

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. 356 of 1989****IN THE MATTER OF****Nabin Chandra Prodhan & Ors.****Vs.****State of West Bengal.****With****C.R.A 357 of 1989****IN THE MATTER OF****M/s. Vivakananda Enterprise****Vs.****The State of West Bengal**

For the appellants	:	Mr. Himanshu De, Adv., Mr. Navanil De, Adv., Mr. Apalak Basu, Adv., Mr. Rajeshwar Chakraborty, Adv., Mr. Srinjan Ghosh, Adv., Mr. Subhrajit Dey, Adv., Ms. Monami Mukherjee, Adv.
For the State	:	Mr. Narayan Prasad Agarwal, Adv., Mr. Pratick Bose Adv.

Judgment on	:	11.04.2023
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Subhendu Samanta, J.

The instant appeal has been preferred against an order of conviction and sentenced dated 17th August, 1989 passed by Learned Special Judge,

(EC Act) Midnapur, in DEBGR 17/84 convicting the present appellants u/s 7(1) (a) (i) of the Essential Commodities Act sentencing them to suffer simple imprisonment for three months and to pay a fine of Rs. 500/- each in default for simple imprisonment for further one month for the alleged violation of para 3(2) and (3) of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977.

The brief fact of the prosecution case is that on June 20th 1984, the complainant DEB officer on the basis of same source of information held raid with police party in the Godown of M/S of Vivekananda Enterprise MR distributor from 17:00 Hrs to 21:00 Hrs. During the raid of the partners of the aforesaid farms were absent but one employee viz Jitendra Nath Jana was present. During search it appears that the Stock Cum Rate Board was found not properly maintained in respect of Stocks of Essential Commodities such as sugar, wheat, NBSF raw rice, boil rice e.tc. On demand the said Jitendra Nath Jana could not produce any satisfactory reply and document thus it appears to the complainant that the firm as well as the partners of the farm has violated the provision of para 3 of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977. Accordingly, the police case was started and after completion of investigation police submitted charge sheet against all the accused persons. During “plea” the accused persons pleaded not guilty and sent up for trial. During trial 9 witnesses were examined on behalf of the prosecution but the defence produced no witness. After hearing Learned Public Prosecutor and the defence Learned Special Judge, has passed the impugned order. By passing the impugned order Learned Special Judge find the present appellants to be guilty for the offence punishable u/s 7(1) (a) (i) of the Essential Commodities Act.

Hence this appeal.

Learned Advocate for the appellants submitted before the court the impugned order passed by the Learned Special Judge is illegal and erroneous the Learned Special Judge, has not considered the factual aspects

of this case and came to an erroneous finding. He further pointed out that the Learned special Judge has misled and misconstrued the evidences on record and passed the erroneous judgment. He again pointed out that Learned Special Judge has not considered the defence case at all and as well as the statement of the accused persons recorded u/s 313 Cr.P.C. He again pointed out the PWs are all police witnesses and no independent witnesses were examined in this case thus the record of conviction passed by the Learned Special Judge has done a miscarriage of justice. Learned Advocate for the appellant further argued that the fact goes to show that on the relevant date of raid there was a Bandh of the said market for which the Rate Cum Stock Board was not displayed. The business was closed for the day that is why it was not necessary to display the board. Only the single employee i.e. Jitendra Jana was present to look after the other affairs not the business, but the Learned Court has not considered the fact and erroneously recorded the order of conviction. He again argued that there are grave of discrepancies in the statements of PWs. and the seizure conducted by the complainant was defective.

He further submitted that the alleged incident was happened in the year 1984. Now this appeal is being heard when 40 years has already been elapsed thus the present appellant has suffered enormous mental pain and agony during the continuation of the entire period. So situations may be considered by virtue of the judgment of Hon'ble Apex court passed in **A.R Antulay & Anr. Vs. R.S Nayek & Anr. [(1992) 1 SCC 225]** .

Learned Advocate appearing on behalf of the State submitted before this court that the business of Vivekananda enterprise MR Distributor was not conducted according to the law, for which, on the basis of source information the complainant along with police party held raid on the business place. He further argued that during the inspection of the business place it appears that huge amount of Essential Commodities were excess in the godown to that written in the Prices Cum Stock Board. The seizure was effected in presence of the witnesses. The present appellants appeared to be violated the para 3 of West Bengal Declaration of Stocks and Prices of

Essential Commodities Order 1977. He further argued that the investigation of the police is ended in charge sheet and prosecution has proved their case by producing 9 witnesses. He further argued that the Learned Special Judge, has considered the argument of both the parties and passed the judgment. It is a speaking and elaborate judgment and cannot be set aside.

