

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 205 of 2008
Manju Rani Das
-Vs-
State of West Bengal

For the Appellant :Mr. Y.J. Dastoor

For the State :Mr. Avishek Sinha

Heard on : 29.11.2022

Judgment on : 25.01.2023

Ananya Bandyopadhyay, J. :-

1. This is an appeal in connection with the judgment and order of acquittal dated 24.08.2007 passed by Judge, Special Court (EC Act) and Additional District Judge, 4th Court, Nadia in EC case no. 13/1997 whereby the accused persons were acquitted of the charges under Section 7 (1)(a)(II) of the Essential Commodities Act, 1955, (hereinafter referred to as E.C. Act)
2. The prosecution case emerged out of a complaint against one Nanigopal Das and partners of "Sharee Kuthir" and Asish Bhaduri located at Fulia Bus Stand Para under PS Santipur. The SP Enforcement Branch, Nadia authorized the complainant to inspect the aforesaid establishment. On the date of inspection i.e. on 12.08.1997 Ashish Bhaduri was unable to

produce any books of account or licence or Trade Licence in absence of the owner of the shop. The inspection further revealed the aforesaid shop to have been purchasing cloth from Shri Krishna Weavers Cooperative Society Limited of Chatkatala Fulia Bus Stand Para by illegal means of cheating and conspiracy with the said cooperative society. The aforesaid shop dealt with the customers without producing cash memos bearing Licence no. and description of goods in violation of the provision enumerated in para 17(I) of W.B. Cotton, Cloth and Yarn Control Order 1960. The establishment further evaded Sales Tax resulting loss of revenue to the Government by suppressing actual amount of sale and purchase of their commodities. The complainant in the presence of witnesses seized certain articles from the shop described in the seizure list and arrested Ashish Bhaduri. The complainant requested to initiate proceeding against the aforesaid accused persons under Section 7(1)(a)(II) of the EC Act, 1955 read with Section 420/120B IPC against them.

- 3.** Based on the written complaint dated 12.08.1997 Santipur PS Case no. 124/1997 dated 12.08.1997 was initiated which culminated in the submission of the chargesheet under Section 7(1)(a)(II) of the EC Act, 1955. Under section 251 Cr.P.C. the substance of acquisition under the aforesaid provision for violation of the West Bengal Cotton and Yarn Control Order, 1960 Para 4, 17 and 26 was read over and explained to the accused in Bengali. They pleaded not guilty and claimed to be tried.

4. The Ld. Advocate Mr. Y. J. Dastoor for the appellant submitted by the dint of the judgment and order dated 24.08.2007 passed in EC case no. 13/1997 the Ld. Trial Judge acquitted all the three accused persons directing the seized articles which were in the custody of Chintaharan Das at Chatkatala PS Santipur, Nadia vide a jimma be confiscated to the State. It was further submitted that the Ld. Trial Judge came to a conclusion that the seized articles did not belong to the establishment in the name and style of (Sharee Kuthir) where the accused Nanigopal Das and Kartick Das were partners. However, contrarily the seized articles belonged to the establishment in the name and style of New Saree kuthir of Manjurani Das the petitioner in the instant appeal being its proprietor having valid licence. The Ld. Trial Judge directed the seized articles to be confiscated to the State and the said portion of the order dated 24.08.2007 was illegal and perverse. Since, the power of passing an order of confiscation is exclusively vested on the collector under the provisions envisaged in Section 6A of the EC Act, 1955 and the Ld. Special Court exceeded its jurisdiction in passing such an order of confiscation while adjudicating the offence punishable under Section 7(1)(a)(II) of the EC Act, 1955 whereby the Ld. Trial Judge was empowered to pass an order of sentence of imprisonment, fine or forfeiture. The ld. Trial Court did not conclusively determine any offence to have been committed in respect of the seized articles which did not belong to Sharee Kuthir distinct from New Saree Kuthir which possessed

a valid licence in the name of the petitioner dealing with the said articles issued by the appropriate authority. Moreover, the order of confiscation was passed without providing an opportunity of hearing to the owner thereof without issuing a notice. The Ld. Trial Judge should have directed the return of the seized articles to the appellant and accordingly prayed for a direction that the seized articles must be returned to the appellant instead of the same being confiscated to the State.

