upon the following judgments:-

- (a) **1990 CRI.L.J. 1559 Santa Kumar Das and Anr. Vs. The State** wherein the Calcutta High Court (Division Bench) held in paragraph 10 and 11:-

"10. On 1st Feb., 1984 a fresh notification has been issued which also provides that "Sub-Inspectors of Police and all Officers of and above the rank of Sub-

Inspector of Police attached to the Enforcement Branch including D.E.B. and District Enforcement Branch" are appointed to act as Inspectors of Fertilisers under Fertilizer (Control) Order, 1957 within their respective areas of work.

11. *It will be evident from the aforesaid Notifications issued on 17th Feb., 1983 and 1st Feb., 1984 that the Sub-Inspectors of Police and all Officers above the rank of Sub-Inspector who are also attached to District Enforcement Branch have been appointed to act as Inspectors of Fertilisers under the Fertilizer (Control) Order, 1957. A Sub-Inspector of Police if attached to the Enforcement Branch could have only acted as Inspector under the said order until the amendment **was affected on 17th Feb., 1983** when all officers of and above the rank of Sub-Inspector attached also to District Enforcement Branch have been empowered to act as Inspector of Fertilizers under the said Control Order."*

The present case is dated 07.07.1984 and the raid was conducted by Sr. M.K. Barman, Inspector of the District Enforcement Branch, Midnapore.

As such in view of notification dated 17th Feb, 1983 and 1st Feb, 1984 both prior to the date of incident in this case, the complainant being an Inspector of the District Enforcement Branch **had** the authority to act as Inspector of fertilizer under the Fertilisers (Control) Order, 1957.

(b) **1980 CRI. L.J. NOC 24 (CAL.) Bimal Ranjan Roy and Anr. Vs. State of West Bengal.**

(c) **1983 CRI. L.J. NOC 90 (CAL.) Kamala Ranjan Dey vs. The State.**

Both these rulings are prior to the notification dated 17.02.1983 and 01.02.1984 and as such **not applicable here.**

It is further submitted that there is no 'mens rea' on the part of the appellant, who has not committed any offence under the Act but has been falsely implicated only for harassment. The Investigating Officer played a very active part in the raid and has totally corroborated the complainant. He has also acted as a seizure witness. Considering all these facts and circumstances, it is clear that there has been serious miscarriage of justice and the appellant has suffered irreparable loss and injury and thus the judgment under appeal is liable to be set aside.

Mr. Prasun Kumar Dutta, learned State Counsel has argued that the violation in this case is very serious and the appellant has been rightly convicted in this case, considering the evidence on record and accordingly the appeal is liable to be dismissed.

Evidence on Record

On 07.07.1984 between **9.00 A.M.** to 11 A.M. the complainant (**prosecution witness no. 1) Mihresh Barman**, Inspector attached to District Enforcement Branch Midnapore along with other officers of the Branch conducted a raid in the shop of the appellant and found that no Stock-cum-Rate board has been put up and also found that the sale register (book of accounts) was written only upto 02.07.1984 and also allegedly found the book of accounts and cash memo book not written properly. The appellant showed the token (application) for renewal of license issued by the authority. The complainant then lodged a complaint for violation of para 3A (a) & b and 21 of

the West Bengal Fertilisers Control Order, which was written by PW 6, S.I. B.K.Nath (Investigating Officer) as per the instructions of the complainant. The seizure list was also prepared by Sri. B.K. Nath as per Instruction of the complainant.

Prosecution witness no. 2 Monoranjan Bose and **Prosecution witness no. 5 Bholanath Adhikari** are independent witnesses to the seizure.

Prosecution witness no. 3 Sadhan Dandaphat is also a witness to the seizure but was **declared hostile**. He has deposed **there was one board in the shop** stating that chemical fertilizer was available there.

S.I. B.K. Nath, the Investigating Officer has been examined as **Prosecution Witness no. 6**. He was part of the raiding team and prepared the seizure list and written complainant **as per the dictation of the complainant (PW 1). The complainant also endorsed the case for investigation to him.** This witness also submitted a prayer before the collector for confiscation of the seized fertilizer but later a stay order had been granted by the High Court on the sale order of the collector.

Analysis of evidence

The date of incident in this case being 07.07.1984. The Fertilisers (Control) Order, 1957 and the notifications dated 17.02.1983 and 01.02.1984 are applicable in this case.

The offence for which the case against the appellant was registered is Section 3-A(a) & (b) and 21 of the Fertilisers (Control) Order, 1957.

Section 3-A(a) & (b) of the Act, relates to display of stock and price list of fertilizers. The complainants own case is that the raid started at 9 A.M. and was on till 11 A.M.

