

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 20 of 1990

Raju Show

-Vs-

The State of West Bengal

For the Appellant : Mr. Arnab Chatterjee
(Amicus Curiae)

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

Heard on : 21.02.2024, 04.03.2024, 26.06.2024

Judgment on : 16.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 05.01.1990 passed by the Learned Judge, Special Court, (E.C. Act), Durgapur in T.R. Case No.7 of 1989 by which the Learned Judge was pleased to find the appellant guilty of the offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (as amended in 1987) and sentenced him to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.300/- in default to suffer further rigorous imprisonment for 15 days.
2. On 14.10.1988 a complaint was lodged by one S.N. Mondal, S.I. of Police, D.E.O., Durgapur at Durgapur P.S. inter alia alleging that on 14.10.1988 the

de-facto complainant while returning from Toula Bridge after working out a secret information, found at a place to the north of Nabarun Club and to the south of G.T. Road, the appellant trying to remove jarricanes covered in gunny bags and was calling a rickshaw van to remove the same. The de-facto complainant found the appellant had 8 jarricanes wrapped in gunny bags containing Kerosene Oil of 30 litres each. Thereafter, a notice was issued to the appellant to produce documents in support of the said Kerosene Oil which the appellant failed to produce. The goods were seized and the appellant was arrested and was liable for prosecution for violation of the provision of para 11(2) of the West Bengal Kerosene Control Order, 1968 to be punished under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (as amended vide Act 25 of 1987).

3. After completion of investigation the D.E.O., Durgapur, the de-facto complainant cum investigating officer filed charge-sheet against the present appellant as there was prima facie evidence that he had contravened the provision of para 11(2) of West Bengal Kerosene Oil Control Order, 1968 and was liable to be punished under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (as amended by Act 25 of 1987).
4. During the course of trial total 4 prosecution witnesses were examined and certain documents were exhibited.

PW-1, Jeetendera Nath Bhui, Constable of the Raid Party.

PW-2, Monimoy Singh Roy, Tendered witness.

PW-3, S.N. Mondal, Sub-Inspector of Police who was the D.E.O., of Durgapur and the Investigating Officer.

PW-4, Radheshyam Banik, Zimmadar of the seized goods.

5. Learned Amicus Curiae further submitted as follows:-

- i. The alleged seized Kerosene Oil was never produced in court during trial and was not materially exhibited. It was the case of the prosecution that after the Kerosene Oil was seized, the said seized Kerosene Oil was kept under the Zimma of one Radheshyam Banik, an employee of M/s Project Store, said Radheshyam Banik was examined as PW-4.

PW-4 in his deposition stated that he kept the Kerosene Oil in some other drum as there was leakage from the Jarricanes.

The seized kerosene oil was not produced before the Court during trial. The Gunny bags and Jarricanes were not labelled. The prosecution failed to prove any kerosene oil was ever seized.

- ii. The seizure was conducted taken place at 9:10 a.m. however there was no independent witness to such seizure. Though absence of independent witness does not demolish the entire prosecution case; but it dilutes the genuineness of the prosecution case in absence of corroborative evidence.

6. The Learned Amicus Curiae in this context relied upon a judgment of the Hon'ble Apex Court in *JITENDRA & ANOTHER vs STATE OF M.P.*, reported in 2004 (10) SCC 562; where the Hon'ble Apex Court deprecated such practice and doubted the authenticity of the alleged seizure.

- i. During the course of seizure no sample was drawn and sent for chemical examination and / or before any expert, to confirm the nature and character of the seized kerosene oil.
- ii. During the course of trial no label of the seized article was exhibited. The purpose of pasting labels upon the seized articles during the course of seizure is not a mere formality, but to prove the authenticity of the alleged seizure, during the course of trial.
- iii. A three Judges Bench of the Hon'ble Apex Court in OUSEPH vs STATE OF KERALA, reported in 2004 (10) SCC 647; observed against such practice.
- iv. In the instant case the formal FIR was exhibited as Exhibit-7, by PW- 2. PW-2 was an officer of D.E.O., of Durgapur District, whereas the formal F.I.R., was written and signed by S.I of Police, namely Sudip Roy, the then O/C of Durgapur Police.
- v. PW-3 was the only person who conducted the search and seizure in presence of PW-1 and 2. Initially PW-2 was tendered by prosecution and later on he was examined-in-chief only in respect of drawing of formal FIR. The presence of PW-2 at the time of search and seizure was doubtful.
- vi. As per F.I.R., at the time of search and seizure PW-3 was accompanied by Jagal Lal Mahato and Arabinda Samanta. None of them were examined during trial. Thus, their presence at the place of occurrence was also doubtful, which probabalized the issue of false implication.

