

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

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

C.R.A. No. - 131 of 1999

IN THE MATTER OF

Palash Saha & Anr.

Vs.

State of West Bengal.

**For the appellant : Mr. Amales Roy, Adv.,
Ms. Mousumi Bhowal, Adv.**

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

Judgment on : 24.02.2023

Subhendu Samanta, J.

The instant appeal has been preferred against a Judgment and Order passed by the Learned Special Court EC Act, Malda in DEBGR Case No. 5 of 1996 arising out of Habibpur Police Station Case No. 34 of 1996 dated March 24, 1996 convicting the appellants u/s 7(1) (a) (ii) of Essential Commodities Act 1955 and sentencing them to suffer rigorous imprisonment for one year each and to pay a Fine of Rs. 2000/- each in default to suffer rigorous imprisonment for a further period of 2 months.

The brief fact of the prosecution case is that on 24.03.1996 in between 5 hours and 7 hours acting of source information one S.I. of DEO as Habibpur P.S along with force under the supervision of Superintendent of Police held a raid in the house of appellant Palash Saha and apprehended him. After being interrogated he confessed that he collected 360 quintals of rice for smuggling; the rice to Bangladesh and for this purpose he had kept those rice in the house of Basudeb Tarafder (another appellant) of Uttar Purba Kendua. Thereafter the raiding party went to the house of Basudeb Tarafder where Palash Saha showed the rice bags; on counting 360 bags of rice of 360 quintals were found. On interrogation Basudeb admitted that they kept the rice for smuggling the same to Bangladesh in lieu of money. On demand they failed to produce any valid licence or any valid papers for the search of rice. Thus they were apprehended and the case was started. The investigation of the police was ended in charge sheet. The accused persons were examined u/s 251 of Cr.P.C. and both of them pleaded for guilty. Thereafter the trial started before the Learned Special Judge and during the trial total 12 witnesses have been examined on behalf of the prosecution but the defence produced no witness. After hearing the PWs and after hearing the arguments of defence and after considering the materials on record Learned Special Judge, passed the impugned Order.

Hence this appeal.

Learned Advocate appearing for the appellants submitted before this court that Learned Special Judge has completely failed to appreciate the facts and circumstances of this case and though there are no substantive facts on record, but the appellant was convicted which is bad in law. He further submitted that the alleged bag of rice was not seized from the house of Basudeb but was seized from the P.W. D Roads. The evidences of PWs and the independent witnesses has stated the fact before the Learned Special Court but

the Learned Special Judge did not considered their depositions and passed an erroneous order. He further argued that the statement of appellant Palash Saha cannot be regarded as a statement u/s 27 of Evidence Act thus on the basis of which the Order of conviction is pulpably illegal. He further argued that the investigation conducted by the investigating agency is perfunctory one and only the table work. No reliance can be placed upon such investigation. It is further case of the appellant that no document was produced by the prosecution to show that the house wherefrom the alleged rice was seized is belong to the appellant Basudeb Tarafder thus the impugned Judgment is baseless.

Learned Advocate for the state submits that the huge amount of rice was seized from the house of the appellant Basudeb Tarafder leading to the confessional statement of appellant Palash Saha. The statement of Palash Saha recorded by the I.O. was duly proved before the Learned Special Judge. He again argued that the 360 quintals of rice is not small materials but such huge materials was staged at the house of one appellant without any valid document and licence thus the violation of Para 3(1) of the West Bengal Rice and Paddy (Licence and Control) order of 1967 has well proved. He further argued that the impugned order passed by the Learned Special Judge suffers from illegality and it is a speaking Order. So the Order cannot be set aside.

Heard the Learned Advocate perused the materials on record also perused the statements of PWs made before the Learned Sessions Judge. In this case it has been alleged that a huge amount of boiled rice has seized from the houses of the appellant Basudeb Tarafder.

PW- 1 Narayan Chandra Saha is an independent seizure witness who identified his signature over the seizure list and he also admitted that the huge amount of rice i.e. 360 bags by giving jimma

to him by the Darogababu thus the factum of seizure was proved in this case.

Only the question which was raised by PW-1 before the Learned Special Judge that the rice were seized from the PWD Road. The P.W 1 in his statement stated the fact. Learned Special Judge has considered the statement along with the other attending facts and circumstances i.e. The sketch map of the statement of other witnesses and the statement of other police witnesses. After considering the entire circumstances Learned Special Judge, is a view that the statement of P.W 1 regarding seized the rice from the PWD Road is not true.

PW 2 was a home guard who accompanied the leading party who stated before the special Judge, that leading to the statement of Palash Saha the huge amount of rice was recovered from the houses of Basudeb Tarafder.

PW 3 is another home guard supported the prosecution case. He also proved the seizure made by the police.

Learned Special Judge also considered the fact of the case that there was a husking mill opposite the house of Basudeb Tarafder Learned Special Judge was dark about the fact that no evidence was produced either from the prosecution or from the defence to show that who owned the husking mill.

