

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 471 of 1990

Dilip Kumar Banick

-Vs-

The State of West Bengal

For the Appellant : Mr. Biplab Mitra
Mr. Swapan Kumar Mallick
Ms. Sudeshna Das

For the State : Ms. Faria Hossain

Heard on : 07.03.2024, 14.06.2024

Judgment on : 19.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the impugned judgment and order dated 22.09.1990 passed by the Learned Judge, Special Court (E.C. Act), Barasat, North 24-Parganas in Special Case No.16 of 1989 Khardah Police Station Case No.61(1)/89 convicting thereby the appellant under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for violation of provisions of Para 4 (1) of the West Bengal Essential Foodstuffs Anti Hoarding Order, 1966 and sentencing him to suffer rigorous imprisonment for four months and to pay a fine of Rs.500/-, in default, to rigorous imprisonment for one month more and further directed that the seized alamats or their sale proceeds as the case may be forfeited to the State.

2. The appellant was put on trial before the Learned Judge, Special Court (E.C. Act), Barasat, North 24-Parganas in Special Case No.16 of 1989 Khardah Police Station Case No.61(1)/89, alleging commission of offences punishable under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for violation of provisions of Para 4 (1) of the West Bengal Essential Foodstuffs Anti-Hoarding Order, 1966.
3. The prosecution case precisely stated on 28.01.1989 at 9:30 hrs., Sri Amalendu Nandi, S.I., D.E.B., North 24-Parganas along with S.I. D. K. Chanda and others raided the grocery shop under the name and style "Sri Krishna Bhandar" at Nilganj Road, Agarpara and found some bags of rice kept in the shop. It was alleged that on being asked, the accused/appellant failed to produce any licence, permit or authority for possession of 450 kgs of rice (12 bags). It was alleged further that the complainant Sri A. Nandi seized the said 450 kgs of rice and kept in the zimma of one Pradip Kumar Shaw and arrested the appellant.
4. On the basis of written complaint made by Sri A. Nandi, S.I. attached to D.E.B., North 24-Parganas, (hereinafter referred to as complainant), Khardah Police Station Case No.61 dated 28.01.1989 was registered.
5. After completion of investigation, Sri. A. Nandi submitted charge-sheet against the appellant.
6. In order to prove the charge against the appellant, the prosecution had examined as many as five witnesses out of which PW-1 was Pradip Kumar Shaw (zimmadar and seizure witness), PW-2 Sidhu Shaw (seizure witness), PW-3 S.I. D. K. Chanda (accompanied PW-5), PW-4 Bholanath Thakur

(constable No.3257), PW-5 S.I. Amalendu Nandi (complainant and Investigating Officer who submitted charge-sheet).

7. Learned Advocate for the appellant submitted as follows:-

- i. Sri Amalendu Nandi (PW-5), who lodged the complaint against the appellant and another himself, investigated the case and submitted charge-sheet which had caused serious prejudice to the appellant and which was not permissible under the law as such the same had vitiated the prosecution case.
- ii. It appeared from the evidence of PW-1 the zimmdar of the articles seized, had not supported the prosecution case so far it related to the recovery of rice from the possession of the appellant.
- iii. PW- 2, who was a seizure witness, deposed before the Court, inter alia, to the effect that seizure was completed before he arrived there and he put his signature as per direction of the D.E.B., Officer. PW-2 also stated before the Court that no seizure and weighment of the rice was actually made in his presence and he did not know the quantum of rice seized from that shop. The sum total of the said evidence made the prosecution case untrustworthy.
- iv. Out of 5 prosecution witnesses except PW- 1 and 2, all other three were Police Personnel. Considering the evidence of PW-1 and 2 as deposed before the court coupled with fact that neither the seizure list nor the quantum of rice seized had been proved by the prosecution by any reliable and/or trustworthy evidence. As such

the order of conviction and sentence passed against the appellant was liable to be set aside.

