

17.1.2023
Item No.10
BR

CRR 1684 of 2003

In the matter of : Sanatan Pakhira

.... Petitioner

Mr.. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury

.... For the Petitioner

Mr. N.P.Agarwal,
Mr. P. Bose
Mr. Provash Bhattacharjee

.... For the State

This Criminal revision is manifestation of displeasure of the petitioner over the judgment passed by learned Additional Sessions Judge , Hooghly in Criminal Appeal No. 21 of 2002 whereby learned appellate Court was pleased to affirm the order of conviction passed by learned Sub-Divisional Judicial Magistrate, Chandannagore in NGR Case No. 1771 of 1997 on 18th July, 2000.

Briefly stated that on 25th November, 1997 in course of patrolling, Sub-Inspector T.K.Biswas found the petitioner selling I.D. liquor. S.I. T.K.Biswas and other police personnel here accompanying him. The petitioner was challenged for selling the I.D. liquor. He was arrested. Five litres of I.D. liquor was

seized . Sample was collected and it was forwarded for chemical examination. Thereafter prosecution report was filed against the accused person under Section 46A (c) of the Bengal Excise Act. The accused person expresses his innocence and joined the trial which commenced on 17th November, 1998.

Learned Trial Court after considering the evidence adduced by four persons on behalf of the prosecution, recorded an order of conviction and the accused person was sentenced to suffer simple Imprisonment for two months and to pay fine of Rs. 200/- with a default clause. The accused made an unsuccessful attempt to reverse said order of conviction in appeal.

Learned Trial Court while disposing of the criminal appeal No. 21 of 2002 on 5th July, 2003 affirmed the order of conviction.

Mr. Tapas Kumar Ghosh, learned counsel representing for the petitioner submits that the prosecution report was filed without the chemical examination report. The sample was received on 18th December, 1997 while the same was examined on 19th April, 2000 as admitted by PW 5 Pranab Kumar Ghosh. Nothing was seized in presence of any public witness. The chemical examination report was produced before the learned trial Court on 25th April, 2000 by the witness Pranab Kumar Ghosh. This fact raises the

question over the sanctity of the chemical examiner's report. The unexplained delay in getting the sample examined should engulf the case of prosecution with shadow of suspicion and benefit of doubt could have been extended to the petitioner which was not done. Prosecution put the cart before the horse, by submitting the prosecution report sans the report of chemical examiner and this fact indicates that there was lack of fair play in the process of enquiry. Mr. Ghosh further submits that learned Trial Court did not invoke the provision of Section 360 of Criminal Procedure Code or the Probation of Offenders Act and for that no reason has been assigned, which is sufficient to call in question as to the propriety of the judgment impugned.

Upon perusal of materials available, I find that incriminating article was seized by the S.I. of Police and accompanying a constable was the only witness. No attempt was made to secure the presence of any independent witness from public at the time of seizure.

The unexplained delay in chemical examination of the seized article, coupled with the fact that copy of the report was not filed along with the prosecution report, speaks of serious lacunae in the case of prosecution and learned Trial Court since did not

assign any reason for non-invocation of the provision of Section 360 of the Criminal Procedure Code or the Probation of Offenders Act, it gives a further jolt to the case of prosecution.

The petitioner has been carrying the baggage full of anxiety for last 20 years , caused by the proceeding.

Under such circumstances, I am inclined to invoke the provision of Section 482 of the Criminal Procedure Code to quash the judgment passed in Criminal Appeal No. 21 of 2002.

With the aforesaid observation the criminal revision stands disposed of. Pending application, if any, stands disposed of.

Mr. Provash Bhattacharjee learned counsel representing for the State. Learned Public Prosecutor, High Court is requested to regularise his appointment, if it is found that the case has not been assigned to Mr. Bhattacharjee.

Copy of this order be sent down to the learned trial Court for information and necessary action.

Urgent certified copy ,if applied therefor, be supplied upon compliance of usual formalities.

(Siddhartha Roy Chowdhury, J.)