So, after through considering the impugned judgment passed by the Learned Special Judge, it appears to me that Learned Special Judge, has considered every pros and cons of the case and after considering the evidence on record he passed the impugned Order I have also perused that the appellants appear before the Learned Special Judge and their statements were recorded u/s 313 Cr.P.C. From their statement no circumstances revealed to disbelieve the case of the prosecution. No explanation was given by the appellant

before the Learned special Judge that how such huge amount of rice was staged in front of the house of Basudeb Tarafder.

Learned Advocate for the appellant submits that the West Bengal Rice and Paddy (Licensing Control) order 1967 defined the dealer in Section 2(d). The instant appellant was convicted for violation of appeal 3(1) of the said order 1967. Para 3(1) of the said order mentioned about the offence conducted by the dealer. According to the definition of the dealer the present appellant cannot be termed as a dealer.

In support of his contention he cited a decision in **AIR 1964 SC 1533 MANIPUR ADMINISTRATION VS. M. NILA CHANDRA SING**

It is the further argument of the Learned Advocate for the appellant that the Learned Special Court has no jurisdiction or power to pass the impugned order. He argued that the Essential Commodities Act (Special Provision Act) 1981 which provided for Special Court u/s 12A came into force on 01.09.1982. The Said Act was in- force for a period of 5 years thereafter the Said Act was extended for a further period of 5 years i.e. 1987 -1992. The Said Act further extended for a further period of 5 years i.e from 1992-1997. In the year 1997 and ordinance was promulgated but no Act was enacted. In the year 1988 further ordinance was promulgated on 24.09.1988 but no Act was enacted accordingly, the Special Court established for trial of Essential Commodities Act seized to function after 1997. In support of his contention he cited a decision of Hon'ble Supreme Court reported in **(2002) 1 SCC 2015 STATE OF TAMIL NADU VS. PARAMASIVA PANDIAN**. It is the final argument of the Learned Advocate for the appellant that prior initiation of the Essential Commodities (Special Provision Act 1981) Jurisdictional Magistrate have the power to try the cases under the provisions of E.C Act. As the Said Act 1981 seized to operation after 1997, the Special Court has no power to pass the impugned order.

So he prayed for setting aside the impugned order for one of jurisdiction.

Para 4 and 16 of **PARAMASIVA PANDIAN** is read as follows-

4. The EC (Special Provisions) Act which provided for Special Courts under Section 12-A came into force from 1-9-1982. The said Act was enforced initially for a period of 5 years and was extended for a further period of 5 years i.e. 1987 to 1992 and thereafter from 1992 to 1997. The Act was in force till 31-8-1997. Thereafter the Essential Commodities (Special Provisions) Ordinance, 1997 (Central Ordinance 21 of 1997) was promulgated. As there was no enactment the Essential Commodities Amendment Ordinance, 1998 (Central Ordinance 13 of 1998) was promulgated by the President. The above two ordinances lapsed since they were not replaced by enactments, as a result of which the Special Courts established for trial of the EC Act cases ceased to function. The consequential position that followed was that the cases registered under the EC Act were to be tried before the Magistrate having jurisdiction as it was being done prior to enactment of the EC (Special Provisions) Act, 1981.

16. On a fair reading of the above provisions it is clear that during the period the EC (Special Provisions) Act was in force the Special Court constituted for trial of offences under the EC

Act had exclusive jurisdiction to try such cases. The Special Court had also the power to pass order of remand under Section 167 but the position changed after the EC (Special Provisions) Act lapsed by efflux of time. Thereafter, the position that used to prevail before the EC (Special Provisions) Act was enforced, stood restored and the Judicial Magistrate who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. The position is beyond any pale of doubt that the remand orders passed by the Special Court at Madurai, long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent.

Heard, the Learned Advocate perused the Rice and Paddy Order 1967. It is true that the prosecution has not produced any document to show that the present appellant have ever made any business of rice or they have ever engaged of any business of selling or purchasing or storing of rice. Thus the appellant cannot be termed under the definition of “dealer”. Furthermore, Essential Commodities (Special Provision Act 1981) seized to function after 1997. The trial of this case was commenced in the year 1996 but it was concluded in the year 1999. The impugned Judgment was passed by the Learned Special Judge, on 31st March 1999. The special Judge had no power to conduct the trial after 1997. Thus it appears to me that the impugned judgment of conviction passed by the Learned Special Judge on 31st March 1999 is out of jurisdiction. Learned Special Judge had no jurisdiction to conduct the trial of this case beyond the year 1997.

Accordingly the instant appeal has got merit and it is liable to be allowed.

Appeal is allowed; the impugned Order passed by the Learned Special Judge is hereby set aside as without jurisdiction.

The appellants are on bail; they be set of liberty.

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

(Subhendu Samanta, J.)