

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.A. No. - 426 of 1988

IA No. CRAN 1 of 2008

(Old No. CRAN 1828 of 2008)

-And-

**IN THE MATTER OF
Dilip Kumar Das & Anr.**

Vs.

The State Of West Bengal

**For the Appellants : Mr. Himanshu De, Sr. Adv.,
Mr. Navanil De, Adv.
Mr. Rajeshar Chakraborty, Adv.
Mr. Srinjan Ghosh, Adv.
Mr. Subhrajit Dey, Adv.**

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

Judgment on : 15.09.2022

Subhendu Samanta, J.

The instant appeal has been preferred against an order and judgment of conviction dated 31.08.1988 passed by Sri A. K. Chatterjee, the Learned

Judge Special Court, (E.C. Act), Midnapore convicting the appellants and sentenced them to suffer simple imprisonment for one year each and to pay a fine of Rs. 1000/- each, in default to simple imprisonment for one month for the offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for the violation of para-5 of the West Bengal Wheat and Wheat Products (Licensing, Control and Prohibition of certain classes of Commercial transaction) Order, 1973, in D.E.B.G.R. Case No. 12 of 1983.

Before enter into the merit of the instant appeal let me consider the prosecution case. In a nutshell, the complaint stated as follows-

On March 16th 1983 One Kashinath Das the then Constable of Police, Garbeta Police Station lodged a complaint to Garbeta Police Station being Garbeta P.S. Case No. 13 dated 16th March 1983 under Section 7(1)(a)(ii) of Essential Commodities Act, contending inter alia on the same day at about 5.15 p.m/ the complainant intercepted 5 Rickshaw pullers with two bags of wheat each totalling of 10 bags. On interrogation it was found that the said rickshaw pullers were transferring the said 10 bags of wheat for the present appellants and on further interrogation it was further revealed that the appellants had purchased the 10 quintals of wheat from One MR Dealer at Bishnupur at the rate of Rs 2010/-Per quintals. They brought the articles by bus to Garbeta and were further transferring them to Amalagora after loading those goods in those 5 rickshaws. The appellants were asked to produce for a receipt or documents for holding the bags of wheat but they failed to produce the same. Hence this police case.

The investigation of the police is ended in charge sheet under section 7(1)(a)(ii) of Essential Commodities Act for the violation of paragraph 3 and 5 of West Bengal Wheat and Wheat Products **(Licensing control and prohibition of certain Classes of Commercial Transactions) Order,1973.**

The appellants were examined under section 251 of the CrPC and they were pleaded not guilty and claimed to be tried.

During trial, 8 witnesses were examined on behalf of the prosecution but defence examined none. After completion of the trial Learned Court below passed the impugned judgment and convicted the appellants and sentenced them to suffer simple imprisonment of one year each and to pay a fine of Rs. 1000/- each, in default to simple imprisonment for one month.

Being aggrieved by and dissatisfied with the impugned order the instant appeal has been preferred.

Points for determination:-

During the course of arguments a single point has been raised before this appellate court that, “whether the appellants come within the meaning of **Section 2(d) of West Bengal Wheat and Wheat Products (Licensing control and prohibition of certain Classes of Commercial Transactions) Order, 1973**”.

Decision with Reason:-

During the course of arguments Learned Advocate for the appellant submitted that it has been stated in the FIR that a quantity of 10 quintals of wheat were seized by the investigating agency at the place of occurrence.

The seized wheat was never measured or weighted either at the time of interception near Garbeta Bazar or in the Police Station.

During the course of investigation the said seized wheat were never measured as it was admitted by the P.W. 5 in his cross examination before the Learned Court below.

He pointed out that carrying 10 quintals of wheat without proper document or receipt is not constitute an offence under **Section 2(d) of West Bengal Wheat and Wheat Products (Licensing control and prohibition of certain Classes of Commercial Transactions) Order, 1973**. In that score the appellants have neither violated paragraph 4 nor any provisions of paragraph 5 of the said Order.

He placed the said Order 1973 and cited Section 2(d) of the said Order where 'Dealer' has been defined.

Learned Advocate for the appellant further argued that the appellants were suffering from mental agony for the last 39 years for such punishment although they are not at all liable to be penalised.

His further argument that Learned Court below has presumed the fact that the present appellants were in possession of the seized wheat and the said seized wheat weighted more than 10 quintals. This presumption is not permissible in the eye of law. Thus the order and judgment of conviction passed by the Learned Court is vitiated in the eye of law.

In support of his contention he cited a decision reported in 1981 CRLJ 1100. He argued by citing para 7 of the judgment that in absence of any statutory presumption the court cannot draw a factual presumption.

Learned Advocates appearing on behalf of the State argued that the alleged 10 bags wheat was seized at the place of occurrence from the possession of the present appellants. They did not produce any valid document to that effect. Obviously they were smuggling the bags of wheat without any proper authority. Thus the police case was initiated. The seizure lists were prepared in presence of the witness and also in presence of the appellants. The investigation of the police is ended in charge sheet and there were no allegation regarding any perfunctory investigation.

He also argued, during the course of trial 8 witnesses were examined on behalf of the prosecution and all of them supported the prosecution case. The offence against the appellants had been sufficiently proved before the Learned Court below. The learned court below also examined the appellants under section 313 Cr.P.C.. Wherein they flatly denied their possession of alleged bags of wheat. During their examination under Section 315 Cr.P.C. they never uttered a single word regarding the weight of wheat. Learned Court below after the scanning of the evidences on record, rightfully convicted the present appellants and sentence them to punishment. Learned

State Advocate also argued that the opinion of Learned Court below regarding the denial of the possession or ownership over the seized wheat by the appellants itself proved their culpable set of mind. So, finally they argued, the impugned Judgment of Conviction suffered no illegality and it needed to be affirmed.

