

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 434 of 1989

Gandhi Dey

Vs.

The State of West Bengal.

For the Appellant : Mr. Satadru Lahiri

For the State : Mr. Narayan Prasad Agarwal,
Mr. Pratick Bose.

Heard on : 17.08.2022

Judgment on : **04.11.2022**

Shampa Dutt (Paul), J.:

The appeal has been preferred against an order of conviction under Section 7(i) (a) (ii) of the Essential Commodities Act, 1955 an amended upto-date, for contravention of paragraph 4 of West Bengal Soft Coke Licensing Order 1965 and sentence of rigorous imprisonment for one year and to pay fine of Rs. 500/- in default to suffer further rigorous imprisonment for five months as imposed on the appellant by the Learned Judge, Special Court (E.C. Act), Hooghly, in his judgment and order dated 23.09.1989 passed in Special Court Case No. 221 of 1986.

The prosecution case is to the effect that PW 1 Sasanka Banerjee, S.I. of Police alongwith PW 2, Watcher Constable Dinonath Singh and others came to the Coal Depot of one Tapan Gupta at Rajyadharpur under Police Station Serampore within the district of Hooghly, but the owner was not present in the said Coal Depot. The appellant was conducting the business and could not produce any License for dealing with coal. Police seized 7 metric tons of Soft Coke from the shop of said Tapan Gupta and lodged a complaint against the appellant after arresting him.

The defence of the appellant was denial of the allegations and it was contended that the Soft Coke in question had not been seized from his possession nor was he an employee of the Coal Depot of Tapan Gupta.

On completion of trial, the appellant was convicted and sentenced as above, but Tapan Gupta was acquitted of all charges.

Mr. Satadru Lahiri, learned legal aid Counsel appearing for the appellant has argued that the Coal as alleged was found/seized from an area adjacent to the Coal Depot Hotel of Tapan Gupta (Not the appellant) though case was lodged against the owner Tapan Gupta and the appellant, only appellant was arrested and falsely implicated even though he is not an employee of Tapan Gupta, the owner of the Coal Depot. No documents were verified that the appellant was an employee. The coal was seized from a space adjacent to a Hotel owned by Tapan Gupta. The space is bounded by a wall and the ownership of the space has not been verified. There are no independent witnesses though the space is adjacent to Delhi Road and a Hotel.

The Trial Judge without proper appreciation of evidence convicted the appellant causing serious prejudice and miscarriage of justice to the appellant.

The judgment and order under appeal not being in accordance with law, the conviction and sentence is liable to be set aside.

Mr. Narayan Prasad Agarwal, learned Advocate (Prosecutor) for the State has submitted that the prosecution before the trial Court could prove the case against the appellant beyond doubt. It was clearly proved that the space from where the Coal was seized, was a Coal Depot of Tapan Gupta where the appellant was an employee and the Coal was for the purpose of business and there was no valid papers for carrying on such business. There was also weighing scales and others related articles seized from the area (Coal Depot)

and there being sufficient evidence on record against the appellant, the appeal is liable to be dismissed.

Evidence on record

Prosecution witness no. 1, S.I. Sasanka Banerjee is the complainant, who conducted the raid, has deposed that they found huge quantity of Soft coke Coal being sold by the appellant/beside the Hotel of Tapan Gupta. They also found weighing scale, weights etc. No valid documents/licence could be produced by the accused/appellant for the sale of the Soft Coke Coal. So the articles were seized (Exhibit 1) and a complaint was lodged by him (Exhibit 2) On being cross examined, he has admitted that there were no customers found at the time of raid and also admitted that though the Coal was weighed (allegedly 7000 kg), no **weightment chart was prepared**.

Prosecution witness no. 2 Dinanath Singh is a constable and was part of the raiding team and is a seizure witness.

Prosecution witness no. 3 Inspector Ashoke Kr. Bhowmick, he was also part of the raiding team.

Prosecution witness no. 4 S.I. B.B. Roy is the Investigating Officer.

The documents proved and exhibited are:-

Exhibit	Description
Exhibit 1	Seizure list.
Exhibit 2	Written complaint.
Exhibit 3	Formal FIR.

