

28.06.2024

SL. 42
Court No.
551
Sourav/
Suvayan

C.R.A. 432 of 1989

In re: An application for admission of Appeal.

And

In the matter of: **Basudev Majhi**

... appellant.

Ms. Jonaki Saha

... for the appellant.

Ms. Faria Hossain, Ld. APP

Ms. Atulya Sinha

... for the State.

1. In this appeal, the judgment and order dated 27.09.1989 as passed in Special Court Case No. 132 of 1987 by learned Judge Special Court (Essential Commodities Act), Hooghly has been assailed.
2. By the impugned judgment and order, the trial court in the said case found the accused guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the 'said Act') for violation of para 3(1) and para 3(2) of the West Bengal Imported Vegetable Oils (Prohibition of Unauthorised sale) Order, 1984 and thus, sentenced the accused to suffer R.I. for one year and also to pay fine of Rs. 1,000/- i/d to suffer further R.I. for two months.
3. For effective disposal of the instant appeal, the facts leading to filing of the Special Court Case No. 132 of 1987 before the learned trial court is required to be dealt with in a nutshell.
4. One Sub-Inspector of Police, namely, Sri Krishna Chandra Banerjee of DEB, Hooghly lodged a written complaint dated

08.07.1987 with the Officer-in-Charge, Chanditala P.S., Hooghly to the effect that on the said day at about 18.45 hours and 19.30 hours on the basis of a secret information, he along with some other police officials held raid in the backside of the grocery shop of one Basudev Majhi (the accused) as well as in the courtyard of the same premises under the supervision of Deputy Superintendent of Police, DEB, Hooghly and DEO-III, Hooghly.

5. It has been alleged further in the said written complaint that during such raid, eight sealed tin containers of rapeseed oil were found in concealed condition and those tin containers were covered by two gunny bags. The said informant apprehended that the aforementioned accused person had kept the said tin containers of rapeseed oil for sale violating the provisions of the said Act and when the informant demanded papers in support of the said rapeseed oil, the accused person failed to produce any cogent documents in support of his possession of the said rapeseed oil.
6. It has been stated further in the said written complaint, thereafter, in presence of the witnesses, namely, Joyanta Kumar Adak and Alok Sanki, two co-villagers of the accused he seized said tin containers containing the rapeseed oil, trade licence of the accused and other articles and also produced the accused person along with seized articles before the Officer-in-Charge, Chanditala Police Station, Hooghly.

7. On the basis of such written complaint, Chanditala P.S. Case No. 9 of 1987 dated 08.07.1987 was started. Investigation was taken up and on completion of the same, charge-sheet was submitted under Section 7(1)(a)(ii) of the said Act.
8. Trial court record reveals that 21.06.1988 was the date fixed for plea. Trial court record further reveals that on the said day, the substance of accusation was stated to the accused to which he pleads 'not guilty' and thus, the trial before the special court proceeded.
9. In order to prove the case of the prosecution, the prosecution has examined six witnesses in all and some documents have been exhibited. Trial court record reveals further that though on behalf of the defence no witnesses have been examined but some documents were tendered and those have been marked exhibits on the side of the defence.
10. Since the evidence of the prosecution witnesses are available in the trial court record, this Court considers that for effective disposal of the instant appeal there is no need to discuss the entire evidence of the prosecution witnesses all over again except to the extent those are necessary for disposal of the instant appeal.
11. P.W. 1 is a co-villager of the accused of the accused and in course of examination in chief he testified that at the time of raid by the police he found 15/16 tins of rapeseed oil were there though he did not count the number of the said tin

containers and in his further version that those tin containers were seized by the police in his presence and he has put signature in the seizure list. The cross-examination of P.W. 1 in considered view of this Court is very much pertinent inasmuch as P.W. 1 stated that the house wherefrom the tin containers were recovered was also possessed by one Kartick Chandra Majhi, the brother of the accused. On being asked he stated further that wife of Kartick Chandra Majhi showed vouchers for those seized oil tins declaring that those oil tin containers arrived at that place after the departure of Kartick Chandra Majhi.