- vii. PW-3 the de-facto complainant of the instant case, after search and seizure was completed, lodged a written complaint at the Durgapur Police Station and the present criminal prosecution was instituted thereon. PW-3 in his deposition deposed that “he took up the charge of investigation”.
7. Learned Amicus Curiae submitted that if PW-3 himself conducted the investigation, then in that event hardly there was any chance of fair investigation. In criminal law registration of FIR is not a conclusion an inquiry. It was only a beginning of an investigation. Latin Maxim Nemo debet esse Judex in propria causa elaborate this important issue of law which stated no one could be a judge in his own case. However in the instant case PW-3 in one hand was the seizing officer cum de-facto complainant and on the other hand he was the Investigating Officer. Thus it was quite natural that in the instant case fair investigation was not done.
 8. In this backdrop Learned Amicus Curiae relied upon a judgment of the Hon'ble Apex Court in *STATE vs. RAJANGAM*, reported in 2010 (15) SCC 369; where the Hon'ble Apex Court deprecated such practice and have doubted about the authenticity of the alleged seizure.
 9. Heard the submission of the Learned Advocate for the State.
 10. Para 11 (2) of the W.B. Kerosene Oil Control Order, 1968, prohibits any person to store or carry kerosene oil exceeding 10 litres In the instant case, the allegation is of seizure of 240 litres of kerosene oil. Appellant was convicted for violation of aforesaid control order and sentenced under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

11. The Hon'ble Supreme Court observed the following in **Rajesh Dhiman v.**

State of H.P.¹ :-

“11. Suffice to say that the law on this point is no longer res integra and the controversy, if any, has been set at rest by the Constitutional Bench of this Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] . The earlier position of law which allowed the solitary ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible. It would be worthwhile to extract the following conclusions drawn in the aforesaid judgment:

“102. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in Bhagwan Singh v. State of Rajasthan [Bhagwan Singh v. State of Rajasthan, (1976) 1 SCC 15 : 1975 SCC (Cri) 737] ; Megha Singh v. State of Haryana [Megha Singh v. State of Haryana, (1996) 11 SCC 709 : 1997 SCC (Cri) 267] and State v. Rajangam [State v. Rajangam, (2010) 15 SCC 369 : (2012) 4 SCC (Cri) 714] and the acquittal of the accused by this Court on the ground that as the informant and the investigator were the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused

¹ (2020) 10 SCC 740

and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in Mohan Lal v. State of Punjab [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

12. In **Rizwan Khan v. State of Chhattisgarh**² the following was held by the Hon’ble Supreme Court:-

“16. Now so far as the submission on behalf of the accused that as PW 4 J.K. Sen who recorded the FIR, he himself was the investigating officer and therefore the trial is vitiated is concerned, it is required to be noted that initially the learned counsel appearing on behalf of the accused made the above submission relying upon the decision of this Court in Mohan Lal [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] . However, in view of the recent decision of this Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] overruling the decision of this Court in Mohan Lal [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] , learned counsel

² (2020) 9 SCC 627

appearing for the accused has not pressed the above ground. Even otherwise, it is required to be noted that in the present case the aforesaid issue does not arise as after the FIR was recorded by Shri J.K. Sen, PW 4, thereafter the case was investigated by Ashish Shukla, PW 5. Therefore, on facts, both the complainant and the investigating officer were different.”

13. The Hon’ble Supreme Court held the following in **Sathyan v. State of Kerala**³:-

*“15. The act governing the instant dispute was brought into force to “consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs in the [state of Kerala]...” The Narcotic Drugs and Psychotropic Substances Act, 1985 has been brought on the statute books to “amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances...” Arguably, both these statutes seek the regulation of similar products, with the purpose of controlling the flow of identified substances. We find, in a case concerning the latter act, a Constitution bench of this Court in *Mukesh Singh v. State (NCT of Delhi)*⁷, having noted as follows:—*

“10.1. Under Section 173 CrPC, the officer in charge of a police station after completing the investigation is required to file the final report/charge-sheet before the Magistrate. Thus, under the scheme of CrPC, it cannot be said that there is a bar to a police officer receiving information for commission of a cognizable offence, recording the same and then investigating it. On the contrary, Sections 154, 156 and 157 permit the officer in charge of a police station to reduce the information of commission of a cognizable offence in writing and thereafter to investigate the same...”