5. The Ld. Advocate for the State conceded to the submission of the Ld. Advocate of the appellant and submitted that in case of acquittal the seized articles must be returned to the appellant or the rightful owner of the same.
6. The prosecution examined 21 witnesses and exhibited certain documents to prove its case.
7. The appellant in the instant case being Manjurani Das, a proprietor of New Saree Kuthir was not the accused before the Ld. Trial Judge. The Ld. Trial Judge in the judgment dated 24.08.2007 inter alia observed as follows:

“Now if we read the evidence of PW 1 (de facto complainant), PW 2, PW 3, PW 4, PW 5 and PW 6 coupled with Exts. 1-5 together, we will find that huge quantity of sharees, yarn, cotton as well as some registers and papers including cash memos were seized under seizure list from the shop and godown of Sharee Kuthir at Fulia Bus Stand under PS Santipur and

the seized articles, such as shares, yarn @ cotton were given in jimma of one Chintaharan Das under a jimmanama (Ext.6)

In the cross examination of PW 1 to PW 6 nothing is elicited to cast doubt about the seizure of huge quantity of sharees, yarn and cotton as well as some papers and registers from the shop and godown of Sharee Kuthir at Fulia Bus Stand, unworthy of credence, except a few suggestions.

The then sub-divisional Controller (Food & Supplies) Ranaghat Sri Arun Kumar Bhattacharjee (PW 20) has made a statement in his evidence that there is no textile licence in the name of Nanigopal Das and it was informed by prosecution agency in writing. Ext. 9 is that information letter. It was informed in writing to the Inspector of Police (I), D.E. B , Nadia that no textile licence under group/C and D in the name and style "Sharee Kuthir" to its proprietor Shri Nanigopal Das and Kartick Chandra Das in Fulia Township under PS Santipur, Nadia has since been issued as per record available in the office.

Exts . A & A/1 are the textile licences standing in the name "new Saree Kuthir" and smt. Manjurani Das, wife of Nanigopal Das (accused herein) was its proprietor. Those two licences were valid up to 31.03.1998 and they were renewed up to 2004.

The prosecution agency has failed to establish that "New Sharee Kuthi" and "Sharee Kuthi" are the same and identical shop. In the seized cash memo and challan the word "New", it is the admission of PW 1 in his cross examination, was mentioned before the words "Sharee Kuthir" but he did

not investigate the matter properly. It is explained that as the word “New” was not so much prominent, it lost his sight. The explanation given is not at all satisfactory. In view of the above, I hold that the prosecution has miserably failed to bring home the offence charged against the accused beyond any pale of controversy. So they deserve acquittal.”

8. Section 452 of the Code of Criminal Procedure empowers a criminal Court to pass orders for disposal of property on conclusion of enquiry or trial granting discretion to the court to determine the person who is entitled to be in position of the said property. The Court, therefore, has jurisdiction to decide the question of possession. In the instant case the seized articles through a jimma was in the possession on one Chintaharan Das, son of late Keshab Chandra Das of Chatkatala under PS Santipur.
9. Determining an offence punishable under Section 7(1)(a)(II) of the EC Act, 1955 which is a Special Act, the Ld. Trial Court should have considered the provisions stipulated under Section 6A of the aforesaid Act dealing with confiscation of essential commodities which states as follows:

“6A. Confiscation of essential commodity.— (1) *Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is*

satisfied that there has been a contravention of the order may order confiscation of—

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

- (i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or
- (ii) where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(3) where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

- (a) where no order or confiscation is ultimately passed by the Collector,
- (b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner thereof or the person from whom it is seized.”

- 10.** The aforesaid section empowered the collector of the District to deal with the seized articles under the said Act.
- 11.** The general rule is that when a property is seized from any person and the same is acquitted of the charge the property should be returned to him. However, the rule is subject to several exceptions depending on circumstances of each case and the seized property to be returned to him cannot be claimed by the accused as a matter of right. It has to be judged as to whether the person acquitted who claims that the property seized should be returned to him is admittedly the owner of the property entitled to the possession of the same.
- 12.** In the instant case the owner of the seized property is doubtful with regard to the establishment from where the articles were seized. The Ld. Trial Court should have sent notice to the parties to ascertain the ownership of the said property. The Trial Court erred in its decision in directing the seized articles to be confiscated to the State. The order impugned is modified to the extent that the seized articles such as cotton, yarn, cloth etc. which were given in jimma of Chintaharan Das, son of Late Keshab Chandra Das of Chatkatala under PS Santipur, Nadia be returned to its actual owner upon identification and conformation of

the same complying the directions enumerated under Section 452 of the Cr.P.C.

- 13.** The appeal is allowed to the extent with the aforesaid modification in the order impugned dated 24.08.2007.
- 14.** Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
- 15.** Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)