

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.A. 460 of 1989

Saniulla Ansari & Anr.
Vs.
The State of West Bengal.

**For the Appellant/
Amicus Curiae** : Mr. Ayan Bhattacharya,
Mr. D. Ghosh.

For the State : Mr. Saibal Mondal,
Mr. Pravash Bhattacharya.

Heard on : 01.07.2022

Judgment on : 22.09.2022

Shampa Dutt (Paul), J.:

This is an appeal against judgment and order dated 21.09.1989 passed by Judge Special Court (E.C. Act), Midnapore in D.E.B. G.R. Case No. 12 of 1988 convicting the accused/appellants of the offence under Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955 for alleged violation of the provisions of Para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and Para 3(1) of the West Bengal Pulses Edible Oil Seeds and Edible Oils (Dealers Licencing) Order, 1978 and sentencing them to suffer R.I. for one year each and to pay a fine of Rs. 1000/- each, in default, to suffer R.I. for one month each.

The prosecution case in short is that on 30.03.1988 at 15.15 hrs. one S.K. Mukherjee, Inspector of Police (D.E.B.), Midnapore (PW 4) lodged a purported written information with the Daspur Police Station, District-Midnapore alleging, inter alia, that on 30.03.1988 at 10.00 hrs. he (PW 4) alongwith Sub-Inspector A.B.Pal of D.E.B., Ghatal (PW 7) and constable Ahibhusan Singha Mahapatra (PW 3) went to the shop-cum-godown of the accused/appellants at Lankagarh Bazar within Daspur P.S. and found both the accused/appellants present there and also found pulses and other articles in that Shop-cum-Godown and also found them running business in pulses and attending customers. The informant thereafter disclosed his identity and served a notice on the accused/appellant no. 1 asking him to produce all the records in respect of his business of pulses but he failed to produce any licence or

document in respect of the business of Khesari pulses. He also failed to produce any Stock-cum-Rate Board nor the same was found displayed in the said Shop-cum-Godown. Thereafter the informant (PW 4) seized 69 bags of Khesari pulses after weighing the same in presence of witnesses, namely, Susanta Sasmal (PW 1) and Sankar Prasad Roy (PW 2) under a seizure list and kept the same in the Zimma of Susanta Sasmal (PW 1). The informant accordingly alleged that both the accused/appellants have violated the provisions of para 3(1) (2) (3) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and para 3(1) of the West Bengal Pulses Edible Oil Seeds and Edible Oils (Dealers Licencing) Order, 1978 for which they are liable to be prosecuted under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955.

That on receipt of the said written complaint from the Inspector S.K. Mukherjee of D.E.B., Midnapore (PW 4), Sub-Inspector S. Pal of Daspur Police Station started a case being Daspur P.S. Case No. 13 dated 30.03.1988 under Section 7(1) (a) (ii) of the Essential Commodities Act, 1955 against the accused/appellants.

On completion of investigation chargesheet was submitted and the accuseds/appellants were examined under Section 251 of Cr.P.C. who pleaded not guilty. On completion of trial the appellants were convicted and sentenced as above.

Mr. Ayan Bhattacharya, learned Amicus Curiae submits on behalf of the appellant that the learned Trial Judge did not asses the evidence on record properly and the learned Judge failed to apply his

mind judicially and totally overlooked the discrepancies and lacunas in the prosecution evidence. The Ld. Trial Judge failed to consider that the seizure witnesses did not support the prosecution case and the public witnesses were declared hostile. The only witnesses who supported the prosecution case were all part of the raiding team and junior in rank to the Inspector who led the raid. PW 7 a member of the raiding team is also the investigating officer and which is completely against the principle of natural justice. That the seizure and other formalities were not properly done in accordance with law and that the appellants were not given proper opportunity to produce the documents as asked for and the learned Judge also failed to consider that the prosecution could not prove their charge against the appellants by way of oral or documentary evidence and erroneously convicted and sentenced the appellants which has seriously prejudice the appellants and caused grave miscarriage of justice. And as such the said judgment and order under appeal is liable to be set aside and the appellants are entitled to acquittal.

Mr. Saibal Mondal, learned lawyer for the State submits that the learned Trial Judge rightly considered the evidence on record which the prosecution was able to prove beyond all reasonable doubt before the Trial Court. The prosecution before the Trial Court proved all the relevant documents in support of their case and also the oral evidence and considering the said materials on record the Trial Court rightly convicted and sentenced the appellants and as such this appeal is liable to be dismissed.

Evidence on record

Prosecution witness no. 1 Susanta Sasmal is a seizure witness. This witness on oath has stated that he cannot say the weight of the Khesari Pulses seized by the Police. He has also stated that he does not know whether Police served any notice on the accused persons for producing documents nor could he say as to whether the accused persons produced any registers. This witness was **declared hostile** by the prosecution. He then denied the case of the prosecution. He has stated that when he had reached the market police asked him to sign the paper.

Prosecution witness no. 2 Shankar Roy another seizure witness was also **declared hostile** by the prosecution. This witness has also not supported the prosecution case.

On being cross examined he has stated that the seizure list and Zimmanama were prepared on the first floor of his house and he resides on the ground floor. He did not see the seized goods nor can he identify the accused persons by name.

Prosecution witness no. 3 Ahibhusan Singha Mahapatra is a constable and was part of the raiding team.

Prosecution witness no. 4 Samir Kumar Mukherjee is the Inspector of Police who conducted the raid. This witness has categorically stated that he did not find customers dealing in Khesari Pulses with the accused in details. He also did not verify the ownership of the accused in respect of the shop. On being cross examined this

witness also admitted that the contents of the notice served to appellant Saniulla Ansari was not read over and explained to him nor did he mention in the seizure list as to whose help he took to weigh the seized pulses.