- v. From the evidence of PW-5, it appeared that the measuring scale and weights were not seized. As such it had remained unexplained by the prosecution through witnesses that the rice was kept for sale or for any other oblique purpose.
- vi. Non-production of the seized articles by the prosecution before the court cast a host of doubt about the veracity the prosecution case and made the same untrustworthy and the regard having had to the said fact the order of conviction and sentence passed against the appellant was liable to be set aside.
- vii. It appeared from the evidence of PW-5 that although the complaint was lodged by PW-5 at Khardah Police Station but there was no endorsement of Officer-in-Charge of Khardah Police Station, there was no order to that effect from the Superior Officer. As such the investigation conducted by the complainant himself, was mala fide, bad in law, as such the same entirely vitiated the prosecution case and judgment and order of conviction and sentence passed against the appellant was liable to be interfered with.
- viii. Non-examination of neighbouring people viz. people of the Local Basar Samity cast a doubt about the credibility of the prosecution case. The independent witnesses, i.e., PW-1 and 2 did not support the prosecution case and did not corroborate the evidence of PW-3, 4 and 5, considering the said fact there was no violation of Para

4 (1) of the West Bengal Essential Foodstuff's Anti-Hoarding Order, 1966 and as such the appellant ought to have been acquitted from the said charge.

- ix. At the time of taking plea under Section 251 of the Code of Criminal Procedure, the acquisition of the commission of offence was not explained and/or put to the appellant specifically in their own language and the same had caused serious prejudice to the appellant in the matter of taking his defence at the trial.
 - x. Mere storage of foodgrains was not an offence under Section 7 (1)(a)(11) of the Essential Commodities Act, in the present control order there was no provision for raising a statutory presumption the storage beyond limit would mean that the same was for the purpose of sale.
 - xi. In absence of any evidence on record and/or finding that the stored rice was made for sale, the conviction of the appellant under Section 7(1)(a)(11) was bad in law and liable to be set aside.
 - xii. On a total assessment of the evidence on record, the Learned Trial Judge ought to have held the prosecution had not been able to bring home the charge beyond all reasonable doubt.
8. Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.
9. A circumspection of evidence of the prosecution witnesses revealed as follows:-

- i. PW-1 stated in his evidence that he knew the grocery shop in the name and style 'Sri Krishna Bhandar' at Nilganj Road, Agarpara. He knew the owner of that shop Dilip Banik. He was a manager of a ration shop. On 28.01.1989 at about 9:30 a.m. police officers went to his shop and asked him to take charge of 4.5 quintals of rice, kept in 12 bags. He signed in the seizure list, zimmanama and weighment chart. The bags of rice were weighed in the grocery shop of the accused. He proved his signature in the seizure list, zimmanama and weighment chart marked Exhibit-1, in the weighment chart marked Exhibit-2 and in the zimmanama marked Exhibit-3.
- ii. During cross-examination, PW-1 stated that Bhagirathi Debi was the owner of the ration shop where he was a manager. There were other persons employed in the ration shop. His duty was to issue cash memo and making entries in the registers. He was busy in his work as he was attending many customers. It took 15 minutes time to go to the grocery shop of the appellant from his ration shop. The bags of rice were weighed. The bags were weighed in his shop and those were carried to his shop in rickshaw. He did not see wherefrom those bags of rice were brought. He did not go to the shop of the accused with the police. He signed all the papers in his shop including the seizure list. All the papers were written in his shop.

- iii. PW-2 knew Dilip Banik, owner of the grocery shop in the name and style 'Sri Krishna Bhandar'. About 1 year ago while he was passing the road, he found certain bags of rice on the road. He signed the papers at the request of the officer. He proved his signature in the seizure list marked Exhibit-4 and on the weighment chart marked Exhibit-5 and thereafter he left for home.
- iv. During cross-examination, PW-2 did not read the contents of the seizure list and weighment chart. He found a large gathering on the road. He found the bags of rice on the road.
- v. PW-3 stated in his evidence that on 28.01.1989 he was DEO, Khardah P.S., he along with S.I. A. Nandi and other officers raided the grocery shop of accused Dilip Banik at Agarpara. The owner of the shop was not present at the time of raid and appeared subsequently 450 kg of rice was kept in 12 bags and the accused could not produce any paper for storing those bags of rice. S.I. A. Nandi seized those bags of rice after due weighment and preparation of a weighment chart. The accused produced a trade licence and he was arrested. He proved his signature on the seizure list and weighment chart. His signature on the seizure list was marked Exhibit-6 and his signature on the weighment chart was marked Exhibit-7. Seized rice were kept in the zimma of ration dealer.
- vi. PW-4 deposed in his examination-in-chief that on 28.01.1989 being attached to DEB, Commercial Zone, he along with S.I. D. K.

