

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. - 77 of 1987****IN THE MATTER OF****Sri Raj Kumar Agarwal.****Vs.****The State of West Bengal.****For the appellant : Ms. Manasi Roy, Adv.,****For the State : Mr. Narayan Prasad Agarwal, Adv.,
Mr. Pratick Bose Adv.****Judgment on : 12.04.2023****Subhendu Samanta, J.**

The instant appeal has been preferred against the order of conviction passed by Learned Judge, Special Court, (EC Act) Hooghly on 9th day of January 1987 in special case no. 158 of 1985 u/s 7(1) a (ii) of the Essential Commodities Act for alleged contravention of the Para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 and

sentence the appellant to suffer rigorous imprisonment for a period of 6 months and also to pay a fine of Rs. 2000/- in default to suffer further rigorous imprisonment for one month.

The brief fact of the prosecution case is that on the basis of source information P.W. 1, District Enforcement Officer along with some force visited and conducted raid at the Mill of the present appellant under the name and style of Paul Pure Oil Mill on 05.07.1985.

During the inspection it reveals that the stock of both Mustered Seeds and Mustered Oil was actually excess than it was written in the stock board. Appellant was not present, his employee namely Naren Biswas was present there who did not give any satisfactory explanation for such excess. Thereafter PW 1 has seized the Mustered Seeds and Mustered Oil with the proper seizure list in presence of witness and lodged the written complaint with the police. On the basis of the complaint the investigation was conducted and it was ended in charge sheet. Present appellant was sent up for trial. During 'plea' u/s 251 Cr.P.C. the appellant pleaded innocence.

During trial prosecution has produced 07 witnesses and exhibited seizure list, stock board, zimmanama, weighment chart e.t.c. From the defence side only one witness was

examined as DW 1. After completion of trial and after hearing Learned Public Prosecutor and the Defence Advocate the impugned order of conviction and sentence was passed by the Learned Sessions Judge.

Hence this appeal.

Learned Advocate for the appellant submitted before this court that the impugned order of conviction and sentence passed by the Learned Special Judge is illegal and improper. The Learned Special Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. Learned Special Judge, should have held that the stock board usually maintained at the end of the business but as the raid was conducted during the business hours the stock was not appeared correctly.

He further pointed out that Learned court below is misread and misdirected himself in passing the impugned order for not considering the evidences of DW 1. He further pointed out that the independent seizure witnesses cannot be believed as he deposed just opposite to the prosecution case. He pointed out that the order of conviction on the basis of the materials available on the record is illegal and liable to be set aside.

Learned Advocate appearing on behalf of the state submitted that the PW 1 is the complainant himself who proves the factum of raid; seizure affected on the date of occurrence. PW 2 is the independent seizure witnesses who supported the prosecution case and proved his signature over the seizure list. PW 3 is the salesmen, PW 4 is the local seizure witness and other PWs are official witnesses. He pointed out that the case of the prosecution was successfully proved by the cogent oral and documentary evidences. The findings of the Learned Special judge cannot be set aside on the ground that the every pros and cons of this case was specifically verified and explained by the Learned Special Judge himself. He further pointed out the impugned order of conviction and sentence is a speaking order, so it cannot be set aside.

Heard, the Learned Advocate perused the materials on record also perused the statement of witnesses. In this particular case the PW 1 with his party conducted raid at the business place of the appellant between 10:00 Hrs. to 13:30 Hrs. Obviously, the time of raid is a business time. During the raid, PW 1 found that the actual stock in the godown is excess to that written in the board. During the evidences of PW 2, PW 7 and DWs also from the statement of appellant recorded u/s 313 Cr.P.C. the defence intended to prove the fact that the

rate-cum-stock-board was usually prepared at the end of the day of the business. It is the positive fact of the defence that some excess quantity of Mustered Seeds and Mustered Oil had reached the godown which shall appear written at the board after the days business is over. It is the submission of the Learned Advocate for the appellant that the Learned Special Judge did not consider the said plea of the defence.

I have perused the impugned order. It appears that Learned Special Judge in passing the impugned order is of view that no documentary evidence was proved or placed to show that the rate-cum-stock-board was prepared after the days business is over. I find no logic in such explanation of Learned Special Judge. Para 3(2) of the impugned order of 1977 makes it clear that the board has to be written regarding the "opening balance".

It is well perceived that if board is written at the opening of the business, during the entire business hours there may have some purchase or sale of the commodities by the said Mill; at the time if one inspect the godwon during the business hour, the physical stock and the board should not be tallied.

It further appears that during the examination of the appellant u/s 313Cr.P.C. he submitted some stock of Mustered

Seeds and Mustered Oil has reached to the Mill during the course of the day. Thus logically discrepancy appeared in the rate-cum-stock-board have some justification.

It appears from the FIR as well as the evidence of PW1 that during the raid the essential commodities were measured and weighted by an employee namely Provu Tanti. The said weighment chart was produced and was exhibited on behalf of the PW 1. No independent witness or other police witnesses proved the wighment chart and the prosecution also not produced the said employee who weighted the essential commodities the Mustered Seeds and Mustered Oil at the time of raid.

The independent seizure witness PW3 was tendered by the prosecution. His signature over the seizure list was not shown for corroboration or verification. During the cross-examination he deposed that accounting of the said Mill/Shop was held at night.

Considering the entire circumstances of this particular case there exists a strong defence case. The discrepancy appeared in the rate-cum- stock-board has some justification. It is a fact that in a case under the Essential Commodities Act a heavy burden lies upon the accused/appellant to prove the

fact pleaded by him. In this case the appellant has successfully raised his defence case that the raid was conducted during the business hours of the Mill for which the physical stock and the stock written in the board appears to be some discrepancies.

Considering the entire circumstances it appears that in this case two explanations are available; firstly, that the prosecution has successfully proved the fact that there are discrepancies in the rate-cum-stock-board with the actual stock and; secondly the raid was conducted during the business hours of the Mill, thus the actual stock is excess to that of the written in the board.

According to the criminal jurisprudence if any explanation is favouring the defence, that explanation should have to be considered to be more weighty.

Considering the facts of this case and considering the materials on record I find there are merits to entertain the criminal appeal. The prosecution had not proved the case against the accused/appellant beyond reasonable doubt.

In result thereof the appeal succeeds; the impugned order of conviction and sentences passed by the Learned Special Judge is hereby set aside.

The appellant is hereby acquitted from this case.

The appellant is on bail, he be set at liberty at once.

The sureties standing in his favour are also discharged.

CRA along with connected CRAN applications if any, are disposed of.

Any order of stay passed by this court during the continuation of this appeal is hereby also vacated.

(Subhendu Samanta, J.)