

IN THE HIGH COURT AT CALCUTTA**Criminal Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. -109 of 1989****IN THE MATTER OF****Banka Das****Vs.****State of West Bengal****For the Appellant : Ms. Suchismita Dutta, Adv.****For the State : Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose Adv.****Judgment on : 04.01.2024****Subhendu Samanta, J.**

The instant appeal has been preferred against the judgment and order dated 23.12.1988 passed by Learned Special Judge (EC) Act Tamluk in TR 16/86 (EGR 23/86) arising out of Panskura Police Station Case No. 2 (10/86) whereby the present appellant was convicted u/s 7(I) (a) (ii) of the EC Act for contravention of provision of Para 3(1) (a) of West Bengal Rice and Paddy (storage by Consumers) order,

1976 as well as Para 3 (i) (a) of West Bengal Rice and Paddy (Restriction of Movement) order 1976 and thereby sentencing the present appellant to undergo rigorous imprisonment for 01 month and to pay a fine of Rs. 500/- in default rigorous imprisonment for one month more.

The brief fact of the prosecution case is that the present appellant on 22.10.1986 stored 05 gunny bags of rice in about 4.25 quintals in a second class compartment of P- 38 down Panskura Horah Local at Panskura Police Station. On that date at about 09:40 a.m. he was arrested by some Railway Policeman on the alleged plea of storing 4:25 quintals of rice. On the basis of the said allegation the FIR was lodged by the PW 1 and summary trial was held by the Learned Special Judge, Tamluk. During the said trial 05 witnesses were examined by the prosecution including the de-facto complainant. The defence case is mainly based on denial of the prosecution case. After hearing the parties the Learned Special Judge has passed the impugned judgment and sentenced finding the present appellant guilty u/s 7(I) (a) (ii) of the EC Act for contravention of provision of Para 3(1) (a) of West Bengal Rice and Paddy storage of consumer order of 1967 as well as Para 3 (I) (c) of West Bengal Rice and Paddy (Restrictions on Movements) order 1967.

Being aggrieved and dissatisfied with the order and judgment and conviction the present appeal has been preferred.

The learned Advocate for the appellant submits that the order of conviction passed by the Learned Special Judge is erroneous in the eye of law. There are no valid or cogent grounds for convicting the present appellant. It could be revealed that all the prosecution witnesses are the police witnesses. No independent local witnesses were adduced in this case though the fact goes to show that the so called seizure and arrest was made in a public place in open day light. The police witnesses are interested witnesses and the Learned Special Judge should not placed reliance upon the version of the police witnesses. The recovery from the possession of the present petitioner could not be established, accordingly the order of conviction required to be set aside. The judgment and order of conviction passed by the Learned Special Court is otherwise bad in law and liable to be set aside.

The Learned Advocate appearing on behalf of the state submits that it was a summary trial before the Learned Special Judge. The trial and the prosecution case has never been challenge before the Learned Special Judge. The appellant has never produced any single witness to contradict the fact of the

prosecution. The police witnesses cannot be disbelieved as there is no previous enmity between the police personnel and the present appellant. He further argued the Learned Special Judge has considered the entire materials on record and passed the impugned judgment. There is no illegality in the judgment, accordingly the instant appeal has got no merit.

Heard the Learned Advocates.

Perused the LCR also perused the evidences of PWs adduced before the Learned Special Judge.

The fact of the case goes to show that the PW 1 was posted as EDB GRPS Howrah on 22.10.1986. He conducted an anti-smuggling raid on rice at Panskura Railway Station with a notice to the GRPS Panskura. On that date at about 09:40 a.m. in the morning P-38 down Panskura Howrah Local was standing on platform no. 4 of Panskura Railway station. He along with the force entered into the Second Class Compartment. At the rear portion of the train they found 05 Gunny Bags of Rice cumulated at the entrance of the said compartment and the appellant was sitting thereon. On query the appellant could not produce any document for the possession of the said rice and the said person i.e. the appellant was apprehended along with the bags of rice.

Thereafter the entire 05 gunny bags of rice was seized by a proper seizure list.