12. P.W. 2 being another co-owner of the accused echoed the version of P.W. 1 to the effect that he was also a witness to the seizure of the aforesaid rapeseed oil tin container from the courtyard of the accused on the relevant day and hour and in his cross-examination it has been submitted that the house belong to the accused and the said Kartick Chandra Majhi.
13. P.W. 3 was, however, declared hostile by the prosecution. In his cross-examination by the accused he stated that on the relevant day and hour wife of Kartick Chandra Majhi showed papers to the police declaring that the seized oil tin containers were the ration commodities of Kartick.
14. P.W. 4 is a police personnel. He also echoed version of the P.W.s 1 and 2 with regard to the seizure of eight numbers of tin containers of the rapeseed oil from the P.O. He stated in his cross-examination that he had written the oil tins were

recovered from the courtyard of Basudev Majhi (appellant herein) and Kartick Chandra Majhi.

15. P.W. 5 is another police personnel who also stated that on the relevant day and hour eight members of sealed tin containers containing rapeseed oil were recovered from the house of the accused. In his cross-examination he, however, failed to say as to whether on the self-same day any other case was started against the said Kartick Chandra Majhi or not.
16. P.W. 6 is the Investigating Officer of this case. In his examination-in-chief, he stated that he visited the P.O. and examined the available witnesses and on completion of investigation he submitted charge-sheet. In course of his cross-examination he, however, stated that though he prepared a sketch map of the P.O. but he did not find the same case diary. He further stated that he failed to ascertain who was the actual owner of the house wherefrom the said tin containers containing the rapeseed oil were seized. He further submitted that he did not send any sample of the seized material for chemical examination.
17. In course of her argument Ms. Saha, learned Advocate for the appellant at the very outset draws attention of this Court to the seizure list dated 08.07.1987 being Exhibit 1/3. It is submitted that from the said seizure list it would reveal that the alleged seizure was made from the courtyard of the present appellant and one Kartick Chandra Majhi.
18. Drawing attention to the written complaint it is submitted

by Ms. Saha that though seizure have been made from the house of two persons there is no explanation on the part of the prosecution as to why the instant case has been lodged only against the present appellant. It is further submitted that though it is the case of the prosecution that on the self-same day a similar case was initiated against Kartick Chandra Majhi on the basis of the same seizure no explanation is forthcoming as to why the said two cases were not tried analogously.

19. It is submitted further on behalf of the appellant that from the cross-examination of P.W.s 1 and 3 it would reveal that the said two prosecution witnesses categorically stated that wife of the said Kartick Chandra Majhi showed papers with regard to the seized rapeseed oil and there is also no explanation on the side of the prosecution as to why those papers have not been seized and as to why those documents were not tendered in course of the examination of the prosecution witnesses.
20. It is further submitted by Ms. Saha, learned Advocate for the appellant that though it is the case of the prosecution that the alleged seized articles were recovered from the courtyard of the house of the accused, the prosecution has failed to tender any document that the property belongs to the appellant. It is further submitted that before the learned trial court alamats were also not produced to substantiate the correctness of the seizure. It is thus submitted that it is a fit case for allowing the instant appeal

by setting aside the impugned order.

21. In course of her submission Ms. Faria Hossain, learned Additional Public Prosecutor for the State, however, submits that there is no infirmity in the impugned judgment. It is submitted further on behalf of the State that all the prosecution witnesses before the learned trial court had adduced clenching evidence with regard to the recovery of eight numbers of tin containers containing rapeseed oil and before the learned trial court the present appellant being accused has failed to discharge his onus to justify the possession of the said rapeseed oil especially when at that material time there was clear prohibition of unauthorized import, stocking and sale of vegetables oil by virtue of West Bengal Imported Vegetables Oils (Prohibition and Unauthorized) Sale Order, 1984.
22. It is thus submitted by Ms. Hossain, learned Additional Public Prosecutor this is a fit case of dismissal of the instant appeal.
23. This Court has meticulously gone through the entire materials as available in the trial court record. This Court has also perused the certified copy of the impugned judgment as well as the deposition of the prosecution witnesses. This Court has given its anxious consideration over the submissions of the learned Advocates for the contending parties.
24. Though on behalf of the appellant it has been contended that before the learned trial court the prosecution has

miserably failed to prove as to whether the seized articles are at all rapeseed oil or not in absence any chemical examination report and/or on account of non-production of the alamats but from the examination of the accused under Section 313 of the Cr.P.C. it reveals to this Court that the accused in course of such examination never disputed that the tin containers contained rapeseed oil though he denied that it was seized from his shop or house. On the contrary he stated specifically that the place from where the seizure took place does not belong to him.

