

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 197 of 1987

**Ruhul Amin Mallick
-Vs-
The State**

For the appellant : Mr. Provash Bhattacharya
(Amicus Curiae)

For the State : Mr. Bidyut Kumar Roy
Ms. Sima Biswas

Heard on : 05.10.2023

Judgment on : 08.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 20.4.1987 passed by the Learned Judge, Special Court (E.C. Act) at Alipore, 24 Parganas (South) in Special Case No. 14(9)/85 (T.R. Case No. 121/86) convicting the appellant under Section 7(i)(a)(ii) of Act X of 1955 and sentencing him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 500/-, in default to suffer Rigorous Imprisonment for one month more.
2. The appellant was carrying on business of building materials barring Cement in the name and style of "MULLICK BUILDERS".

3. The appellant purchased 44 bags non Levy Cement on 14.9.1985 from a licensed dealer for the purpose of repairing and/or construction of his own residential quarter.
4. The appellant carried on the business and resided in the same premises.
5. On 16.9.1985 officers attached to the District Enforcement Branch, visited the premises of the appellant at 10.30 a.m. and stayed there till 11.15 a.m. they seized the above said bags of cement and lodged a First Information Report alleging, inter alia, therein that the appellant had violated Para 3 of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.
6. Thereafter a case being Special Case No. 14(9)/85 (T.R.Case No. 121/86) was initiated under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 and a charge sheet was submitted by the police authorities.
7. The Learned Advocate for the petitioner/appellant submitted that :-
 - i. The Learned Judge of the court below ought to have held that the appellant did not violate any provision of the Essential Commodities Act, 1955 including the provisions of the West Bengal Licensing of Dealers of Cement & Distribution of Levy Cement order, 1982.
 - ii. Mere possession of 44 bags of cement for own utilization did not *ipso facto* attract the provision of 10(1) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.

- iii. The appellant did not violate any provisions of the Essential Commodities Act, 1955 or Para 10(1) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982.
- iv. It was not proper to conclude that the appellant had violated Para 10(1) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 merely because of the fact that the residential house of the appellant was situated adjacent to the shop in question.
- v. The Learned Judge of the court below should have appreciated that on the date when the raid was conducted masonry work was going on for which the said cement was stored and there was no ingredient contrary thereto and as such, when the charge of violation of Para 3 of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982 was not proved, the charge for violation of Para 10(1) of the said Order, 1982 cannot be attracted, in the facts and circumstances of the case and on that ground alone no case can be started against the appellant.
- vi. The Learned Judge of the court below failed to appreciate that the cement in question was purchased from a licensed dealer on 14.9.85 for construction and repairing work for residential quarter of the appellant and the police authorities came on 16.9.1985 when admittedly the masonry work in connection with

the repairing and/or construction work was going on with the said cement.

vii. The judgment and the order of conviction and sentence dated 20.4.1987 passed by the court below are otherwise bad in law, without jurisdiction and erroneous.

8. The Learned Advocate for the State submitted that the appellant had stored the cement under the same roof for selling the same in the garb of construction work and the prosecution aptly proved its case and the appeal shall be dismissed.

9. A circumspection of the evidences of prosecution witnesses revealed that:-

- i. PW-5, the Sub Inspector of Police who was then attached to District Enforcement Branch, 24 Parganas South since 1981 deposed that he had been to Mallick Builders at Pirtala within the Police Station of Bishnupur for the purpose of a raid. Watcher constable Swadhin Guha and Sadananda Sharma accompanied him there. The owner of the said shop Rahul Amin Mallick was present in the shop. He was present at the dock. Forty-Four bags of cement were found at the godown. One "belcha" was also there in the same godown but no license or permit could be shown for dealing in cement. He seized the bags of cement in the presence of witnesses under a seizure list. He also seized the "belcha". He prepared a sample out of the bags of cement. The seizure list was written and signed by him and had been marked as Exhibit-3. The seized cement was given to the custody of the accused as no other "jimbadar" could be found. The carbon copy of the "jimbanama" written

by PW-5 and signed by the accused had been marked as Exhibit-4. He filed a complaint before the Officer-in-Charge at Bishnupur Police Station. The petition of the complaint written and signed by him had been marked at Exhibit-5. He knew the Assistant Sub Inspector and the formal F.I.R. was filled in by him and Bishnupur P.S. Case No. 10, dated 16.9.85 was initiated.