Prosecution witness no. 5 Paresh Ch. Patra and **Prosecution witness no. 6 Gurupada Mandal** are both independent witnesses and both were **declared hostile** by the prosecution as they have not supported the prosecution case.

Prosecution witness no. 7 Anath Bandhu Pal is a Sub-Inspector of Police who had accompanied PW 4 to conduct the raid. The witness has stated that when they went to conduct the raid, appellant Sk. Sawakat Ali fled away. He has supported the case of the complainant. This witness also on being cross examined could not say whose help was taken for weighing the seized articles which were in sealed condition. No empty bag was found at the place of occurrence during search and seizure. He also did not make any enquiry as to the ownership of the disputed Shop-cum-Godown. This witness also investigated the case and submitted chargesheet in the present case.

Sl No.	Exhibits	Description of documents.
1	Exhibit 1 series	Notice.
2	Exhibit 2	Seizure list.
3	Exhibit 3 series	Zimmanama.
4	Exhibit 4 series	Written complaint.
5	Exhibit 5 series	Formal FIR.
6	Exhibit 6 series	Hand sketch map.

From the evidence as recorded before the Trial Court and the findings of the learned Trial Judge it is found that admittedly no documents were seized nor did the prosecution verify the ownership of the shop in this case. It has also come before the Court that the seized articles were all in sealed condition. No empty bag was found in the shop. As such the prosecution case that Khesari Pulse was being sold has not been substantiated by the said evidence. The seizure witnesses and the independent local witnesses have all been declared hostile by the prosecution and none of them have supported the prosecution case. The raiding team also could not produce any evidence to show that Khesari pulse was being sold as admittedly they did not examine any customer. The complainant also admitted in his evidence that he did not serve a copy of the notice upon the appellant Saniulla Ansari. It is the case of the prosecution that appellant Sawakat Ali fled away on seeing the raiding team. No copy of notice was served upon accused Sawakat Ali. Witness PW 3 is a constable, who accompanied the raiding team and Sub-Inspector PW 7 who, had accompanied the complainant for the said raid is also the Investigating Officer in this case. PW 3 a constable a Subordinate Officer to the complainant is only one of the two witnesses to support the complainant's case. The other being PW 7, another subordinate officer and part of the raiding team.

PW 7 in his examination in chief has admitted that he accompanied the complainant at the time of raid and is also a seizure witness. **In his**

cross examination he has stated that on completion of investigation he submitted chargesheet.

Ld. Lawyer for the appellant has relied upon a ruling ***Bhagwan Singh Vs. The State of Rajasthan, cited in AIR 1976 Supreme Court 985***, wherein the Court held:-

“Now, ordinarily this Court does not interfere with concurrent findings of fact reached by the trial Court and the High Court on an appreciation of the evidence. But this is one of those rare and exceptional cases where we find that several important circumstances have not been taken into account by the trial Court and the High Court and that has resulted in serious miscarriage of justice calling for interference from the Court. We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the First Information Report for taking action against the appellant. It is difficult to understand how in these circumstances Head Constable Ram Singh could undertake investigation? In fact, Head Constable Ram Singh, being an officer below the rank of Deputy Superintendent of Police, was not authorised to investigate the case but we do not attach any importance to that fact, as that may not affect the validity of the conviction. The infirmity which we are pointing out is not an infirmity arising from investigation by an officer not authorised to do so, but an infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant. This is an infirmity

which is bound to reflect on the credibility of the prosecution case.”

Admittedly prosecution witness no. 7 (S.I.) was part of the raiding team when he accompanied the complainant PW 4 an Inspector. In his evidence on oath before the Court he has categorically stated that he was part of the raiding team and that he conducted the investigation in this case and submitted the chargesheet. This witness has supported the evidence of the complainant. As such, such conduct is totally against the judgment of the Supreme Court as referred to above. Wherein the Court clearly held **“This was an infirmity which was bound to reflect on the credibility of the prosecution case.”** Further there is no independent prosecution witness nor any seizure witness who has supported the prosecution case. It is seen from the judgment under appeal that the Trial Judge found no reason to disbelieve the witnesses inspite of the fact the independent witnesses and the seizure witnesses were all declared hostile. It is totally uncorroborated oral evidence of the witnesses who were part of the raiding team that the Trial Judge relied upon and without any proper analysis of evidence on record and proper reasoning came to the finding that the prosecution was able to prove the charge against the appellants beyond all reasonable doubt and convicted and sentenced the appellants.

Conclusion

Considering the facts and evidence as discussed above and also the fact that the incident in this case occurred in the year 1988 (34

years ago), it is found that the investigation in this case was conducted in a biased manner with the purpose to see that the appellant is convicted as the Investigating Officer himself is part of the raiding team who has supported the complainant. This has thus vitiated the trial and has also caused serious miscarriage of justice as the principle of natural justice has not been followed and on this ground alone the order of conviction and sentence should be set aside and as per the lines of the Supreme Court in **AIR 1976 Supreme Court, 985, Bhagwan Singh Vs. State of Rajasthan** “**this was an infirmity which was bound to reflect on the credibility of the prosecution case**”.

Further neither the seizure witnesses nor the independent witnesses have supported the prosecution case and were declared hostile.

In addition the evidence on record also do not justify the order of conviction as the prosecution has clearly not proved their 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 suffers from inherent illegality and is thus liable to be set aside.

The appeal thus stands allowed. The appellants are accordingly acquitted of all charge and discharged/released from their 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.)