This is the case of the prosecution that the present appellant is the owner and possessor all the 05 gunny bags of rice and he could not provide any satisfactory explanation regarding his possession of such huge quantity of rice. PW 1 to PW 5 all are the police witnesses. All the witnesses echoed the version of PW 1 (de-facto complainant). The FIR, seizure list was exhibited before the Learned Tribunal. It was submitted by the PW 1 that all the 05 gunny bags was weighed at the weighment scale of Panskura GRPS. It appears that no weighment scale was seized by the I.O during the course of investigation of this case. Moreover, the fact goes to show that each bags of rice were not weighted separately. It was the case of the prosecution that 05 gunny bags total about 4.25 quintals of boiled rice. PW 5 is the I.O. of this case who deposed that he conducted the investigation and examined the available witnesses and submitted the charge sheet against the present appellant. During the course of investigation the I.O never weighted the seized boiled rice. It further appears that the seizure was affected in a second class compartment of a local train at day hours. Admittedly there may have several passengers in the train but the I.O. has never examined

independent local witnesses. Fact is more surprising that the Station Master was also not examined regarding the alleged offence made to have been committed within the Panskura Railway Station. No rice or inventory of the seized rice was produced before the Learned Special Judge at the time of trial.

It further appears that during the course of examination of the accused u/s 313 Cr.P.C. the general omnibus questions were asked to the appellant. The questions were not specific regarding the allegation against him appearing from the mouth of the prosecution witnesses during the trial.

The fact of the case is very much surprising. The appellant was arrested with 05 gunny bags of rice in about 4.25 quintals within a second class compartment of a local train. It is very much absent in the prosecution case how such 05 big bags of boiled rice were reached in the local train through the entire platform of Panskura Railway Station. It is more surprising why the appellant was not apprehended at the gate of the Railway Platform while he was carrying those gunny bags. Mere sitting upon some gunny bags does not itself prove the possession of any person. It is absent in the investigation that where from such gunny bags were procured by the appellant. It is disbelieved that the appellant himself can

smuggle such 05 big gunny bags of boiled rice on his own accord.

In this case the Learned Special Judge has acted on the basis of the police report. The all prosecution witnesses are police witnesses. The police officers are duty bound to prove a case initiated by them. The I.O. has committed great mistake for not taking the evidences on other local witnesses.

It is pertinent to be noted herein that Para 3(1) (a) of the West Bengal Rice and Paddy (Storage by Consumers) Order, 1967 allowed a person to possess 2.6 quintals of rice at a time for personal consumption. To prove the violation of this Para, the prosecution has to prove that the accused stored more than 2.6 quintals of rice. No weighment chart was prepared in this case by P.W 1 or the I.O. It creates doubt in the prosecution case. The appellant is entitled to get the benefit of doubt.

It further appears that the instant case is pending since 1986; we are approaching nearly 40 years since initiation of the criminal case. The instant appeal is pending since 1989; long 33 years has been elapsed after filing of said appeal. Considering the entire aspect I am of a view that the appellant must have suffered tremendous mental agony during the long pendency of this appeal.

Considering the entire aspect I think it necessary to observe that the order of conviction passed by the Learned Special Judge is not passed upon the correct appreciation of facts as well as law. The learned Special judge has whimsically passed the order of conviction for the violation of Para 3 (1) (a) of West Bengal Paddy and Rice (Restrictions of Movements order 1976). The Learned Special Judge has held that the local train is running from Panskura to Howrah, so the present appellant is also guilty of violation of the provisions of West Bengal Paddy and Rice (Restriction of Movements Order) 1967. The FIR or the entire prosecution case does not alleged against the said provision. Thus, the observation of the Learned Special Judge at the time of passing of judgment against the present appellant is not tenable in the eye of law.

After considering the entire merits of the case, I am of a view that the Learned Special Judge has failed to appreciate the facts and circumstances of this case and passed an erroneous order of judgment and conviction.

Accordingly the instant appeal has got merit and liable to be allowed.

Hence the instant CRA is allowed. Impugned judgment and order of conviction dated 23.12.1988 passed by the

Learned Special Judge, Tamluk against the present appellant is hereby set aside.

The appellant is hereby acquitted from the case. He be set liberty at once.

The sureties standing in his favour are also released.

CRA along with Connected CRAN applications, if pending, are also disposed of.

Any order of stay passed by this court during the continuation of the instant appeal is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)