- ii. The formal FIR had been marked as Exhibit-6. He took up charge of the investigation of the case. During the course of the investigation, he arrested the accused after 3 days. He sent the sample to the chemical expert for examination and report. He examined the witnesses also. After his transfer, the case was handed over to another Sub-Inspector of Police. He examined PW-1 on 16.09.85 who stated before him that on 16.09.85 at about 9:30 am, the police had checked the building material godown of the accused at Pirtala and PW-3 along with him had been to the shop of the accused and saw Forty-Four bags of cement in the godown and that the accused failed to produce any paper or license relating to sale of the cement from his building material shop. He also examined PW-3 on 16.09.85 who stated before him that on 16.09.85 at about 9:30 a.m. the police officer along with two other persons went to the godown of Mallick Builders and he also went there and he found Forty-Four bags of cement in the said godown and that on demand the accused failed to produce any license or permit for dealing in cement. In the cross examination of the accused, the accused disclosed that he purchased those bags of cement from outside. The police could not

ascertain during the course of investigation where the accused had purchased the bags of cement. The accused could not produce the cash memo by which he purchased the bags of cement. The accused deposed that he did not purchase those bags for his own utilization. He did not serve any notice directing the accused to produce paper on how he got the bag of cement. He did not make any enquiry regarding the purchase of the bags of cement from Universal Distributors pursuant to the memo produced at the time of bail hearing petition. No document was found at the shop of the accused regarding the sale of cement from the shop. Nobody disclosed to him that the accused was selling cement from his shop and as such no person was examined. The bags of cement were recovered from a room attached to the building material shop. The residential house of the accused was at a distance of 15 cubits from his shop. The accused did not disclose that the said bags of cement were kept in the room for his own use. PW-3 did not put his signature on a blank paper at his residence. PW-1 did not sign at the house of PW-3. A seizure list was prepared at the spot. "Jimbanama" was prepared after the seizure list was prepared. The signature of the accused was not taken on the seizure list. The residential house of the accused was not attached to the shop. A false case had not been started. Besides the bags of cement and the "belcha", there was no other material in the place where the bags of cement were recovered. Some empty bags were there as well.

- iii. DW-1, the accused in the case deposed that he was the owner of the building material shop named as Mullick Builders. His residential house was attached to the building material shop. He purchased Forty-Four bags of cement for his own utilization and kept the same in a room attached to the said building material shop. He presented a challan by which he purchased the bags of cement. He purchased the same on 14.9.85. He received the challan from Universal Distributors in usual course of business. It was written by the employee of the company in his presence. The challan had been marked as Exhibit-A. He showed the challan to the police and told them he had purchased the said bags for construction which was not considered by the police. The police officers inspected his shop in his presence. His signature was obtained by the police on a paper representating that the same would be an evidence of an enquiry. He came to know about his arrest when he was arrested. He did not know why his signature was taken. He did not sign on the "jimbanama". The bags of cement were still lying at the same place. The document marked at Exhibit-A was the challan and not the cash memo. The challan was shown to the police. He did not deal in cement without having a license and the bags of cement were stored there for a purpose. No sanction plan was required at the place where he resided to construct any floor or building. He did not manufacture the challan for the purpose of the case.

10. It is pertinent to produce Section 3 and Section 10(1) of the West Bengal Licensing of Dealers of Cement and Distribution of Levy Cement Order, 1982:-

“3.Licensing of dealers and special category dealers.

No person shall carry on business in cement as a dealer or as a special category dealer except under and in accordance with the terms and conditions of a licence granted under this Order.

10. Written authority for storage.

(1) No person other than a bulk distributor, a dealer or a consumer shall have in its possession or under his control any quantity of cement except under and in accordance with a written authority granted under this order by the licensing authority or the Sub-divisional Controller in the Department of Food and Supplies having jurisdiction.”

11. The initial burden to prove that the appellant was a dealer who carried on business could not be proved by the prosecution. Prosecution could not cite a witness to have purchased the cement from the godown of the appellant. The witnesses declared hostile by the prosecution had been the seizure list witnesses who did not reveal that the appellant used to sell cement from the godown.
12. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
13. Under such facts and circumstances, the judgment and order dated 20.4.1987 passed by Learned Judge, Special Court (E.C. Act) at Alipore, 24 Parganas (South) in Special Case No. 14(9)/85 (T.R. Case No. 121/86)

convicting the appellant under section 7(1)(a)(ii) of Act X of 1955 is set aside.

14. The instant criminal appeal being CRA 197 of 1987 stands disposed of.
15. There is no order as to cost.
16. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Provash Bhattacharya, as *Amicus Curiae* in disposing of the appeal.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. 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.)