

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 165 of 1992

**Murari Mohan Das
Vs.
The State of West Bengal**

For the appellant	: Ms. Pallavi Priyadarshee
For the State	: Ms. Faria Hossain, Ld. APP Ms. Suparna Chatterjee Mr. Pratick Bose
Heard on	: 29.07.2024
Judgement on	: 29.07.2024

PARTHA SARATHI SEN, J.:

1. In this appeal the judgment of conviction and order of sentence both dated 18.05.1992 as passed by learned Judge, Special Court (E.C. Act), Howrah in S.C.T. case No. 57 of 1988 has been assailed. By the impugned judgment the learned trial court

found the accused, Murari Mohan Das guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the said 'Act') and thus sentenced the said accused to suffer R.I. for three months and to pay fine of Rs., 1.000/- i.d. to suffer further imprisonment of 15 days.

2. The accused felt aggrieved and preferred the instant appeal.
3. In support of the instant appeal Ms. Priyadarshee, learned *amicus curiae* who has been appointed by this Court to argue on behalf of the appellant at the very outset draws attention of this Court to the written complaint as lodged in this case. Attention of this Court is also drawn to the evidence of the prosecution witnesses. It is argued on behalf of the appellant that from the deposition of the prosecution witnesses more specifically from the evidence of P.W. 2 it would reveal that proper procedure was not followed while seizure of the alleged rapeseed oil inasmuch as the said P.W. 2 in course of this testimony categorically stated that neither the gunny bags containing the oil tins nor the seized oil tins were labeled at the time of the seizure.
4. Drawing attention to the deposition of P.W. 3 it is submitted that the said P.W. 3 though according to the prosecution is a seizure witness but he at the time of his deposition turned hostile and even then his evidence cannot be thrown away since from his

cross-examination it would reveal that the two bottles of rapeseed oil was not seized and/or recovered from the possession of the accused and on the contrary the same was found inside some bushy bamboo clump beside the road.

5. It is further submitted on behalf of the appellant that time of alleged seizure of the said two bottles of rapeseed oil is doubtful in view of the fact that two seizure list witnesses, namely, P.W.s 2 and 3 in their respective depositions have stated different time of seizure that is to say P.W. 2 stated that the two bottles of rapeseed oil was found to be in possession of the accused at 6.30 p.m. while P.W. 3 in his deposition stated that it was at 8.00 p.m. It is further submitted on behalf of the appellant that while passing the impugned judgment learned trial court has failed to visualize such contradiction which materially affects the genuineness of the prosecution case. It is further submitted that learned trial court though recorded that the said two bottles of rapeseed oil were disposed of by the order of the Collector but no such paper has been exhibited on behalf of the prosecution to substantiate the contention of the prosecution. It is thus submitted that it is a fit case for allowing the instant appeal by setting aside the order impugned.

6. Ms. Faria Hossain, learned Additional Public Prosecutor for the State, however, contends that from the evidence of the prosecution witnesses; both oral and documentary it would reveal that the charges against the accused have been proved in accordance with law and, therefore, there is no justification to interfere with the judgment which has been assailed in this appeal.
7. This Court has meticulously perused the entire materials as placed before this Court. This Court has given its anxious consideration over the submissions of the learned Advocate for the contending parties.
8. For effective disposal of the instant appeal the facts leading to initiation of S.C.T. case No. 57 of 1988 is required to be dealt with in a nut shell.
9. On 31.03.1988 the Officer-in-Charge, Shyampur Police Station received a written complaint from the informant to the effect that on 24.03.1988 at about 18.00 hours one Gunadhar Dhara, one Sukumar Maji, one Ranjit Dhar and some others of Village – Kamina detained one Murari Mohan Das (the appellant herein) with two tins of rapeseed oil in a gunny bag for sale. According to the said villagers the said apprehended person failed to explain as to why he was in possession of the said two tins of rapeseed oil

and he had also failed to show any paper to justify the possession of the said two tins of rapeseed oil and accordingly the said villagers took the said apprehended person, viz.; Murari Mohan Das to Shyampur P.S. and thereafter Shyampur P.S. G.D. entry No. 1044 dated 24.03.1988 was made and the rapeseed oil was seized and on the basis of such written complaint Shyampur P.S. case No. 8 dated 31.03.1988 under Section 7(1)(a)(ii) of the said Act was started.

