

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. - 38 of 1989****IN THE MATTER OF****Ashoke Kumar Sarkar & Anr.****Vs.****State of West Bengal.**

**For the appellant No. 2 : Mr. Sabir Ahmed, Adv.,
Ms. Ameena kabir Adv.**

For the State : Mr. Navanil De Adv.,

Judgment on : 05.04.2023

Subhendu Samanta, J.

The instant appeal has been preferred against the judgment dated 11th January 1989 passed by Judge, Special Court, Essential Commodities Act Calcutta in connection with GR Case No. 1666 of 1985 u/s 7(1)(a)(ii) of the Essential Commodities Act, having reference case no. 473 dated 23/07/1985 hereby convicted the present appellant u/s 7(1)(a)(ii) of the Essential Commodities Act, sentencing them to suffer rigorous imprisonment for 3 months each to pay a fine of Rs. 500/- each in default to suffer rigorous imprisonment for 15 years each.

In a nutshell the prosecution case is that a raid was conducted in the shop of the appellant under name and style M/S Menaka Stores situated at

87, Old China Bazar Street (Room No. 90 and 91) when the appellant no. 1 was found to be person in charge of the shop. The shop was found to have stored exercise books of different size without displaying the stocks and prices of these articles in the rate- cum- stock- board and as such there was violation of the provision of para 3 of the West Bengal Declaration of Stock and Price List of E.C. Order-1977. The exercise books were seized under a proper seizure list in present of the witness and FIR was lodged at the police station. Police took up the investigation and during investigation it appears that the appellant no. 2 Manilal Pal is the owner of the shop. After completion of investigation the final report was submitted. The appellants were sent up for trial. During trial, 4 witnesses were examined as PWs and one witness was examined as DW. After completion of the trial the accused persons were examined u/s 313 Cr.P.C. Learned Special Judge, after hearing the public Prosecutor as well as the defence passed the impugned order of conviction and sentenced against the present appellants.

Hence this appeal.

During continuation of the appeal, appellant No- 1 expired, thus the appeal is abated against him.

Learned Advocate for the appellant no. 2 submitted that the impugned order of conviction and sentence passed by the Learned Court below suffers illegality and impropriety. The impugned order appears to be illegal and not according to the provisions of law, thus it need be set aside. The Learned Special Judge has misguided himself and misconstrued the evidence on record and came to an erroneous finding. He again argued that Learned Court has observed the discrepancies for the prosecution case but instead of which, he recorded order of conviction against the present appellants. He again pointed out that the independent witnesses did not support the prosecution case, the exhibited documents were also not supporting the prosecution case. The order of conviction passed by the Learned Special Judge is only based upon some erroneous findings. He prayed for setting aside the impugned order.

Learned Advocate appearing on behalf of the state submitted before this court that the seizure was effected at the shop while appellant No. 2 being the owner was not present appellant no. 1 employee of appellant no. 2 was present and signed all the seizure list. He again argued that the investigation of the police was conducted properly. The seizure was effected in presence of local witnesses who support the prosecution case. The Learned Special Judge, has passed the impugned order on the basis of the evidences on record so the impugned order cannot be set aside.

Heard the Learned Advocate perused the materials on record. The conviction against the present appellant is recorded for the violation of Para 3 of West Bengal Declaration of Stock and Prices List of Essential Commodities Order 1977. It is allegation that the appellants did not display the Stock and Prices at the board properly. It was not mentioned in the board regarding the different size of exercise books kept in the shop. P.W 1 is a seizure witness who stated that on day of incident he put his signature over the seizure list on request of police. He did not personally see the police seizing the articles. PW 2 is the officer- in- charge who raid at the shop of the appellant and found different sizes of exercise book kept in the shop but it was not properly displayed in the board. PW 2 did not specifically stated that he ever seized the Rate- Cum-Stock Board during the raid. He only stated some different sizes of exercise books were seized.

PW 3 is one of the independent witnesses who identified his signature but he did not see police to seize anything. PW 4 is one of the member raiding party who deposed that the Rate-Cum-Stock-Board of the shop was not distinct regarding the stock position. PW 4 is the person who took up the investigation and after completion of investigation submitted the cs/final report. DW 1 is the accused /appellant no 1 who deposed that the police officer at the time of appearing the shop on the relevant date, seized the stock board of the shop and obtained signatures of visitors on a papers and ask the witness to attend the police station. During the recording the statement of the appellant u/s 313 Cr.P.C. they are pleaded innocence.

On perusing the impugned judgment passed by the Learned Special Judge, it appears that Learned Special Judge is of a view that prosecution could not sufficiently proved the accused persons status; whether they are dealers or retailer, or not. It further appears that Learned Special Judge is also of view that the investigation of the police was completed in perfunctory manner. He has also a view that the rate cum stock board has not been seized or produced before the court; still then it is the view of the Learned Special Judge, that due latches and negligence the investigating officer the entire case cannot be thrown away.

In this particular case it has been alleged against the present petitioner/appellant that the Rate- Cum-Stock Board of the shop of the appellant was not properly maintained. To prove the violation of Order 3(2) of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977, the prosecution has to prove that the present appellant is either dealer or retailer. No document was produced to show that the present appellant was a dealer or retailer at the time of raid. In absence of such documents. It cannot be said that the Para 3(2) of the said Government Order is actually applicable in this case. The evidences of prosecution is not specified whether during the raid the Rate- Cum-Stock Board was seized. It was also not specified that what was the discrepancy in the Rate- Cum-Stock Board and the physical verification of the exercise books. the Rate-Cum-Stock Board was never produced before the Learned Special Judge, to verify the prosecution case. This is a grave discrepancies of the prosecution case which cannot allow to pass an order of conviction against in all the accused persons.

Learned Advocate on behalf of the appellant cited a judgment of Hon'ble Supreme Court of **A.R Antulay & Anr. Vs. R.S Nayek & Anr. [(1992) 1 SCC 225]** and submitted that the instant criminal case is pending since 1985. The present appellant no. 2 has suffered immense mental pain and agony during the long pendency of the criminal proceeding as well as the appeal. By virtue of Principle of **A.R Antulay's** case right to speedy trial to the citizen of India cannot be denied.

Heard the Learned Advocate perused the Judgment of **A.R Antulay** and principles underlying therein.

It appears that the present appellant No. 1 died during the pendency of the appeal. Appellant No. 2 is facing criminal proceeding as well as the criminal appeal since the year 1985. Obviously appellant has suffered a tremendous mental agony during the entire period of pendency of this appeal.

In merit, it appears to me that the prosecution has conducted the investigation of this case in a perfunctory manner. The status of the appellant was not specifically proved before the Learned Special Court; finally, the Rate-Cum- Stock Board was not specifically proved before the Learned Special Judge. Thus it appears that the record of conviction and sentence passed by the Learned Special Judge, is erroneous one. The prosecution has miserably failed to bring home charge against the present appellants beyond reasonable doubt.

In result thereof the impugned order of conviction and sentence passed by the Learned Special Judge, is hereby set aside.

The CRA is allowed and disposed of.

The appellant no. 2 is acquitted from this case.

Appellant no. 2 is on bail, he be set at liberty at once.

The sureties standing in his name are also discharged.

Pending connected CRAN applications are disposed of any order of stay passed by this court during the pendency of the instant criminal appeal is hereby also vacated.

(Subhendu Samanta, J.)