³ 2023 SCC OnLine SC 986

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12. Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightaway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. As held by this Court in Ram Chandra [State of Rajasthan v. Ram Chandra, (2005) 5 SCC 151 : 2005 SCC (Cri) 1010] the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [see Vipin Kumar Jain [Union of India v. Vipin Kumar Jain, (2005) 9 SCC 579]].

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12.2. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record.

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13.2. (II) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice

would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case-to-case basis. A contrary decision of this Court in Mohan Lal v. State of Punjab [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

(emphasis supplied)

16. Therefore, it can no longer be said to be res integra that the person receiving the information of the crime or detecting the occurrence thereof, can investigate the same. Questioning such investigation on the basis of bias or such like factor, would depend on the facts and circumstances of each case. It is not amenable to a general unqualified rule that lends itself to uniform application.”

14. The following was held by the Hon’ble Supreme Court in **Office of the Odisha Lokayukta v. Pradeep Kumar Panigrahi**⁴

“37. In the instant case, the complaint was made by the Deputy Superintendent of Police (Mr. Ranjan Kumar Das) of the Directorate of Vigilance, who is, directly or indirectly, not concerned with the complaint, he can be said to be an informant to the office of the appellant and that apart, a preliminary inquiry was conducted independently by a senior officer of the Directorate of Vigilance, Additional Superintendent of Police, Mr. P.K. Naik, who submitted his report of the preliminary inquiry on 28th May, 2021, the question

⁴ 2023 SCC OnLine SC 175

of bias in the instant facts and circumstances does not arise at all and that apart, the Constitution Bench of this Court recently in Mukesh Singh v. State (Narcotic Branch of Delhi)³, while examining the question as to whether in case investigation is conducted by the police officer who himself is a complainant is the trial stands vitiated and the accused is entitled to acquittal and after examining the scheme of the Code, finally answered the reference as under:

“13. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

13.1.(I) That the observations of this Court in Bhagwan Singh v. State of Rajasthan [(1976) 1 SCC 15], Megha Singh v. State of Haryana [(1996) 11 SCC 709] and State v. Rajangam [(2010) 15 SCC 369] and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal.

13.2.(II) In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has

to be decided on a case-to-case basis. A contrary decision of this Court in Mohan Lal v. State of Punjab [(2018) 17 SCC 627] and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

(emphasis added)

38. *We are of the considered view that there was no element of bias in conducting a preliminary inquiry in the instant case and the objection raised by the respondents stands overruled.”*

15. In view of the above observation of the Hon'ble Supreme Court, the complainant can act as an Investigating Officer.
16. Through Exhibits- I/I, I/II, I/III, Exhibit-V, Exhibit-VI, Exhibit-III, Exhibit-III/I and Exhibit- III/II, the notice issued to the accused, the signature of the witnesses thereon, the seizure of the containers of kerosene oil had been proved and the same had been marked as Material Exhibit- I to VIII along with gunny bags which were marked Material Exhibit-IX to XVI. During such raids, generally the independent public witnesses are reluctant to sign the seizure or even to face the trials and tribulations of appearing before the Court to their dismay and disgust. Such uninterested persons do not generally come forward to be an independent witness and absence of the same will not affect the prosecution case otherwise based on material substance. The appellant did not cite a rebuttal to the claim of unexplained carriage of a huge quantity of kerosene oil. The judgment of the Trial Court is well reasoned and this Court is not inclined to interfere with the same.

17. However, there has been a lapse of considerable time and accordingly the appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.5,000/- with two sureties to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.5,000/- each within 6 months from the date of this order failing which he shall be called to serve out the sentence.
18. Accordingly, the instant criminal appeal being CRA 20 of 1990 stands disposed of.
19. I record my appreciation for the able assistance of Learned Advocate Mr. Arnab Chatterjee, as Amicus Curiae in disposing of this appeal.
20. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. 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.)