

07.09. 2022
item No.01
n.b.
ct. no. 551

CRA 445 of 1989

**Baharul Hossain
Vs.
The State of West Bengal**

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

None appears on behalf of the appellant.

State is represented through Mr. Narayan Prasad Agarwal along with Mr. Pratick Bose, learned advocates.

It is directed on the earlier occasion that the administrative notice upon the appellant has already been served but he did not appear.

This is an appeal pending since 1989. Considering the long pendency of the same, it is necessary to dispose of the same after hearing it on merit.

Matter is taken up for passing necessary order and judgment.

Mr. Agarwal and Mr. Bose, learned advocates appearing on behalf of the State submitted before this Court that the instant appeal has been preferred against the order of conviction under Section 7(1)(a)(ii) of Essential Commodities Act, 1955. There are three accused persons before the learned

Court below and after conclusion of hearing, the learned Court below acquitted two accused persons and convicted the present appellant. They further contended that during the course of trial 11 witnesses were examined on behalf of the to prosecution and all witnesses supported the prosecution case. They further argued that the matter has been categorically examined by the learned Trial Court and there is no loopholes in the impugned judgment. They further argued that the conduct of the appellant would show that he is not willing to proceed with further and necessary order may be passed.

Heard learned Counsel and perused the impugned judgment. It appears that the instant appeal has been preferred against the order of conviction under Section 7(1),(a), (ii) of the Essential Commodities Act, 1955 as amended up to date, for contravention of paragraph 4 and conditions no.4 and 5 of the license granted under Form B of the West Bengal Kerosene Control Order, 1968, and sentence of rigorous imprisonment for 2(two) years and to pay a fine of Rs.3,000/- in default to suffer further rigorous imprisonment for 6(six) months, as imposed on the appellant by the Learned Judge, Special Court(E.C.Act) Midnapore, by his Judgment and Order dated 26th September, 1989 passed in D.E.B. G.R. Case no.47/88.

I have carefully examined the impugned judgment, it appears that on the basis of a written complaint dated 29.9.1988 the case was initiated by Kotwali Police Station, District Midnapore(undivided). It has been alleged that the

accused persons had violated the provisions of para 4 of West Bengal Kerosene Control Order 1968 and condition no.4/5 and other provisions of licence of Kerosene oil dealer issued under para 6 of the said order of 1968 and also para 3 of West Bengal declaration of cost and prices of Essential Commodities Order 1977.

It further appears from the LCR that all the three accused persons have been examined under Section 251 Cr.P.C and wherein all of them have been pleaded not guilty and claim to be tried. The trial has initiated; during course of trial; prosecution has produced eleven witnesses in their favour after the completion of prosecution witnesses, all the three accused persons were examined under Section 313 of Cr.P.C. Thereafter, the learned Trial Court below has pronounced the Judgment. It appears that including the eleven witnesses the P.W. 10 and P.W.11 are the Investigating Officers and others are the private witnesses. All the witnesses have supported the prosecution case. Investigating Officer had examined before the learned Court below regarding the conduct of investigation. During the course of examination of the accused under Section 313 Cr.P.C. they have enquired regarding their complicity in the alleged offence but they decided to be mum. They only pleaded innocence.

I have carefully examined the impugned judgment after going through the entire judgment, it appears that the learned Court below has pointed out each and every statement of the prosecution witnesses; after scanning the evidence,

Learned Court below is of the optimum view that the case against the two accused persons namely, Amir Hossain and Lakshmi Kanta Dey had not been sufficiently proved and they have been acquitted but in case the present appellant; Learned Court below has opined that the offence against the present appellant had sufficiently proved by the prosecution. There were no iota of doubt against the commission of the offence by the present appellant.

I have also carefully examined the evidence placed before the Learned Court below. Considering the same, I am at par with the view of the learned Court below and I find no illegality or impropriety in the impugned judgment. So, there is no scope to interfere with the finding of the learned Court below. Accordingly, I find no merit in the present appeal and it is liable to be dismissed. Hence the instant appeal is dismissed on merit.

The impugned order passed by the learned Court below is hereby affirmed.

The appellant/convict is not represented before this Court. Thus, the Chief Judicial Magistrate, Paschim Midnipur is directed to issue warrant of arrest in the name of the present appellant for his production to serve out the sentence.

Let a copy of this order be sent down to the Learned Chief Judicial Magistrate, Paschim Midinipur through District Judge, Paschim Midnipur for its proper compliance.

Thus, the instant appeal and connected application, if any, is disposed of.

All parties shall act on the server copy of this order
duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)