10. Investigation was taken up and on conclusion of the same charge-sheet under Section 7(1)(a)(ii) of the said Act was submitted.
11. Before the learned trial court the accused was examined under Section 251 Cr.P.C. and at the time of plea, the accused pleaded is innocence and claim to be tried and thus before the learned trial court the trial proceeded.
12. In order to bring home the allegations, the prosecution has examined nine witnesses in all and some documents have been marked exhibits on behalf of the prosecution. Before the learned trial court the accused has not adduced any evidence. However, from the trend of cross-examination of the prosecution witnesses and the answers given by the accused under Section 313 Cr.P.C. it appears to this Court that the defence case is based on false implication and clear denial.

13. Since in the judgment impugned the learned trial court has elaborately discussed the evidence of the prosecution witnesses both oral and documentary, this Court considers that detailed discussion of the evidence of all the prosecution witnesses all over again is unnecessary except to the extent it is necessary for the disposal of the instant appeal.
14. P.W. 2, Gunadhar Dhara according to the FIR is one of the residents of village Kamina who along with other co-villagers of the said village brought the accused to Shampur P.S. when the accused is allegedly to be in possession of two tins of rapeseed oil. In his evidence the said Gunadhar Dhara, that is P.W. 2 though supports the case of the prosecution but in course of his cross-examination it has been candidly testified by him that the police officer who seized the said rapeseed oil tin and/or the gunny bag did not put any label all such tin container or gunny bag.
15. P.W. 3 is an another resident of village Kamina who according to the prosecution brought the accused to the P.S. He, however, turned hostile and at the time of his cross-examination he stated that on the relevant day the said rapeseed oil tin was found to be inside one bushy bamboo clump.
16. So far as the time of apprehension of the accused is concerned this Court has also noticed serious contradiction in the evidence

of P.W.s 2 and 3 in view of the fact that in his deposition P.W. 2 stated that the accused was apprehended at 6.30 p.m. while P.W. 3 stated that the accused was apprehended at 8.00 p.m. though on the self-same day.

17. P.W. 9 is the Investigating Officer of this case and in his deposition he has stated that after taking charge of investigation he drew up the sample for sending it to expert, prepared seizure list, examined the available witnesses, however, he cannot say as to whether any expert report is received or not.
18. On overall assessment of the entire materials as placed before this Court it reveals to this Court that neither from the oral evidence of the prosecution witnesses nor from the exhibits it cannot be established beyond reasonable doubt that the seized article was at all rapeseed oil or not since in his deposition P.W. 9 being the I.O. categorically stated that though he drew the sample from the seized oil and send it to the expert but no expert report has been received.
19. In view of such, in considered view of this Court learned trial court is not justified in coming to a finding that the seized article was rapeseed oil.

20. As rightly pointed out by learned *amicus curiae* appointed on behalf of the appellant that the seizure of the alleged two tins of rapeseed oil from the possession of the present appellant has become doubtful and more specifically has not been proved in accordance with law in absence of any label over such tin container as well as on the gunny bag. It is equally pertinent to mention that though in the impugned judgment learned trial court believed that the rapeseed oil was disposed of by the order of the Collector but learned trial court has failed to take note of the fact that on behalf of the prosecution no document has been exhibited with regard to the said disposal of the rapeseed oil.
21. So far as the evidence of P.W. 3 is concerned it appears to this Court that the said seizure witness has turned hostile as discussed supra and even before becoming hostile his evidence is no way supportive of the case of the prosecution.
22. In view of the discussion made hereinabove, this Court thus find sufficient merit in the instant appeal and accordingly the instant appeal is allowed.
23. Consequently, the impugned judgment and order of conviction dated 18.05.1992 as passed by learned Judge, Special Court (E.C. Act), Howrah in S.C.T. case No. 57 of 2988 is hereby set aside.

24. Consequently, the present appellant, Murari Mohan Das is, thus, found not guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. He is, thus, acquitted in connection with S.C.T. case No. 57 of 1988 as disposed of by learned Judge, Special Court (E.C. Act), Howrah. The appellant, Murari Mohan Das is, thus, discharged from his bail bond and be set at liberty at once, if not wanted, in connection with any other case.
25. Department is directed to forward a copy of this judgment along with the L.C.R. to the learned trial court forthwith before parting with.
26. Before parting with this Court must not forget to extend sincere thanks to Ms. Pallavi Priyadarshee, learned Advocate who as per request of this Court discharged her duty as *amicus curiae* on behalf of the appellant and for her pen staking effort, this Court directs the learned Secretary, Calcutta High Court Legal Services Committee to pay honorarium to Ms. Pallavi Priyadarshee, learned *amicus curiae* as per her entitlement forthwith.
27. Department is further directed to forward a copy of this judgment to the learned Secretary, Calcutta High Court Legal Services Committee for immediate compliance of this Court's order.

28. With the aforementioned observations, the instant appeal being **CRA 165 of 1992** along with all connected applications, if there by any, stands disposed of.
29. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)