

20.09.2024

SL. 72
Court No. 551
Sourav/G.B.

C.R.A. 10 of 1989

In Re: An application under Section 374 (2) of the Code of Criminal Procedure read with Section 12-AB of the Essential Commodities Act, 1955.

And

In the matter of: **Raj Kumar Bairagya**

... appellant.

Mr. Prabir Majumder
Mr. Snehansu Majumder
Mr. Debraj Shil
Ms. Sangeeta Chudhury

... for the appellant.

Ms. Faria Hossain, Ld. APP
Ms. Suparna Chatterjee

... for the State.

1. The challenge in this appeal is the judgment of conviction and order of sentence dated 25.11.1988 passed by the learned Judge, Special Court under the Essential Commodities Act, Nadia, Krishnagar in E.C. Case No. 37 of 1988.
2. By the impugned judgment, learned trial Court found the present appellant guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, hereinafter referred to as "the said Act" and he is thus sentenced to suffer R.I. for one year and to pay fine of Rs. 1,000/- i/d to suffer R.I. for six months.
3. For effective disposal of the instant appeal, the facts leading to initiation of E.C. Case No. 37 of 1988 before the learned trial Court is required to be dealt with in a nutshell.
4. On 21.07.1988 in between 12.30 p.m. to 1.15 p.m. the informant being the D.E.O., Karimpur along with others went for an inspection to the grocery shop-cum-godown of the

appellant and at the time of such inspection, he found that the accused was dealing with kerosene oil. The appellant failed to produce any licence for dealing with kerosene oil. The informant being the S.I. of D.E.O., Karimpur thereafter seized incriminating materials including 85 litters of kerosene oil from the shop of the appellant.

5. The appellant was, thereafter, arrested and produced before the O.C., Tehatta Police Station. On the basis of the written complaint, Tehatta P.S. Case No. 12 dated 21.07.1988 under Section 7(1)(a)(ii) of the said Act was started. Investigation was taken up and the completion of the same, charge-sheet was submitted against the accused person under Section 7(1)(a)(ii) of the said Act. The appellant being the accused was examined under Section 251 Cr.P.C. wherein the appellant claimed himself to be innocent and also claimed to be tried. In order to bring home the accusation, the prosecution has examined two witnesses in all and some documents have been exhibited on behalf of the prosecution.
6. On behalf of the defence, no evidence was adduced. However, from the trend of cross-examination of the prosecution witnesses as well as from the answers as given by the accused in his examination under Section 313 Cr.P.C., it appears that the defence case is based on clear denial and false implication.
7. Mr. Majumder, learned advocate appearing on behalf of the appellant in his first fold of submissions contends that the investigation as conducted in this case has been vitiated since the complainant has become the investigating officer which

according to Mr. Majumder, learned advocate for the appellant affects the very root of the case. It is further submitted by Mr. Majumder that P.W. 1 being a seizure witness has become hostile and, therefore, the alleged seizure of kerosene oil from the shop room of the accused who is the appellant before this Court has become doubtful since the evidence of P.W. 2 being the informant and the I.O. gets no corroboration from the evidence of P.W. 1.

8. In his third fold of submission, Mr. Majumder further submits that the alleged kerosene oil as seized from the shop room of the accused was never sent for chemical examination and, therefore, the learned trial Court is not justified to hold that the seized liquid article can easily be identified as kerosene oil from its odour. Mr. Majumder further submits that the instant appeal may be allowed by setting aside the impugned judgment and order.
9. Per contra, it is submitted on behalf of the State that there is no illegality or irregularity in the judgment which is impugned before this Court. The learned trial Court is very much justified in passing the impugned judgment of conviction considering the oral and documentary evidence adduced on behalf of the prosecution witnesses.
10. After careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears before this Court that admittedly the informant though he is a sub-inspector of D.E.O. has himself become the investigating officer. As rightly pointed out by Mr. Majumder, learned advocate for the

appellant that when the complainant himself becomes the investigating officer, the outcome of the investigation is vitiated by biasness.

11. From the Trial Court Record, it reveals that though the P.W. 2 in his testimony duly supports his version as made in the written complaint but his evidence gets no corroboration from the evidence of P.W. 1 who according to the prosecution is an alleged seizure witness since P.W. 1 has become hostile. No chemical examination report is also exhibited to substantiate as to whether the seized liquid article is at all kerosene oil or not as kerosene oil.
12. This Court does not accept the logic as given by the learned trial Court that from its odour, the liquid can be identified as kerosene oil.
13. It is settled principle of law that a criminal trial, the degree of proof is not based on preponderance of probability and on the contrary, strict proof of allegation beyond reasonable doubt is very much necessary. In considered view of this Court, the prosecution has miserably failed in establishing the accusation of the guilt of the accused.
14. This Court thus finds sufficient merit in the instant appeal and, accordingly, the instant appeal is allowed. Consequently, the impugned judgment of conviction and order of sentence dated 25.11.1988 as passed in E.C. Case No. 37 of 1988 by the learned Judge, Special Court under the Essential Commodities Act, Nadia, Krishnagar is hereby set aside.
15. The present appellant, Raj Kumar Bairagya is thus found not guilty under Section 7(1)(a)(ii) of the Essential Commodities

Act, 1955 and is thus, acquitted from the E.C. Case No. 37 of 1988.

16. The present appellant, Raj Kumar Bairagya is thus discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
17. Department is directed to send down the Trial Court Record along with a copy of this judgment forthwith.
18. With the aforementioned observations, the instant appeal being **CRA 10 of 1989** is disposed of.
19. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

