

IN THE HIGH COURT AT CALCUTTA**Criminal Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. – 359 of 1989****IN THE MATTER OF****Dilip Kumar Rana****Vs.****State of West Bengal****For the Appellant : Mr. Swapan Kumar Mallick, Adv.,
Ms. Sudeshna Das Adv.****For the State : Mr. Pravas Bhattacharya, Adv.,
Mr. M.F.A Begg Adv.****Judgment on : 05.01.2024****Subhendu Samanta, J.**

The instant appeal has been preferred against the judgment and order dated 22.08.1989 passed by Learned Special Judge (EC) Act Midnapur in DEBGR case No. 31/85 convicting thereby the present appellant u/s 7(1) (a) (ii) of the Essential Commodities Act 1955 and sentence him to suffer rigorous imprisonment for 06 months and to pay a fine of Rs 500/- in default to suffer rigorous imprisonment for one month.

The brief fact of the prosecution case is that on 22.06.1985 between 9:50 Hrs. And 13:35 Hrs. One Mani Sarkar, Inspector, DEO Midnapur (FW 10) (complainant) inspected business place of the appellant at Kanchanpur, Keshiari, Midnapur. It has been alleged that shop was closed from 20.06.1985 to 22.06.1985 as such the complainant along with other police officers broke upon the door and found 21 quintals of rice excess in comparison with the stock-cum-rate board, 35kg. Mastered oil, 15kg. Dalda, 99 kg. Rapeseed oil in huge tins of STC brand and another 24 Kg. In open tin and 17 bags of washing soap in the godown. It has been further alleged that all the commodities were seized and were kept in jimma of one Bibhuti Bhusan Panigrahi. The complainant endorsed the case to one P.C. Adhikary, DEO, Belda for investigation.

To prove the case the prosecution has examined as many as 11 witnesses out of which PW 1 was a seizure witnesses PW 2 is the person who broke upon the lock of the door and prepared seizure list, PW 3 received the written complaint from the complainant, PW 4 prepared normal FIR, PW 5 is a seizure witness, PW 6 is the jimmadar, PW 7 and PW 8 are the seizure witnesses who declared hostile by the prosecution, PW 9 is the owner of the house where the commodities are seized. PW 10 is the complainant and PW 11 is police personnel who identified the signature of the I.O.

After completion of the trial the Learned Special Judge, found the present appellant to be guilty and convicted him u/s

7(1) (a) (ii) of the Essential Commodities Act for contravention of Para 3 (1) (2) of the West Bengal Imported vegetables oil (provisions of unauthorised sale) order 1984 and those of Para (16) (A), (16) (B) 18/19(a)/4/19(B) of the West Bengal Rice and Paddy Licensing and Control Order 1976 and sentencing him to suffer rigorous imprisonment for 06 months and to pay a fine of Rs 500/- in default to suffer rigorous imprisonment for one month more.

Being aggrieved by and dissatisfied with the said order of conviction the instant appeal has been preferred. Learned Advocate for the appellant submits that the impugned judgment and order of conviction passed by the Learned Special Judge is inappropriate and violative to the provision of law. The prosecution has not submitted any report of the chemical examination to show that the oil seized is imported vegetable oil of edible form, has such the observation of Learned Special Judge regarding the contravention of provision of Para 3(1) (2) of the said order of 1984 is erroneous. The investigating officers namely P.C. Adhikary never examined by the prosecution which raised great doubt in favour of the defence. He also argued that the evidence of the prosecution would show that the appellant was not present at the time of seizure. Some of the seizure witnesses went hostile so Learned Special Judge should not place reliance upon the evidence of seizure.

Further more it would be revealed from the entire case that the shop room of the appellant was broke upon by PW 2. The police authority could not show any document to search the shop room of the appellant by breaking it open. No notice has been served upon appellant before broke open the shop room. The entire case was initiated on the behest of the police authority in connection with another criminal case filed under the provisions of IPC. So he prayed for setting aside the impugned judgment and order of conviction.

Learned Advocate appearing on behalf of the State submits that total 11 witnesses were examined in this case huge quantities of articles were seized from the shop room of the appellant. The appellant has closed his licenses shop from 20.06.1985 till 22.06.1985 without any reason. The police authority had no opportunity to serve notice upon the appellant, accordingly they broke upon the door of the shop room of the appellant. He further argued that the appellant had no explanation regarding the possession of huge quantity of the Essential Commodities in his godown. Learned Special Judge has correctly found him guilty for the violation of relevant paras of order 1978 as well as 1984. The impugned Judgment and Order of conviction passed by the Learned Special Judge is a speaking order so it could not be set aside.

