

03.04. 2023
item No.19
Ali
ct. no. 551

CRA 65 of 1990
Fatik Chowdhury
Vs.
The State of West Bengal

Mr. Ranadeb Sengupta
..... for the Appellant.

This is an appeal against an order of conviction under Section 7(i)(a)(ii) of Essential Commodities Act, 1955 passed by learned Judge, Special Court (Essential Commodities Act), Hooghly in Special Court Case No. 91 of 1987 thereby sentencing the accused of rigorous imprisonment for one year and to pay fine of Rs. 2,000/- in default of suffer further rigorous imprisonment for 3 months.

The brief fact of the case is that the P.W.-1 Shri Ranjit Kumar Roy being Sub-Inspector of police (EB) West Bengal on the basis of a source information alongwith his force in between 8.05 hours and 14.00 hours on 16.05.1987 had conducted raid to an unauthorized coal godown of the appellant in presence of witness at Kantapukur, P.S.-Magra, District-Hooghly at present of Jhampa, P.S. Polba, District-Hooghly. On reached there, he issued notice to the accused for production of licence, stock accounts, cash memo, sale accounts etc. On physical verification as well as after preparing weighment chart a huge quantity coal being in the godown, he found that total 124.40 quintals of different type of coal was present in the godown and the accused/appellant was selling the coals to other two persons. As no proper documents were shown by

the appellant the P.W.-1 seized the huge amount of coal alongwith other materials and the by-cycle of the purchaser by a proper seizure list. He arrested the present appellant and produced him to the P.S.

On the basis of the said FIR, the Special case was initiated against the appellant and after completion of investigation charge-sheet/final report was submitted and the present appellant was sent-up for trial. During trial 8 witness were examined on behalf of the prosecution but defence had adduced no witness. The accused was examined by the learned Special Judge under Section 313 of the Criminal Procedure Code.

After hearing the learned P.P. as well as the defence the impugned order of conviction and sentence was passed. Hence this appeal.

Learned advocate for the appellant submitted that the impugned order of conviction passed by the learned Special Judge is erroneous and in appropriate.

He further argued that the learned Special Judge has misread and mis-appreciated the facts and circumstances of the case and came to an erroneous findings. He again argued that the investigation conducted against the present appellant is without basis, the evidences as advanced on behalf of the prosecution were actually not supported the prosecution case.

Learned advocate for the appellant pointed out that P.W.-2, P.W.-3 and P.W.4 and the police personnel, who were the part of the raiding party. P.W.-5 is an independent seizure witness, who identified his signature but actually not supported the prosecution

case. P.W. 6 and P.W.-7 are cited as purchaser at the time of raid but they were declared hostile by the prosecution. He further argued the evidences of P.W.8 has no legs to stands upon as he had no knowledge regarding the location of the alleged godown.

State is not represented during the argument of this case. However, from the impugned order of conviction, it appears that the learned Special Judge is of the view that as the raid was conducted and seizure has been effected from the possession of the present accused; thus, the offences established against the present appellant. It is the view of the learned Special Judge that the opportunity was given to the appellant to adduce evidence; as he did not adduce the single evidence, thus, he actually admitted his guilt.

Heard the learned advocate appearing for appellant. Perused the impugned judgment and order of sentences passed by the learned Special Judge. It appears that the order of conviction was also recorded against the appellant for the violation of para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977. From the entire seizure list it appears that no document was seized regarding the licence of the present appellant. The prosecution has miserably failed to prove that the present appellant was actually any point of time hold any licence for selling of coal or not. Furthermore, during the examination of the appellant under Section 313 of the Criminal Procedure Code he specially averted that he was a manager of nearby Chowdhury Hotel beside the Delhi Road at Jhapa. He never engaged in a business of selling coal. The prosecution and his witness also did

not stated before this court that any document was seized or collected by them during the course of investigation that the appellant had any point of time was engaged in a business of coal. The evidence of P.W.-5, P.W.-6 and P.W.-7 during their cross objection discloses that the appellant was a manager of Chowdhury Hotel. Considering the same, without having any licence of dealer or stockist in the name of appellant, the violation of para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 does not arise. No Stock Board was seized or produce at the time of trial before the court or material exhibited. Considering the same, I find that the observation of learned Special Judge regarding the violation of para 3(2) of such Govt. Order is actually erroneous.

Some police witnesses examined before this court who supported the prosecution case partially. The seizure regarding quantity and allied material to deal with the coal have seized but that it is not proved that the present appellant was actually deal with the coal business. No single witnesses adduced by the prosecution that any Cash Memo or no receipt was obtained from the intending purchaser i.e. P.W.6 and P.W. 7.

Considering the same it appears that the prosecution has miserably failed to prove the charge sheet against the present appellant beyond reasonable doubt. In the result thereof the impugned order of conviction of sentence passed by the learned Special Judge appears to be not corrected in the present facts and circumstances of this case.

The instant appeal is appeared to have a merit to entertain.

The impugned order passed by the learned Special Judge for conviction of the appellant under the provision of Section 7(1)(a)(ii) of E.C. Act is hereby set aside. The appellant is hereby acquitted from this case. The sureties standing in his favour of the appellant are also released. The appellant is on bail. He be set at liberty.

Accordingly, CRA 65 of 1990 is allowed and disposed of.

Any order of stay passed by this Court during the continuation of the instant criminal revisional application is also vacated.

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

(Subhendu Samanta, J.)