Chanda, S.I. A. Nandi and others raided a grocery shop in the name and style "Sri Krishna Bhandar" at Nilganj Road. Owner of the shop was present. They found 12 bags of rice weighing about 450 kg. Being interrogated by his officer the shop keeper could not produce any licence, permit etc. for storing those bags of rice. So those bags of rice were weighed in presence of the witnesses and those were seized under a seizure list. The accused was arrested and taken to the P.S. Seized rice were kept in the zimma of a ration dealer. He proved his signature on the seizure list marked Exhibit-8 and his signature on the weighment chart was marked Exhibit-9. He denied that the bags were carried to the ration shop for weighment. After weighment of those bags, those were not sealed and labeled. The zimmadar was called from his shop. He could not say the location and distance of the shop of the zimmadar. He could not state how the zimmadar carried the bags of rice to his shop. The accused was present in his shop when they arrived there. He could not state the names of the persons who participated in the process of weighment of the bags. 2/ 3 persons helped them for weighment of the bags of rice.

- vii. PW-5 deposed in his evidence that on 28.01.1989 as a D.E.O, North 24-Parganas, he along with S.I. D. K. Chanda, W/C, Bhola Thakur and others raided a grocery shop in the name and style "Sri Krishna Bhandar" owned by Dilip Kr. Banik. Owner of the shop was present at that time. In that shop he found huge

quantities of rice along with other commodities. The area was within rationing area so he asked the owner whether he had any licence or permit for storing and selling rice in his grocery shop but he failed to produce any such documents. So they in presence of the local witnesses weighed the bags of rice bag wise and found 450 of rice in 12 bags. He prepared a weighment chart in which the witnesses and accused Dilip signed. He also seized that trade licence along with 450 kg of rice under a seizure list written by him. The weighment chart was marked Ext-10. His signature on the weighment chart was marked Ext- 10/1. Signature of Dilip Banik on the weighment chart was marked Ext- 10/2. Seizure list was marked Ext-11. His signature on the seizure list was marked Ext- 11/1 and signature of accused on seizure list was marked Ext- 11/2. Seized rice was kept in the custody of local A.R. shop owner Pradip Shaw who executed a zimmanama. He wrote the zimmanama and he proved the same marked Ext- 12. Ext-12/1 was his signature on the same. He arrested accused Dilip and produced him along with the trade licence, seizure list etc. and lodged the written complaint. He proved the written complaint and it was marked Ext-13. He was acquainted with the handwriting and signature of A.S.I, Ashish Dutta of Khardah P.S. who filled up the formal F.I.R. He proved the same marked Ext.-14. He took up investigation of the case by order of O/C Khardah P.S. During investigation, he visited the place of occurrence, examined the

witnesses, filed prayer for confiscation of seized rice and after completing investigation submitted charge-sheet against the accused on 07.02.1989.

- viii. During cross-examination, PW-5 could not say whether the entire Nilganj Road was within the Municipal area but the place of occurrence was within the Municipal area. As the accused held the trade licence of the municipality the shop was within Municipal area. He deposited the trade licence at local P.S. The trade licence was not produced in Court. In the CD, he did not describe the place of occurrence. Seizure witnesses, raiding police party, the owner etc. were present at the time of weighment. Seal and weighments were not seized. He did not seal and label each bag. He could not state the fate of the seized bags which were not produced in Court. He could not say how the zimmaradar Pradip carried the bags of rice. The distance of the shop of the zimmaradar was at a distance of 25/30 yards from the shop of the accused. He denied that the licence did not stand in the name of the accused.

- 10. The evidence of PW-3, PW-4, PW-5 was contrary to the narrative of the complaint concerning the presence of the appellant at the time of the raid. PW-3 deposed that the appellant was not present at the shop at the time of raid and PW-4, PW-5 testified his presence at the shop at the relevant time.
- 11. PW-1, an owner of a grocery shop situated at a considerable distance from the disputed shop was cited as a witness.

12. PW-1 was the zimmadar. The seized bags of rice were not produced before the Court. None of the local persons apart from a passerby was cited as a seizure list witness. The seizure of rice was not sealed or labelled. PW-4 and PW-5 failed to state the manner and mode in which such huge quantity of rice was transported from the shop of the appellant.
13. Apart from mere allegation, prosecution failed to prove the quantity of rice was heaped at the shop of the appellant, illegally for the purpose of sale. Not a single customer was produced to such claim of purchasing rice from the disputed shop. The stacking of such rice at the shop could not be proved by the prosecution.
14. In view of the above discussions, the appellant is acquitted from the conviction and the instant criminal appeal being CRA 471 of 1990 is allowed.
15. Accordingly, the criminal appeal 471 of 1990 is disposed of.
16. There is no order as to costs.
17. Trial 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.)