Heard the Learned Advocates.

Perused the impugned judgment passed by the Learned Special Court it appears that the appellant was put on trial

before the (EC) Act Medinipur u/s 7(1)(a)(ii) of the EC Act for violation of Para 3(1),3(2) and 4 of the West Bengal Declaration of Stocks and prices of Essential Commodities Order 1977 and Para 6 (1), 18(2),19(a) and conditions No 2,3(2) and 5 of licence granted under West Bengal Rice and Paddy (licensing control) order 1967 and Para 3(2),3(3),3(4),12(A),12(B),12(C), and 13(1B) of the West Bengal Pulses Edible Oil Seeds (Dealers Licensing) order 1978 and Para 3(1) and 3(2) of the West Bengal Imported Edible Oil (prohibition of unauthorised sale) order 1984.

Learned Special Judge, after hearing the prosecution witnesses found the appellant to be guilty for contravention of provision of Para 3 (1) (2) of said order of 1984 and Paras of said Order of 1967. In deciding the entire issue the Learned Special Judge is of view that prosecution has failed to prove that the accused kept his business close on and from 20.06.1985 to 22.06.1985 with a mala fide motive. The Learned Special Judge is also of view that the prosecution has failed to produce the Chemical Examination Report in respect of the alleged edible oil /vegetable oil.

During the examination of the appellant u/s 313 Cr.P.C. the appellant specifically stated that the articles are not belong to him. It is the case of the prosecution that the police authority has seized the articles from the shop room of the appellant in his absence.

It is quite surprising that what prompted the police authority to broke upon the shop of the appellant and raid the articles inside his shop room. The prosecution is silent to that score.

PW 10 is the de-facto-complainant who deposed before this court that the OC of Keshiari P.S. by virtue of Keshiari PS Case No. 6 dated 20.06.1985 has seized huge articles from the possession of the present appellant PW 10 was informed that the appellant has stopped the business from 20.06.1985 to 22.06.1985 and there was no sale during that period resulting withholding sale of Essential Commodities causing inconvenience to the customer. This fact prompted him to broke open the shop of the appellant. During the examination the PW 10 admitted that he never go through the FIR of Keshiari PS Case No. 6 of 1985.

Considering the entire fact of this case it appears to me that PW 10 had no authority to broke open the shop of appellant moreover he had been influenced by the then OC of Keshiari PS who conducted an investigation of a criminal case Keshiari PS Case No. 6 of 1985. The conduct of PW 10 (complainant) is not beyond doubt. The Learned Special Judge in impugned judgment has observed that the prosecution has failed to bring home the charge the present appellant beyond reasonable doubt but he was of a view the huge possession of Essential Commodities in the shop room of the appellant proved mensria of the appellant.

The observation of the Learned Special Judge appears to be contradictory. The violation of each and every provisions of law has to be dealt with. The appellant was charged for violation of specific paras of relevant Government Orders. The prosecution had miserably failed to bring home the charge by putting convincing and required evidence regarding the contravention of specific para of Government Order by the appellant. The prosecution appears to be broke open the door of the shop room of the appellant without presence of the appellant and without serving a relevant notice or information to the appellant. There are no evidence to justify that the seized materials were weighed by preparing a proper chart. The conduct of the prosecution/police authority to broke open the house or shop room of a person without any authority is doubtful. The power of search and seizure of the prosecution for the purpose of investigation of a criminal case has to be performed. According to the specific rule and law enumerated in the Code of Criminal Procedure; violation thereof raised great doubt which can very well proved against the prosecution.

Considering the entire aspects and considering the entire materials on record It appears to me that the learned Special Judge has misguided himself in passing the impugned judgment. The Learned Special Judge in one hand has held that the prosecution could not produce the relevant chemical examination report as well as the prosecution failed to prove

that the shop was closed for a ulterior motive; on the other hand, the observation of the Learned Special Judge, against the present appellant to be guilty for the violation of relevant Paras of G.O., is erroneous. In the case of prosecution there is reasonable doubt. The prosecution has failed to bring home the charge against the present appellant beyond reasonable doubt. Accordingly I find justification to entertain the instant criminal appeal. The appeal, being meritorious is allowed.

The order of conviction passed by the Learned Special Judge against the present appellant on 22.08.1989 in DEBGR case No. 31 of 1985 is hereby set aside.

The appellant is hereby acquitted from this case.

Appellant is on bail, he be set at liberty at once. Sureties standing in his favour are also released.

CRA along with connected CRAN applications if pending are disposed of.

Any order of stay passed by this court during the continuation of the instant appeal is hereby 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.)