

31.01. 2023
item No. 4
n.b.
ct. no. 551

CRA 471 of 1989

**Jaydeb Das
Vs.
The State of West Bengal**

Mr. Suman De
.. for the appellant.

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose,
.... For the State.

This is an appeal under Section 12AB of the Essential Commodities Act, 1955 against the judgment and order of conviction dated November 17, 1989 passed in Case No. 22 of 1988 by the learned Judge Special Court. (E.C Act), Hooghly under Section 7(1)(a) (ii) of the E.C. Act for contravention of para 3(2) of West Bengal Declaration of stock and prices of E. C. Act, 1977 thereby the appellant is convicted for sentence to suffer rigorous imprisonment for three months and to pay fine of Rs.100/- in default to suffer further R.I. of ten days.

The brief fact of the case is that on January 21, 1988 the complainant along with some other police man went to Jirat Colony Bazar, P. S. Balagarh and found that an oil Mill was being run at that place, the owner i.e. the present appellant was not present but in the relevant time the Oil Mill was being run by Swapan Barik in absence of the owner. The complainant further alleged that Swapan Barik was selling Mustard oil to different customers but when called upon he failed to produce any book of account and also

stock and price board. For the alleged violation of the provision of pars 3(2) of the West Bengal Declaration of Stocks and Prices of E. C. order, 1977. The complainant filed written complaint with the police at Balagarh P. S. During inspection the different articles were seized by proper seizure list. The seized articles were placed in Jimma to the said Swapan Barik. Accordingly, the case was initiated and the investigation was taken up. After completion of investigation police has submitted charge-sheet before the learned Special Judge. The accused person pleaded not guilty before the learned Special Judge and claimed to be tried hence the trial start.

During the course of trial 4(four) witnesses were examined on behalf of the prosecution and the defence also examined two witnesses. Several documents were marked before the learned Special Judge on behalf of the prosecution D.W also marked to be material exhibit and Exhibit 'A'.

The appellant was examined under Section 313 of the Code of Criminal Procedure and his statements were recorded by the Special Judge. After conclusion of the trial and after hearing both the parties learned Special Judge passed the impugned order of sentence of imprisonment for which the instant appeal has been preferred.

Learned advocate for the appellant submitted before this Court that the impugned judgment and sentence passed by the learned Special Judge suffers illegality and impropriety. He further submitted before this Court that the way of investigation conducted by the police is perfunctory. He also appointed out that P.Ws were not actually supporting the prosecution case and the inspection

conducted by the D.W. 1 is not in proper manner. He further pointed out that P.W. 2, who is the Jimmader as well as the person who look after the business in absence of the appellant do not support the prosecution case but he has not been declared hostile by the prosecution. He further pointed out that the evidence of police witnesses cannot be relied upon. He further pointed that the learned Special Judge must look into the evidences of D.Ws and concentrate upon the stock board as produced by D.W.2. He further pointed out that the observation of the learned Special Judge is not in proper perspective and he has misguided himself in opining that the prosecution has to prove the case beyond reasonable doubt. He further pointed that the defence has put reasonable doubt in the mind of the learned Special Judge but he omitted to concentrate upon that; he further pointed out that the impugned order passed by the learned Special Judge is liable to be set aside and the present appellant is liable to be acquitted.

Learned advocate appearing on behalf of the State submitted before this Court that four witnesses were examined on behalf of the prosecution who is supported the prosecution case though the P.W. 2 is the part time owner of the shop; but he proved the seizure list and his signature thereon. He also submitted that the documents of stock board, trade licence were never produced before the learned Special Judge during the course of D.Ws, so the learned Court below is quite justified to disbelieve the evidence of D.Ws. He further pointed out that the prosecution has successfully proved the case beyond reasonable doubt. So, at this juncture the impugned order of sentence cannot be set aside.

Heard the learned advocates perused the impugned judgment also perused the P.Ws and D.Ws, I have also perused the seizure list and other exhibited documents. There are three private seizure witnesses only P.W. 2 was examined as one of the seizure witnesses who specifically stated before the learned Special Judge that appellant is his Mama(Maternal Uncle) and he looks after the business of Oil Mill in the absence of the appellant. He admitted the fact that the Daragobabu inspected physically and seized Master Oil Master seed during cross-examination he admitted that the police threatened him to sign over the seizure list. He also stated in his cross-examination that he himself tried to show the documents to the police but police did not want to see anything. He also admitted that the police threatened him to take the Jimma of the seized of Alamats. The evidence of P.W. 2 appears to be very vital one. The other witnesses are the police witnesses. The only single private witness is P.W.2 who specifically present at the time of inspection. He admitted that the police seized the articles but when he wanted to show the documents; police did not want to see these documents. The witnesses were never declared hostile by the prosecution. There are other two seizure witness, they are not produced by the prosecution.

In considering the statement of P.W 4 who is the Investigating Officer of this case. He submitted that he visited the P.O. but no sketch map or rough sketch was produced. The statement of available witnesses were not contradicted. Moreover, the statement of P.W. 2 taken in cross-examination was also not

contradicted by the P.W. 4. Considering the same the statement of P.Ws itself is contradictory to the prosecution case.

In considering the opinion of the learned Special Judge it appears that learned Special Judge has put emphasis upon the D.W.2 who placed the material Exhibit 'A' before the learned Special Judge. And learned Special Judge is of view that the statement of D.W. 2 is not reliable but he has not put any comment regarding the evidence of P.W. 2.

Considering the entire facts, it appears that there are reasonable doubt to put this appellant under the bar, the opinion of the learned Special Judge regarding the case of the prosecution beyond reasonable doubt is not proper. I have perused the other statements and the documents and I have perused the statement of P.W. 1 and P.W.3 which appears to be not material one as they are the complainant and police witnesses. Considering the same I find there is no justification to convict the present appellant. There are reasonable doubt in the prosecution case and the prosecution has failed to prove the case beyond reasonable doubt against the present appellant.

In conclusion the impugned order passed by the learned Special Judge is devoid on merit and liable to be set aside, the appellant deserves acquittal.

Hence it is ordered that the appellant namely, Jaydeb Das is hereby acquitted from the case. The accused/appellant is on bail he is set at liberty at once. The sureties standing in support of the appellant are also discharge.

Accordingly, CRA 471 of 1989 is disposed of.

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

(Subhendu Samanta, J.)