Heard the Learned Advocate; perused the materials on record also perused the evidences adduced by the prosecution.

It appears that the complainant conducted raid along with the team to the business place and found the Rate Cum Stock Board was not maintained properly. The seizure was made by preparing the seizure list, the materials was given Zimma by preparation of a Zimmanama. A true copy of Rate Cum Stock Board was also prepared.

It appears from the evidence of the complainant that on the day of raid he along with other police personnel had been to the godown of Vivekananda Enterprise. Two persons were described as independent seizure witnesses; both the witnesses deposed before the trial court. Though they identified their signatures, but specifically stated that they were not present at the time of seizure. They, only put their signature upon the seizure list on request of the Daroga Babu. They have also stated that they had no knowledge regarding the content of the seizure list. The other police personnel who deposed on behalf of the prosecution stated that they were present at the time of raid but they did not put their signature over the seizure list. It is the case of the prosecution that Rate Cum Stock Board was not maintained properly by the employees and partners of the Vivekananda Enterprise; but the alleged specifications/discrepancies of the Rate-Cum-Stock- Board was not categorically proved.

It is the case of the defence that on the date of raid, there was local Bandh so, they did not display the Rate Cum Stock Board on that day. Only the gate was open but the business was closed.

In perusing the impugned judgment it appears to me that Learned Special Judge has considered the statement of the defence regarding the fact of 'Bandh' on the date of incident but considering the entire materials he disbelieved the fact.

Let me consider whether the finding of Learned Special Judge is justifiable or not in attending facts and circumstances of this case. First of all, on perusal of FIR it appears to me that the complainant i.e. inspector of police Mr. Mani Sarkar at the time the raid disclosed their identity to Jitendra Jana who was present at the time of raid in the shop. Nowhere it was stated either any FIR or in the evidences of Mani Sarkar that any notice of search was served upon Jitendra Jana or not.

It further appears that the seizure was effected and seizure list was prepared in respect of huge quantity of Essential Commodities; but FIR does not disclose how such huge quantity was measured/weighted; who help them to measure such huge quantity of Essential Commodities; at the time of seizure no weighment chart was prepared; no measuring instrument were seized by the help of which the Essential Commodities was measured to verify the Stock position of the firm. The Essential Commodities must be measured before seizing the same by raiding party. In this case it appears that the raiding party has not prepared any chart to that effect. No weighment was made during seizure of investigation of this case.

It further appears to me that during the examination of the appellant u/s 313 Cr.P.C he stated that the gate was opened but the godown and shop was closed. The statement was not considered by the Learned Special Judge. It is the bounden duty for the accused persons under the cases of Essential of Commodities Act to prove their innocence. Though the initial burden is always upon the prosecution which appears to me that it was not shifted upon the accused.

In this particular case the seizure list was not proved. The two seizure witnesses denied the fact that they were present at the time seizure. No other police witness was cited as seizure witness. No notice of search was

given to the accused persons before conduction of raid. No essential commodity was measured during search, during raid or during a course of investigation of this case.

Considering the entire aspect it appears to me that the prosecution has miserably failed to bring home the charge against the accused persons beyond reasonable doubt. The finding of Learned Special Judge regarding mens rea of the present appellants appears to me erroneous. I find there is merit to entertain the instant criminal appeal.

The instant criminal proceeding is pending since 38 years. Obviously, appellants are suffering tremendous mental pain and agony for being a part of this long pending criminal proceeding.

Considering the entire aspect, I am of a view that the impugned judgment of conviction and sentence passed by the Learned Special Judge, against the appellant is pervasive and liable to be set aside.

In result thereof the CRA is allowed and disposed of.

The impugned order of conviction passed by the Learned Special Judge, in DEBGR 17/84 convicting the present appellants u/s 7(1) (a) (i) of the Essential Commodities Act is hereby set aside.

The appellants are hereby acquitted from this case. They are on bail they be set at liberty at once.

Sureties standing in their favour are also discharged.

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

(Subhendu Samanta, J.)