

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. - 286 of 1986****IN THE MATTER OF****Bablu Nath.****Vs.****The State of West Bengal.****For the petitioner : Mr. Bikash Shaw, Adv.,****For the State : Mr. Debabrata Chatterjee, Adv.,
Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose Adv.,****Judgment on : 17.05.2023****Subhendu Samanta, J.**

The instant criminal appeal has been preferred against the judgment and order of conviction and sentenced dated 14th June 1986 by Learned Special Court (EC Act) Krishnanagar, District Nadia in EC case No. 5 of 1986 (TR Case No. 9 of 1986) thereby convicting the present appellant u/s 7(1)(a)(ii) of the Essential Commodities Act for alleged violation of the West Bengal Kerosene Control Order 1968 and sentencing the appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1000/-, in default, to suffer rigorous imprisonment for 06 months.

The brief fact of the prosecution case is that on 20th March 1986 at about 18:15 p.m the complainant and other police officials raided the grocery shop of the appellant situated at Karimpur Bazar. On search 40 litters of kerosene filled up in three tin containers recovered from the shop of the appellant. The appellant had no satisfactory account for the same, nor he could show any valid document or licence for selling of such kerosene oil. Accordingly, the complainant seized the kerosene oil under proper seizure list and arrested the appellant.

The defence case is based upon the denial of the fact and plea of innocence, the positive case of the defence is that the appellant was not the owner of the shop in question.

The appellant was sent up for trial. During the trial the prosecution examined 05 witnesses. Defence examined none. The appellant was examined by the special judge u/s 313 Cr.P.C. and his statement was recorded. Upon hearing the parties Learned Special Judge has passed the impugned judgment and order of conviction and sentence against the present appellant,

Hence this appeal.

Learned Advocate for the appellant submitted before this court that the impugned order of conviction and sentence is illegal in the eye of law. Learned Special Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. The evidence of PWs was not sufficient to prove guilt against the present petitioner. The discrepancies in the evidences of PWs entitled the appellant to have an order of acquittal. The Learned Special Judge has misread and misconstrued the facts and circumstances of this case and

there is a miscarriage of justice. It is the submission of the Learned Advocate for the appellant that the conviction of the appellant u/s 7(1)(a)(ii) of the EC Act is baseless. The appellant is not the owner of the shop in question. The prosecution has not produced any document to show that the present appellant is anyway connected with the business of the alleged shop in question. The three tin of kerosene was seized but it was never measured during the investigation of the case. PW 1 during his cross-examination has admitted that the weight of the seized kerosene oil was taken approximately and it was never measured by measuring Can. He further argued that the examination of the appellant u/s 313 Cr.P.C. is not proper and the question put thereon are not at all reasonably understandable.

Learned Advocate appearing on behalf of the State submitted before this court that Learned Special Judge, has considered the materials on record and the evidences of PWs. Under the provisions of Essential Commodities Act, the burden is upon the appellant to prove that he is innocent. In this case the defence has not adduced any witness in his favour thus, the onus upon the appellant did not shifted. He again submitted that the Learned Special Judge, has correctly passed the impugned judgment and order of conviction against the appellant.

Heard the Learned Advocate. Perused the materials on record and also perused the FIR, the seizure list, evidence of PWs and other materials. PW 1 is the complainant. He is the SI of police attached to the Karimpur P.S he formed the raiding team including PW 2 and PW 3, thereafter conducted search and raid at the shop in question. During the examination of the

PW 1 he himself identified the seizure lists and the FIR. During his cross examination, he admitted that the seized kerosene oil was not weighted but it was measured approximately. He also admitted that he had no knowledge regarding ownership of the shop in question and no investigation was conducted regarding the ownership of the business.

PW 2 and PW 3 are cited as seizure witnesses who were the members of the raiding party. Surprisingly PW2 and PW 3 was not examined by the prosecution but they were tendered by the prosecution for cross examination. PW 4 is cited as an independent seizure witnesses who was declared hostile by the prosecution. During his cross examination, PW 4 stated that the shop in question belongs to one Piklu.

PW 5 is the IO who conducted the investigation of this case. The PW 5 disclosed that he did not inquired as to the ownership of the shop in question. During the course of investigation he also not examined the Panchayet people to ascertain the ownership of the shop he also did not measured the seized kerosene oil. He also did not examine any person to whom the kerosene oil was sold by the appellant.

This being the evidence of prosecution, Learned Special Judge, inquired the appellant u/s 313 Cr.P.C. wherein the appellant specifically answered that he is not the owner of the shop in question,

On perusing the impugned judgment and sentence it appears to me that the conviction is only based upon the evidence of PW 1.

The PW 1 is the complainant of this case who himself identified the seizure list and signature thereon. To prove the

fact of seizure in a criminal case there is a requirement of witnesses who were present at the time of seizure only PW 1 i.e. the complainant himself prove the seizure. The PW2 and PW 3, who were the member of the raiding party also did not state anything regarding the factum of the seizure. PW 4 being an independent witness declared hostile by the prosecution. PW 1 himself admitted that the kerosene oil were not measured during the seizure. Thus the circumstances shows that one police officer brought one accused to the PS with some tins of kerosene oil by the strength of an FIR written therein that the Essential Commodities were seized from a shop room belongs to the appellant. The entire story of the prosecution is only supported by the PW 1 but not by any other PWs. Considering the situation it appears to me that the fact of seizure is doubtful. Learned Court below has failed to appreciate the fact that seizure of the kerosene oil had never been proved by the prosecution. The discrepancies as evident in this case is not a minor discrepancy but it is a grave discrepancy for which the order of conviction is not sustainable.

The IO (PW 5) deposed before the Learned Special Judge that during the course of investigation he visited the PO but no witnesses were shown or no neighbouring shop was inquired by the IO to ascertain the ownership of the shop in question. Thus the investigation of the police in this case appeared to be perfunctory and not justified.

Learned Court below in passing the impugned judgment of conviction is of view that the keeping or storing kerosene oil for more than 10 litters is a punishable offence, for which the appellant had violated the kerosene control order. I find no justification regarding the comment of the Learned Special

Judge; how it has been proved that the kerosene oil was seized from the shop in question while no witness uttered a single word regarding the fact that the kerosene oil were seized from the possession of the appellant.

Considering the entire facts and circumstances it appears to me that Learned Special Judge has failed to appreciate the entire materials on record of the instant Criminal case. The ingredients of an offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act has not at all being proved beyond reasonable doubt. Prosecution has miserably failed to bring home the charge against the appellant in this particular case.

In result thereof I find merit to entertain the instant criminal appeal and it is liable to be allowed.

Criminal appeal is allowed. The impugned judgment of conviction and order of sentence passed by the Learned Court below against the present appellant is hereby set aside. The appellant namely Bablu Nath 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.)