25. At this stage if I look to the evidence of the prosecution witnesses, I find consistent evidence of the P.W.s. 1, 2 and 3 who are the co-villagers of the accused that the house wherefrom the alleged seizure took place is in occupation of the accused and his brother/cousin brother, Kartick Chandra Majhi.
26. From the materials as placed before this Court, it appears to this Court that it is also the consistent evidence of the prosecution witnesses that the present accused owns a grocery shop, while his brother Kartick Majhi owns a ration shop. From the cross-examination of the P.W.s. 1 and 3, it further reveals to this Court that it is their version that at the time of seizure, wife of Kartick Majhi showed vouchers/documents with regard to the said tin containers. Admittedly, no explanation is forthcoming from the side of the prosecution as to what prevented the prosecution to seize those vouchers/documents.

27. Another pertinent feature which this Court noticed that from the seizure list dated 08.07.1987, it would reveal that the alleged eight numbers of tin containers were seized from the courtyard of the accused, Basudev Majhi and Kartick Chandra Majhi. However, in the case in hand, the FIR was lodged against Basudev Majhi although a case has been made out on behalf of the prosecution which is reflected in the order-sheets of the trial court that a separate case has also been started against the said Kartick Majhi.
28. Such being the position, this Court finds no justification as to what prevented the prosecution to proceed with the trial of both the criminal cases analogously especially when it is the case of the prosecution that the alleged seizure was made from the house of the present appellant and his brother Kartick Majhi.
29. As rightly pointed out by Ms. Saha, learned advocate for the appellant that though the instant case is based on seizure, the prosecution has failed to produce any scrap of paper either with regard to the ownership or with regard to the possession of the place of occurrence or place of seizure.
30. In view of the discussion made hereinabove, this Court thus considers that there is sufficient force in the submission of Ms. Saha, learned advocate for the appellant inasmuch as the prosecution before the learned trial court though proved the alleged seizure but has miserably failed to prove from whose property the alleged seizure was done.
31. As discussed supra, no explanation has also been advanced

from the side of the prosecution that when the alleged seizure was made from the house of the present appellant and Kartick Chandra Majhi, why no FIR has been lodged against the said Kartick Majhi. This Court also gets no clear picture with regard to the alleged 'P.O' in absence of any sketch map though in the cross-examination, the I.O. (P.W. 6) had stated it categorically that he had drawn such sketch map.

32. In view of the discussion made hereinabove, this Court thus finds a series of doubt with regard to the actual place of seizure of the said rapeseed oil and the prosecution has also miserably failed to prove either the ownership or the occupation from where the alleged seizure was done and thus, the accused person is entitled to get the benefit of doubt.
33. In view of the discussion made hereinabove, the instant appeal succeeds and is hereby allowed.
34. Consequently, the impugned judgment and order dated 27.09.1989 as passed by the learned Judge, Special Court (Essential Commodities Act), Hooghly in Special Court Case No. 132 of 1987 is hereby set aside.
35. The present appellant, namely, Basudev Majhi is thus found not guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, for violation of para 3(1) and para 3(2) of the West Bengal Imported Vegetable Oils (Prohibition of Unauthorised sale) Order, 1984 in connection with Special Court Case No. 132 of 1987. The present appellant is

discharged from his bail bond and be set at liberty at once if not wanted in connection with any other case.

36. Accordingly, the instant appeal being **CRA 432 of 1989** is disposed of.
37. Department is directed to forward a copy of this order along with the LCR to the learned trial court forthwith.

(Partha Sarathi Sen, J.)