The normal working hours in a shop carrying on such business, is as per the shops and establishments Act. Such shops normally do not open before 10 A.M., but may open at 9.00 A.M as per norms of the market. When such shops are closed for the day, the Rate-cum-Stock Board displayed are kept inside the shop and again brought out for display on the next day, when the shop is again opened for business. The complainant herein started the raid at 9.00 A.M. and not further in the day when the shop was fully functional, when there would not be any doubt regarding the conduct (display of Stock-cum-Rate board) of the shop owner (appellant). But at 9.00 A.M., just when the shop is being opened and the shop owner is in the process of setting up his business, for the day the complainant has started his raid and has complained that the shop owner (appellant) has violated the provisions of Section 3-A(a) & (b) of the order, of 1957 by not displaying any Stock-cum-Rate board.

PW 3 (seizure witness) (hostile) has deposed in his examination in chief that **there was one board in the shop** stating that chemical fertilizer was available there. On being cross examined he has deposed that there was a Stock Board in the shop. As such in the said circumstances as discussed

above, the benefit of doubt is to be given in favour of the appellant. It is thus before the Court that there was a Stock Board (Details not stated as declared hostile) and considering the time of raid (9.00 A.M.), (shop being set up), the stock and rate was yet to be displayed.

The next charge is under Section 21 of the order of 1957.

“21. Maintenance of records and submission of returns, etc.

The Controller may, by an order in writing, direct manufacturers, dealers or importers of fertilizers or any class thereof,-

- (a) To maintain such books, accounts and records relating to their business and in such form as may be specified in the Order;*
- (b) To submit to such authority returns or statements in such form and containing such information relating to their business and within such time as may be specified in the Order.”*

Exhibit 7 is the book of accounts. It is alleged by the prosecution that on **07.07.1984**, the raiding team found that the cash book had been written only up to **02.07.1984**. The defence is that the appellants employee who wrote the said book of accounts was ill and so the book could not be updated. On perusal of Exhibit 7 it is found that there is no entry after 02.07.1984. The said book contains regular noting made for the period during which no sale was conducted. Notings in the cash book, stating the fact of no sale was made for the following periods:-

- (a) 24/08/83 to 20/09/83.

(b) 11/10/83 to 28/11/83.

(c) 09/01/84 to 01/02/84.

(d) 16/02/84 to 08/06/84.

It is found that for the said periods, when no sale took place, such notings for the total period of 'No sale' were made in the book of accounts **in/by a single entry**. No cash memo book for the period from **03.07.1984 to 06.07.1984** has been seized to show that even though there was sale during that period, the respective noting in the cash book of accounts was missing. There is no evidence on record to show that there was any sale from 03.07.1984 to 06.07.1984. From the nature of the said notings, it is found that notings had been made as and when the sale resumed. As such, the presumption goes in favour of the appellant to the extent that the period from 03.07.1984 to 06.07.1984 of 'No Sale' would also be noted in the book of accounts when the sale again resumed. **The book of accounts has been regularly and diligently written in detail. There is no discrepancy in the entries in the said book (register).**

The documents marked Exhibit 8 series on the reverse of duplicate receipt copy no. 195 (of the receipt book) appear to be in accordance with law, duly written, as seen from the carbon copy. Duplicate cash memo no. 199 has not been exhibited before the trial court, though stated by PW 1 (complainant) in his evidence.

The said findings prove that the charge under Section 3A (a) & (b) and 21 of the order of 1957 has not been substantiated by the evidence on record against the appellant. Proviso to Section 20 of the Fertiliser Control Order of 1957 lays down:-

“20Provided that where the owner or other person in charge of the fertiliser or books of accounts or documents so seized is known, the Inspector shall give receipt to such owner or other person, for such fertilizer or books of accounts or documents and in any other case, it shall not be necessary to give such receipt.....”

In the present case, though the book of accounts (Exhibit 7) and cash memo book (Exhibit 8) have been seized and produced before the Court, no receipt as required, under the said proviso to the said Section was issued. No such compliance has been proved before the Court.

PW 6, Sub-Inspector of Police, Sri B.K. Nath, and Investigating Officer has deposed that he submitted a prayer before the collector for confiscation of the seized fertilizers but there was a stay order by this Court on the sale order.

Section 6A of the Essential Commodities Act, 1955 relates to the procedure for confiscation of the essential commodities.

Sec. 6B, requires issuance of show cause notice before confiscation of essential commodity.

In this case, no such issuance of show cause notice has been proved before the trial Court.

Thus it is clear that the said provision has not been complied with by the Investigating Officer.

