

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. - 43 of 1990****IN THE MATTER OF****Achhalal Show.****Vs.****The State of West Bengal.****For the appellant : Mr. Snehasish Sutradhar, Adv.,****For the State : Mr. Bidyut Kumar Roy, Adv.,
Ms. Rita Dutta Adv.****Judgment on : 16.05.2023****Subhendu Samanta, J.**

The instant criminal appeal was preferred against judgment dated 06.01.1990 passed by Judge, Special Court Asansol, in trial case No. 16 of 1987 convicting the present appellant u/s 7(1)(a)(ii) of the Essential Commodities Act for alleged violation of the provision of Clause 12 of West Bengal wheat and wheat products (Licensing and Control and Prohibition of certain Classes of Commercial Transactions) order, 1973, Clause 18 of the West Bengal Rice and Paddy (Licensing Control Order 1967), Kerosene Control Order 1968 maintenance of record Para 12, Para 6 of violation of Sugar Order and 3 and 4 of West Bengal Declaration of Stock and

Prices of Essential Commodities Order 1977 thereby sentencing the appellant to suffer rigorous imprisonment for 6 months and to pay a fine of Rs. 1000/-, in default, to suffer rigorous imprisonment for one month.

The brief fact of the prosecution case is that on 22.05.1986 on 15 hours DEO Asansol visited the MR shop of the appellant at Janakpura under P.S Kulti and on search in the said shop-cum-godown of the appellant in presence to local witnesses, he found a stock of kerosene oil, sugar, whet and rice but after physical verification with the stock register he found that there was excess in stock of sugar, kerosene oil, wheat and rice. The appellant could not give any satisfactory account in such discrepancies. The stock register was found written up to 18.05.1986, there was no rate-cum-stock board display in the shop, no true or correct account of the aforesaid Essential Commodities were kept at the shop; by such the DEO of Asasol found that the conduct of the appellant is violative to the provisions of West Bengal Wheat and Wheat Products Control Order West Bengal Rice and Paddy (Licensing and Control Order, Kerosene Control Order, Sugar Control Order and also West Bengal Declaration of Stocks Prices of EC Order and he seized the articles by proper seizure list and arrested the appellant. The criminal case was initiated against the appellant u/s 7(1)(a)(ii) of EC Act. The complainant was endorsed for the investigation of the case and after investigation he submitted charge sheet against the present appellant for commission of offence punishable u/s 7(1)(a)(ii) of the EC Act.

During plea the appellant pleaded not guilty and claimed to be tried. The defence case is only based on denial of the

allegation and it is the specific defence before the Special Judge that the MR dealer shop of one Om Prakash Agarwal was linked up with the shop of the appellant thus, the Essential Commodities found excess in stock are justified.

Trial was conducted summarily by the Learned Special Judge. During the trial 05 witnesses were examined on behalf of the prosecution, on the other hand the defence had adduced 07 witnesses.

After hearing the witnesses and after hearing the argument on behalf of the parties Learned Special Judge, had passed the impugned order of conviction against the present appellant.

Hence this appeal.

Learned Advocate for the appellant submitted before this court that the impugned order of sentence suffers illegality and it is liable to be set aside. Learned Special Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous findings. The impugned judgment is passed on non-consideration of materials on record thus there is a miscarriage of justice. Learned Special Judge failed to consider the MR dealer is not dealer as per the provisions of the Essential Commodities Act, as such no Control Orders are applicable to the appellant as he sales articles to ration card holders only and the excess articles found was the Government property. He further argued that the ingredients of the offence charge has not been established against the appellant and the conviction thereby is not sustainable in the eye of law. The impugned judgment was passed not considering the evidences of defence witnesses thus it is liable to be set aside.

Learned Advocate appearing on behalf of the state submitted that the Learned Special Judge, has passed the reasoned order; the stock-cum- rate board was not at all displayed in front of the MR shop which is mandatory provision under the Essential Commodities Act. The register maintained by the appellant in the MR shop was also not up to date. Though several DWs were adduced before the Special Judge but their evidences is not supportive to the ingredients of the offences alleged against the appellant. He further pointed out that the seizure was effected at the time of raid and the seizure list was proved before the Learned Special Judge, so the impugned order of conviction is justifiable.

Heard the Learned Advocates. Perused the materials on record also perused the evidences adduced before the Learned Special Judge. The record suggests that one raid was conducted by the DEO officials at the MR shop of the appellant on 22.05.1986 in between 15 hours to 15:45 hours at Janakpura.

The FIR disclosed that apart from the police witnesses the raid was conducted in presence of independent witnesses namely S.K. Hannan and Md. Ashique S.K.

PW 1 is formal FIR maker, the PW 2 is a constable, that is, part of the raiding party who proved the seizure, PW 3 is another constable, PW4 is DEO Officer who conducted the investigation. PW 5 is a clerk attached to Sub-Divisional Controller of Food and Supplies Asansol. No independent witnesses were examined on behalf of prosecution to prove the seizure. A huge quantity of the seizure was effected during the date but no witnesses uttered regarding the fact that weighment of the seized articles were made. During cross-

examination of PW 4 he admitted that the MR shop was controlled by the Food and Supplies Department Government of West Bengal the articles were given to the MR shop dealer through Food and Supplies, Government of West Bengal to distribute the same to the ration card holders. He also admitted that the civil supplies use to supplies those articles for a week. He again admitted that the excess of stock in the MR shop was the Government property.

The positive defence case is that the MR shop of one OP Agarwal was tagged with the MR shop of the present appellant. PW 5 who is a clerk attached to the Food and Supplies Department including DW 1, DW 2 and DW 7 adduced before the Special Judge that the fact of linking the MR dealership of OP Agarwal with the MR dealership of present appellant is true. The record of linking and of MR shops document thereof were produced before the court and marked as Exhibits.

DW 2 is the Chief Inspector of Food and Supplies attached to the District Controller Food and Supply Department who deposed that the MR dealer of OP Agarwal resigned from the MR dealership shop and submitted resignation to that effect. The card holders of such OP Agarwal were tagged with the shop of present appellant. During the examination of the appellant u/s 313 Cr.P.C. He specifically answered that the excess articles are belonging to the MR dealer of OP Agarwal and was stocked, in the godown there is no excess.

Thus, considering the evidences on record it appears to me that the defence has placed a reasonable cause for excess of the Essential Commodities at his godown. Let me consider whether such defence case was at all considered by the

Learned Special Judge. In perusing the impugned judgment it appears to me that Learned Special Judge has not at all considered the evidences of defence at the time of passing the impugned order. There are palpable illegality for not considering the evidences on record from both side. The evidence of police witnesses is immaterial as the official witnesses are duty bound to submit according to the prosecution case as they themselves parted the raiding team. There is no explanation from the prosecution as to why a single independent witness was not produced to prove the factum of seizure; more over, the discrepancies of not making weight in the Essential Commodities, during the entire investigation is fatal.

In my view the prosecution had failed to bring home the charge against the appellant beyond reasonable doubt. The Learned Special Judge, had misguided himself to assess the ingredients of offences in the attending facts and circumstances of the case.

In result thereof, I find the impugned order passed by the Learned Special Judge, suffers illegality and liable to be set aside.

The instant criminal appeal is hereby allowed. The impugned judgment of conviction and order sentence passed by the Learned Special Judge in trial case no. 16 of 1987 against the present appellant is hereby set aside.

The appellant namely Achhalal Show is hereby acquitted from this case.

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

Sureties standing in his favour are also discharged.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)