

17.02. 2023
item No.17
n.b.
ct. no. 551

CRA 78 of 1991
Dulal Krishna Pal
Vs.
The State of West Bengal

Ms. Minoti Gomes,
Mr. Amanul Islam,
Mr. Sourav Mukherjee
.....for the appellant.
Mr. Pravas Bhattacharya,
Mr. Mirza Firoj Ahmed Begg,
..... For the State.

The instant appeal has been preferred against the judgment passed by the learned Special Court (E.C. Act), Barasat, North 24 Parganas in Special Case No. 112 of 1989 convicting the present appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 6(ii) of the West Bengal Baby Food Licensing Order 1966 and sentencing him thereunder to R.I. for four months and to pay a fine of Rs.500/- in default of R.I. for one month more.

The brief fact of the prosecution case is that the present appellant was the owner of a stationary shop namely, M/s. D. K. Pal situated at Station Road, Sodepur Police Station Khardah. On 3.5.1989, he was absent in the said shop when the officers of Enforcement Branch, North 24 Parganas visited the said shop when the salesman one Prangopal Pal was there. On verification and enquiry and on physical verifying the stock register it appears to be that D.E.B officers that the licence of selling baby food was

not there and the appellant also not maintained the register for selling and stocking such baby food. Accordingly, the seizure has been made in present of witnesses and the case was initiated. The investigation of the police ended in charge-sheet hence the trial started. In all three witnesses were produced by the prosecution to proof the case and the defence only put his declaration that licence was there. However, during the trial the P.Ws has proved the seizure list, which was marked as exhibit and the P.Ws has corroborated the prosecution case. After hearing the both the parties learned Special Judge has passed the impugned order. Hence this appeal.

Learned advocate for the appellant submitted before this Court that the impugned order of conviction of the learned Special Judge suffers illegality. He further pointed out that the licence was already there but the appellant could not maintain the register for stock of the baby food properly. He further pointed out there are loopholes in the investigation. So at this juncture the case of the prosecution cannot be said to be proved beyond reasonable doubt. Further the order passed by the Special Judge suffers illegality so it is liable to be set aside.

Finally learned advocate for the appellant frankly submits that the present appellant is aged about more than 74 years and he has suffered immense mental paid during the pendency of the criminal proceeding and criminal appeal, so at this juncture necessary order may be passed considering long pendency of the appeal.

Learned advocate appearing on behalf of the State raised strong objection and submitted before this Court that the prosecution has brought home the charge against the present appellant and the seizure list as well as the stock register have been produced before the learned Special Judge wherefrom it would be evident that the present appellant has clearly violated the para 6(ii) of the West Bengal Baby Food Licensing Order, 1966. He further submitted before this court thought the credibility of Essential Commodities Act is not now very essential but at that time when the offence has been committed there are huge chance of Baby Food smuggling. Therefore, the order of conviction passed by the learned Special Judge is justified.

Heard the learned advocate perused the materials on record it appears that the PW 1 who is the complainant, prove the seizure as well as the raid conducted at the shop of the appellant, several tins of Amul Sprey Baby Food was seized. Considering the other evidence on record and also after considering the examination of the accused under Section 313 of the Code of Criminal Procedure it appears that the appellant could not brought any circumstances or reasonable apprehension for which the case of the prosecution can be negated. However, it appears that order of conviction passed by the learned Special Judge is justifiable.

However, considering the submission of the learned advocate for the appellant regarding the age of the present appellant and also considering the fact that the instant case was initiated on the basis of the written complaint on 31.5.1989 and we are now running in 2023. Thus, the appellant must have suffered

an immense mental agony during the pendency of the instant criminal proceeding as well as the appeal. Considering the same, the order of conviction is hereby reduced and upheld to the effect that the appellant i.e. the convict of the case namely, Dulal Krishna Pal is directed to pay the fine amount only amounting to Rs.2,000/- I.D. to suffer the simple imprisonment for four months.

The appellant is directed to appear before the learned Sessions Judge, Barasat, North 24 Parganas to serve out the sentence on March 30, 2023. Failing which the learned Sessions Judge shall issue a warrant of arrest against the present appellant for compliance of the instant order.

Accordingly, CRA 78 of 1991 is disposed of.

The interim order, if any, passed by this Court is also hereby vacated.

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

(Subhendu Samanta, J.)