Finally, the investigation in this case has been conducted by an officer junior (Sub-Inspector, DEB) in rank in the same department as that of the complainant (Inspector, DEB). He was also part of the raiding team led by PW 1 and has also admittedly written the seizure list and the written complaint as per instructions of the complainant. **Such circumstances creates doubt as to whether the investigating was free and fair.**

A constitution Bench of the Supreme Court in Special Leave Petition (Criminal) Diary No. 39528/2018 (Mukesh Singh vs. State (Narcotic Branch of Delhi) on 31st August, 2020, in para 12, held:-

Para 12, "I. That the observations of this Court in the cases of Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15; Megha Singh v. State of Haryana (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are **to be treated to be confined to their own facts**. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case

is to be disbelieved and the accused is entitled to acquittal;

*II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. **The question of bias or prejudice would depend upon the facts and circumstances of each case.** Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. **The matter has to be decided on a case to case basis.** A contrary decision of this Court in the case of Mohan Lal v. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”*

In the present case the Investigating Officer is a Junior Officer who admittedly was part of the raiding team and also wrote the seizure list and the written compliant as per direction of his superior, an Inspector who is the complainant in this case.

Such facts and circumstances clearly indicate that the situation herein was not fair and there is sufficient evidence on record, which proves that the **Investigating Officer (PW 6) was all along acting as per instructions of the complainant** and thus indicates clear bias on the part of the Investigating Officer, who submitted the charge sheet in this case.

In ***Nathulal vs. State of Madhya Pradesh on 22 March, 1965, AIR 1966 SC, 43*** the Supreme Court held:-

"4. The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occasions. It does not call for a detailed discussion. It is enough to restate the principles. **Mens rea is an essential ingredient of a criminal offence.** Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof: see *Srinivas Mall v. King-Emperor*, ILR 26 Pat 460: (AIR 1947 PC 135), **Hariprasada Rao v. State, ; and Sarjoo Prasad v. State of Uttar Pradesh, .** Most of the relevant English decisions on the subject were referred to in the judgment of this Court in **State of Maharashtra v. Mayer Hans George, Cri Appeal No. 218 of 1963**, dated 24-8-1964: . How to disprove mens rea has been succinctly stated in Halsbury's Laws of England, 3rd Edition, Col. 10, at p. 288, thus:

"When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and prima facie proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable

grounds for a belief is evidence of the honesty of that belief.

*Having regard to the object of the Act, namely, to control in general public interest, among others, trade in certain commodities, it cannot be said that the object of the Act would be defeated if mens rea is read as an ingredient of the offence. **The provisions of the Act do not lead to any such exclusion.** Indeed, it could not have been the intention of the Legislature to impose heavy penalties like imprisonment for a period upto 3 years and to impose heavy fines on an innocent person who carries on business in an honest belief that he is doing the business in terms of the law. Having regard to the scope of the Act it would be legitimate to hold that a person commits an offence under **Section 7** of the Act if he **intentionally** contravenes any order made under **Section 3** of the Act. So construed the object of the Act will be best served and innocent persons will also be protected from harassment.”*

The appellant in this case was carrying on his business of fertilizers and showed one token (instead of licence) to the complainant stating that he had deposited the licence for renewal and had been issued the token towards the deposit of licence for renewal.

The prosecution herein could not prove that the appellant intentionally contravened any order of the Act of 1957 as alleged, as is evident from the discussion above.

Conclusion

The evidence on record as discussed do not prove the offences as alleged under Sections 3-A(a) & (b) and 21 of the Fertilisers (Control) Order Act, 1957. The appellant duly applied for renewal of licence to run his fertilizer shop. The

raid was conducted at 9.00 A.M. when the appellant was opening his shop and the Stock-cum-Rate board which was in the shop (PW 3) was to be set up. The book of accounts (Register) was duly and diligently maintained as discussed. The marked and exhibited cash memo no. (195) has been duly written and though PW 1 has stated about memo no. 199 in his evidence, the said receipt has not been proved as exhibit. The proviso to Sec. 21 of the Order of 1954 and Sec. 6A and 6B have not been complied with by the Investigating Officer, thus was not in accordance with law.

The Investigating Officer (PW 6) and also part of the raiding was an officer subordinate to the complainant and was working as per the direction of the complainant during raid by preparing seizure list and writing the complaint as dictated by the complainant. The said **conduct of obedience** goes against the prosecution case, **leading to the conclusion, that the investigation in this case was biased and not fair, thus not in accordance with law and against the principle of natural justice.** The time of raid (9.00 A.M.) gives the benefit of doubt to the appellant that the shop had just opened and the Stock-cum-Rate board would be displayed in due course. Presence of board in the shop was proved by PW 3 (though hostile). The appellant was conducting his business in a lawful manner by maintaining his book of accounts/cash memo diligently and has thus not intentionally contravened (if any) any of the provision as alleged and the accused/appellant has clearly discharged his onus. The prosecution thus could not prove their case against the appellant

beyond reasonable doubt and the findings of the learned Trial Judge is thus not in accordance with law.

The appeal CRA 316 of 1988 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.)