

Item No. 21.08 2024 55

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IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

CRA 67 of 1992

**Sibu Das @ Shib Sankar Das
Vs.
The State of West Bengal**

Mr. Soumik Ganguly. ... for the appellant.
Mr. Avishek Sinha. For the State.

1. In this appeal the judgment and order of sentence dated 11.02.1992 as passed in CS GR Case No. 25 of 1989 by the learned Judge, Special Court, Bankura has been assailed. By the impugned judgment, learned Trial Court found the accused guilty of offence under Section 7(1)(a) (ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the “Said Act” in short) for violation of Clause 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977 (hereinafter referred to as the “Said Order of 1977”) and thus sentenced the said accused to suffer rigorous imprisonment for two years. The convict felt aggrieved and preferred the instant appeal.
2. For effective adjudication of the instant appeal, the

facts leading to initiation of the aforementioned case is required to be dealt with in a nutsheel.

3. On 17.08.1989 one Binoy Bhusan Chakraborty Inspector of Police, DEB Bankura lodged a written complaint with the OC Bankura police station stating, inter alia, that on the said date i.e. on 17.08.1989 at about 12.30 hours on receipt of a source information he along with other three police personnel went to the house of the accused at Nutanganj, Bankura Town. On reaching there, the accused on being asked stated that he has stored seven (7) begs of sugar in his godown attached to his residence.
4. It has been stated further in the said complaint that thereafter the informant along with the other police personnel went to the godown of the accused and found seven (7) bags of sugar and on demand the said accused failed to produce any purchase memo, stock register, sale register, stock and price board of essential commodities despite service of notice upon him. The informant thus found that the accused has flouted the provisions of said Act vis-à-vis the provision of the said Order of 1997 and West Bengal Sugar Dealers Licensing Order 1980 (hereinafter referred to as the "Said Order of 1980" in short) and accordingly he seized seven (7) bags of sugar and the other articles by executing a seizure list. It is the further version of the informant that thereafter the seized sugar was kept

in the zimma one Harch Bajoria and he then arrested the accused and produced him before aforementioned O.C.

5. On the basis of the said FIR, Bankura Police Station Case 126 of 1989 dated 17.08.1989 was started. Investigation was taken up and on completion of same chargesheet under Section 7(1)(a)(ii) of the said Act was submitted on 06.12.1989.
6. Learned Trial Court examined the accused under Section 251 of the Code of Criminal Procedure. At the time of plea, the accused denied all the accusations as made against him and claimed to be tried and thus the trial proceeded. Trial Court record reveals that in order to bring whom the accusations as against the accused, the prosecution has examined five witnesses and some documents has exhibited on their part.
7. Since in the impugned judgment, learned Trial Court has elaborately discussed about evidence of all the prosecution witnesses, this Court feels it unnecessary to recapitulate the same all over again in this judgment except to the extent the same is necessary for the disposal of the instant appeal.
8. It is pertinent to mention that though in the written complaint as well as in the chargesheet, there was allegation of violation of the Clauses of said Order of 1977 and the said Order of 1980, however, in the impugned judgment, learned Trial Court found the

accusation for violation under Clause 3(2) of the said Order of 1977 has been proved and in view of such, this Court considers that the evidence of the prosecution witnesses with regard to the alleged violation of the Clause of said Order of 1980 is also unnecessary, since no appeal has been preferred against the acquittal of the accused for alleged violation of said order of 1980.

9. For effective adjudication of the instant appeal, I propose to look to the some provisions of the said order of 1977.

“2(e) “place of business” means a place where the books of accounts of a dealer’s business are kept and where orders or offers involving purchase or sale of any essential commodity are received and includes place or places where the dealer stores any essential commodity;”

“3. Display of stock and price lists.- (1) Every producer and importer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form A indicating the opening stock of each essential commodity held by him on each day.

(2) Every wholesaler and every retailer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form B indicating the opening stock and the wholesale or retail price, as the case may be, of each essential commodity held by him on each day.

(3) The wholesale price and the retail price to be displayed under sub-paragraph (2) shall respectively be exclusive and inclusive of all local taxes.”

10. At this juncture, if I look to the written complaint as lodged by the informant, it reveals that on the fateful

day and hour he went to the godown of the accused attached to his residence and found no declaration of stock price board and the accused also could not produce the same though notice was served upon him.

11. At this juncture if I look to the evidence of PW-1 who is a police personnel and who according to the prosecution is a seizure witness testified that on the relevant day and hour he went to shop of the accused. He further testified that there was no mention of sugar in the stock. It thus appears to this Court that though it is the case of the prosecution that on the relevant day and hour, the raiding team led by the informant went to the godown of the accused but the PW-1 who is a police witness deposed in a different direction stating, inter alia, that on the relevant day he went to the shop of the accused. It is further pertinent to mention that though in the FIR it is the version of the informant that on being asked by serving a notice the accused failed to produce any display board but from the version of the PW-1 it reveals to this Court that it has been testified by PW-1 that there was no mention of sugar in the stock which suggests that a board was there in the shop room of the accused on the relevant day and hour where there was no mention regarding stock of sugar.

12. Despite adducing such contrary evidence, PW 1 was not declared hostile by the prosecution and therefore in considered view of this court contradictory evidence as

adduced by PW-1 in his examination in chief is bound to hamper the genuineness of the case of the prosecution.

13. PW-2, being the Informant, however, deposed in the same line as has been stated by him in his written complaint and this Court finds no inconsistency even in his cross-examination.
14. The evidence of PW-5, who is the Investigating Officer of this case and who is also a party to the raiding team, testified that on the relevant day and hour he, being a member of the raiding team, found no stock-cum-price board in the shop of the accused.
15. On comparative study of PW-1, PW-2 and PW-5, a real confusion arises about the exact location of the PO, i.e., to say, it could not be ascertained as to where the said raiding team on the relevant day and hour went for raid either in the godown of the accused or in the shop room of the accused.
16. Admittedly, under clause 2(e) of the said Order of 1977, a godown also comes within the purview of 'place of business', but in the case in hand, it has really become doubtful where the prosecution witnesses found non-compliance of clause 3(2) of the said Order of 1977.
17. This Court, thus, finds that while writing the impugned judgment, the learned Trial Court overlooked the aforementioned infirmity as has been pointed (supra) and, thus, misdirected himself in passing the

impugned judgment of conviction and order of sentence of the accused.

18. As a result, the instant appeal succeeds and is, hereby, allowed.

19. Consequently, the impugned judgment and order of sentence dated February 11, 1992 as passed in CSGR Case No.25 of 1989 by the learned Judge, Special Court, Bankura, is, hereby, set aside.

20. Consequently, the present appellant, Sibul Das @ Shib Sankar Das is found not guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 in connection with CSGR Case No.25 of 1989.

21. The appellant, Sibul Das @ Shib Sankar Das, is, thus, discharged from his bail bond and be set at liberty at once, if not wanted in any other case.

22. Department is directed to send down the LCR along with a copy of this judgment to the learned Trial Court forthwith.

23. Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Partha Sarathi Sen J.)