Heard, the Learned Advocate at length perused the Section 2(d) of West Bengal **(Licensing control and prohibition of certain Classes of Commercial Transactions) Order, 1973**. Section 2(d) of the said Order defined 'Dealer' as follows:

1. (d) 'dealer' means a person who is engaged in any business involving –

(i) sale or purchase for sale of wheat or wheat products or both in a quantity exceeding ten quintals in one transaction or storage for sale of wheat or wheat products or both in a quantity exceeding fifteen quintals at one time, either on his own behalf or on behalf of any other person as commission agent or arhatia,

Section 2(d) specifically pointed the purchase for sale of wheat in a quantity exceeding 10 quintals in one transaction. This is the point of argument of Learned Advocate for the appellant that if the seized bags of wheat are 10 quintals or less they are not come under the purview of Section 2(d) of the said Order. The offence will only constitute if any person purchase for sale of wheat in a quantity exceeding 10 quintals.

So, it is crystal clear that if the quantity of wheat is 10 quintals or less the offence is not constituted but if it is more than 10 quintals the offence is surely attracted for the violation of the said Order.

I have categorically examined the LCR including written complaint, the seizure list and the evidence of PWS laid before the Learned Court below.

The written complaint of the complainant (Exhibit 4) stated the quantity of the wheat to be 10 quintal.

Seizure list dt. 16.08.1983 at 17.30 hrs. mentioned under heading article seized as 10 bags of wheat in 5 rickshaw weighted approximately 10 quintals.

PW 5, one investigating officer before the Learned Court below, in his cross- examination admitted that "I did not take weight in all the seized article".

Thus the materials on record does not suggest that the seized wheat weighted exceed 10 quintals. The entire prosecution case has started on a presumption that the accused/appellants has committed the offence punishable under the 7.1a(ii) of the Essential Commodities Act. i.e. they were in possession of wheat more than 10 quintals.

For the purpose of violation of the **Section 2(d) of West Bengal Wheat and Wheat Products (Licensing control and prohibition of certain Classes of Commercial Transactions) Order 1973**, it is to be proved that the person smuggling wheat or wheat products in a quantity "exceeding 10 quintals"

I have also perused the judgment of this High Court reported in 1981 CrLJ 1100. The principle laid down in paragraph 7 of the said judgment is as follows:

(7) In the Order, with which we are concerned, there is no provision for raising a statutory presumption that storage of food grains beyond certain limits would mean that the storage was for the purpose of sale. In spite thereof the learned Courts below relying upon the circumstance that the petitioner stored the pulses in his shop room drew an inference that the pulses were stored for the purpose of sale. In other words, in absence of any statutory

presumption the Court drew a factual presumption; and considering the evidence on record we are unable to hold that the presumption drawn by the Courts below from the facts proved or admitted, is an improper one, still then, as observed by the Supreme Court, mere storage for sale would not justify the conclusion that it was made for the purpose of "carrying on business" as concept of business postulates continuity of transactions. In that view of the matter and since there is no evidence on record except storage in the shop room that he was carrying on business in pulses, the petitioner cannot be held to be a dealer within the meaning of paragraph 2(a) of the Order.

In this case Learned Court below had entirely acted on the presumption that the present appellants had violated the provisions of the said Order 1973. But such presumption actually not justified because the bags of wheat never weighted at all, or had never stated anywhere in the materials on record that the seized wheat were weighted exceeding 10 quintals.

The principles laid down in the above citation is very much applicable in this case. The presumption of Learned Court below in this case is not on the basis of proper materials. When the alleged seized wheat was never weighted how can one come to an inference that the accused/appellants had committed an offence by violating the said Order of 1973.

The defect of investigation as pointed out in the present case before this Appellate Court is not at all curable one. Though the appellants remained themselves mum at the time of their examination under Section 313 Cr.P.C. regarding their possession and ownership of the wheat; but the prosecution had the duty to prove the fact that the wheat seized allegedly

under the possession of the appellants measured exceeding 10 quintals. In absence of such material the entire investigation vitiates.

Initial burden was upon prosecution to prove that the Convicts/Appellants had violated the provisions of the Orders 1973; but prosecution has measurably failed to discharge their onus.

Accordingly, after considering the entire case record and the memorandum of appeal it appears to me that, instant appeal has got merit and the investigation conduct against the present appellant as well as the trial before the Learned Court below had not conducted on the basis of justified material on record. The presumption of innocence is always in favour of the accused /appellants. The principle of benefit of doubt, as they are, is sang in favour of the appellants in the present case.

Thus, in my view the impugned order and judgment of conviction passed by the Learned Court below suffers illegality and impropriety. Hence the instant appeal has got merit and it is liable to be allowed.

In result thereof, instant criminal appeal is allowed on contest.

The impugned order and sentence of imprisonment and fine passed by the Learned Court below in DEBGR case No. 12 of 1983 convicting the appellants is hereby set aside.

The appellants are on court bail. They are set at liberty at once. The surety standing in their favour are also released.

The instant criminal appeal along with connected CRAN application, if any, is disposed of.

A copy of this order be sent down to the Learned Court below for their information and necessary action.

(Subhendu Samanta, J.)

