

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.A. No. - 350 of 1988

IN THE MATTER OF :

Lakshmi Kanta Kuila

Vs.

The State of West Bengal

**For the Appellant : Mr. Apalak Basu, Adv.,
Ms. Pritha Bhaumik Basu, Adv.,**

**For the State : Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose, Adv.**

Judgment on : 22.11.2023

Subhendu Samanta, J.

The instant appeal has been directed against an order of conviction passed by the learned Special Judge under E.C. Act, Tamluk, Medinipur. On 24.06.1988 in T.R. No. 1 of 1987 thereby sentenced the present appellant to suffer Rigorous imprisonment for 1 (one) month and fine of Rs. 500/- in default to rigorous imprisonment for another month under Section 7(1)a(ii) of the Essential Commodities Act., for the violation of paragraph 3(b)ii of the West

Bengal Rice & Paddy (Licensing & Control Order), 1967 and para 3A of West Bengal Rice & Paddy (Storage by Consumers) Order, 1967.

The brief facts of the case is that on 22nd October, 1986 at 9-35 A.M. a team of Police Officers led by P.W. 1 and other PWs arrived at the Panskura Railway Station and for anti-smuggling raid for rice. At that relevant time ,P-38 Down Panskura-Howrah Local was standing by the side of platform No. 4 when they found that the present appellant was boarding a Second Class compartment of the said train with a gunny bag of rice on his head while 3 (three) other bags of rice were tagged at the platform No. 4. The appellant was apprehended by the police personnel, an query he could not produce any document for possession of the rice, which was weighed and found to be 2.80 quintals, the same was seized under a proper seizure and the appellant was arrested.

Thereafter, P.W. 1 lodged the written complaint before the Panskura G.R.P.S. and under the direction of the O.C., Panskura G.R.P.S. Case, the case was initiated.

The appellant was forwarded to the learned Special Court. The investigation of the police ended in charge-sheet under Section 7(1)a(ii) of the Essential Commodities Act and the appellant was sent-up for trial.

During the course of the trial the prosecution has examined 4 (four) witnesses; all of whom were police witnesses and members of

the raiding team. After recording the evidences and after hearing the parties the learned Special Judge has recorded the conviction after finding the appellant to be guilty for the offences punishable under Section 7(1)a(ii) of the Essential Commodities Act.

Hence, this appeal.

Learned advocate for the appellant submits that the learned Special Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. He again argued that there are major discrepancies in the prosecution case which was overlooked by the learned Special Judge. The discrepancies appears in the prosecution case is not at all a mere discrepancies. It is the case of the defence that the seizure was not effected as per the version of FIR. The seizure list also mentioned the place of seizure otherwise then mentioned in the FIR. The PW. 1 who is the de-facto complainant headed the raiding team has converted the entire case only to punish the present appellant as he could not nab the original culprit. The appellant was a passenger of the local train and he was sitting inside the compartment, at the time the police personnel entered into the compartment and seized some bags of rice and on the direction of the police personnel the appellant put her LTI over some of the documents without knowing the content of the same. The original smuggler had fled away but the police has apprehended the innocent appellant in this case. He again argued that the learned Special Judge has failed to point out the deviation of evidences adduced by the police personnel

in this case. He submits that the learned Special Judge should have acquitted the present appellant from the case for want of sufficient evidences.

The learned advocate appearing on behalf of the State argued that the learned Special Judge has taken the evidences and after going through the materials on record. He was convinced about the involvement of the present appellant in the said offences. The appellant had no explanation regarding his innocent before the learned Special Judge. The learned Special Judge has recorded the statement of the appellant under Section 313 CrPC. Wherein the appellant has failed to explain the allegation put against him. The impugned judgment passed by the learned Special Judge is a speaking order and it cannot be set aside. There were no requirements for the police personnel to entangle the appellant in this present case without reason.

Heard the learned advocate perused the materials on record. It appears that the GRP had conducted a raid on 22nd October, 1986 at 9-35 A.M. at platform No. 4 of the Panskura Railway Station while P-38 Down Panskura-Howrah was standing. The FIR as well as the PW 1 discloses that the present appellant was apprehended while he was carrying a gunny bags with the rice on his head and another 3 (three) bags were staged at the platform. Being challenged the appellant failed to produce any authority in carrying the rice. Thereafter, the appellant was arrested and the 4 (four) bags of rice was seized by preparing a

seizure list. PW 1 and PW 2 stated about the said fact of FIR that the bags of rice was seized from the platform No.-4. PW 3 another witness of the police and a member of raiding party stated before the court that the 4 (four) gunny bags of rice weighing about 2.80 quintals of rice was seized from the 2nd Class compartment of the train being No. P-38 Down Panskura- Howrah Local at platform No. 4. It is the statement of PW 3 that accused was sitting over the bags of rice so he was arrested with the bags of rice. The statement of PW 1 and PW 2 differed to the statement of PW 3. On perusing the seizure list it appears that the seizure was effected inside the train but not at the platform No. 4 of Panskura Railway Station. FIR is recorded otherwise. So, it is doubtful regarding the place of seizure of the gunny bags. The prosecution has no sufficient explanation in the entire case before the learned Special Judge regarding such deviation.

It appears from the provision of para 3(a) of West Bengal Rice & Paddy (Storage by Consumers) Order, 1967 that any person is prohibited from possessing of rice more than 2.60 quintals at a time. In this case, the accused/appellant has alleged to be found in possession of 2.80 quintals of rice to which he had no explanation or authority.

Study of the entire case record reveals that the appellant was convicted for possessing merely more 20 Kg. of rice then the limit under para [3(A)]. The seizure list and the FIR stated about the weight of the seized rice to be 2.80 quintals. But, surprisingly no evidence

was adduced by the prosecution as to when the rice was weighted by the weighing machine. The 4 (four) gunny bags of rice were seized and the weight of rice in particular each bag was not mentioned in the seizure list. No weight machine was seized. There were no witnesses in presence of whom the weighment was made. Thus, it is quite unjustified in this case that the seizure was effected actually the rice weighted 2.80 quintals. The learned Special Judge has misread the entire prosecution case and failed to appreciate the fact that when there is an allegation against the appellant regarding the possession of a minimum amount of excess rice such allegation has to be proved beyond all reasonable doubt. In my view, the prosecution has failed to bring home the charge against the accused person by adducing sufficient and cogent materials. On the above score, the order of conviction and sentenced passed by the learned Special Judge against the present appellant appears to me baseless and it is liable to be set aside.

I find merit to entertain the instant appeal as the order of conviction and sentence against the present appellant is illegal.

The instant criminal appeal is hereby allowed.

The order of conviction and sentence passed by the learned Special Judge against the appellant dated 24.06.1988 in T.R. No. 1 of 1987 is hereby set aside.

The appellant, namely, Lakshmi Kanta Kuila is hereby acquitted from this case.

The appellant is on bail. He be set at liberty at once.

The sureties standing in his favour are also released.

Any order of stay passed by this Court during the continuation of this instant appeal is hereby vacated.

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.)