Analysis of evidence

From the evidence on record the following facts have come before the Court:-

- a) There are no independent witnesses in this case, in spite of there being a Hotel and a Petrol Pump adjacent to the place of occurrence and there being people present in the Hotel (PW 3).
- b) No documents of ownership of the place of occurrence or the adjacent Hotel has been seized by the raiding team.
- c) No proof either oral or documentary that the appellant was an employee selling Coal.
- d) If the appellant was an employee, who was the owner of the Soft Coke Coal? Or the property on which it was allegedly found.
- e) No weighment chart prepared (Admittedly).
- f) Section 14 of the West Bengal Soft Coke Licensing Order, 1965 has not been complied.
- g) From the judgment under appeal, it is found that the Trial Judge has not given any clear findings, nor is there any proper appreciation of evidence on record. The Trial Judge held that though no weighment chart was prepared, he found no scope to doubt the evidence on record (Statement) of witnesses.

The Trial Judge based the conviction solely on the statement of the witnesses who were all part of the raiding. There is no discussion regarding

absence of independent witnesses in spite of there being a Hotel and a Petrol Pump adjacent to the place of occurrence.

Another important piece of evidence that the Trial Judge has over looked is that no where in the seizure list (Exhibit 1 series) it is noted that the Soft Coke was recovered from the possession of the appellant.

The seizure has been shown to have been made “from the Coal Depot of Tapan Gupta”. There is the LTI of the appellant in the seizure list though not attested and not noted that seizure was made from him. Thus the seizure has not been shown to be from the accused/appellant. Though the LTI has been shown as taken, it is not noted as to in which capacity (or allegation/offence) his LTI has been taken. But the appellant has been made an accused. Accused Tapan Gupta has been acquitted as no documents of ownership could be produced by the prosecution. Though such documents being public documents are easily available to the Investigating Officer and with some effort, the documents could be produced.

Section 10 of the West Bengal Soft Coke Licensing Order, 1965 lay down:-

“Section 10. *If it appears to the Director or the District Magistrate, as the case may be, that a dealer has indulged in any malpractice or contravened any provision of this Order or any condition of the licence or any direction given under paragraph 12 of this Order, he may forthwith temporarily suspend the licence:*

[Provided that the dealer, whose licence has been so suspended, shall be asked in writing by a notice setting out the charges against him

to be replied within a period of thirty days of receipt of such notice and also may be given an opportunity of being heard, if considered necessary, before cancellation of the licence or revocation of the order of suspension finally in writing by the licensing authority. The order of cancellation or revocation of suspension order shall be passed on the basis of available records or ex parte, in case the dealer does not give reply to the charges or fails to appear at the hearing, if fixed.]”

Section 14 of the Act of 1965 lays down:

“Section 14. *The Director or the District Magistrate or such other person not below the rank of a Sub-Inspector of Food and Supply in the Department of Food and Supplies, West Bengal, or of a Sub-Inspector of Police authorized in writing in his behalf by the Director or the District Magistrate may, with a view to maintaining supplies and securing compliance with the provisions of this order –*

- a) Require any person to give any information in his possession with respect to any stock of soft coke in his possession or in the possession of any other person;*
- b) Enter and inspect the premises of any dealer for the purpose of ascertaining if the conditions of licence and the direction of the Director or the District Magistrate as the case may be, are being complied with and seize any stock in respect of which the Director or the District Magistrate or the person so authorized has reason to believe that a contravention of the order has been or is being made on about to be made.*
- c) Require a dealer to produce before him any accounts, registers, vouchers or other*

documents relating to the sale or purchase of soft coke, by such dealer.”

The officer who conducted the raid/complainant is PW 1 Sub Inspector Sasanka Banerjee and his authority to conduct such raid is provided under Section 14 of the Act of 1965.

A Sub-Inspector of Police (as in this case) has to be authorized by the Director or the District Magistrate, empowering him to act under Section 14 of the Act of 1965.

But no such authorization has either been produced or proved by the prosecution. The raid and thus the initiation of this case has been in complete violation of Section 14 of the Act of 1965 and is therefore not in accordance with law.

The judgment of the Trial Judge is also not clear regarding his findings. Only a general observation that there was no reason to “doubt” the evidence adduced by prosecution. From the analysis of evidence it is clear that the prosecution could not prove their case before the Trial Court beyond reasonable doubt.

In addition the evidence on record also do not justify the order of conviction as the prosecution has clearly not proved, the 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 CRA 434 of 1989 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.)