

02.08.2024

SL. 35
Court No. 551
Sourav

C.R.A. 472 of 1989

In re: An application under Section 374 of the Code of Criminal Procedure, 1973.

And

In the matter of: **Barun Chandra Mondal**

... appellant.

Ms. Ajeya Mitra
Ms. Srijani Das

... for the appellant.

Mr. Pratick Bose

... for the State.

1. In this appeal, the judgment of conviction and order of sentence both dated 29.11.1989 as passed in DEBGR Case No. 27 of 1988 by the learned Judge, Special Court (E.C) Act, Purulia, has been assailed.
2. By the impugned judgment, the learned trial Court found the accused guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the 'said Act') and thus convicted him for the said offence and also sentenced him to undergo rigorous imprisonment for three months and to pay fine of Rs. 200/- in default to undergo further rigorous imprisonment for one month more.
3. The appellant felt aggrieved and thus preferred the instant appeal.
4. For effective adjudication of the instant appeal, the facts leading to initiation of the DEBGR Case No. 27 of 1988 is required to be dealt with in a nutshell.
5. One Manish Chandra Neogi, DEO, Raghunathpur lodged a written complaint dated 26.11.1988 with the Officer-in-

Charge of Santari P.S. stating, *inter alia*, that while producing the accused Barun Chandra Mondal and on receipt of a secret information regarding clandestine business of kerosene oil on 26.11.1988 in between 10.30 hours and 11.30 hours, he along with some other police personnel went to the village Beria and inspected the kerosene oil shop cum grocery shop of accused Barun Chandra Mondal and prior to inspection, he served requisite notice to the accused.

6. It was the further averment of the informant that on inspection of the allotment registrar, he noticed that the accused Barun Chandra Mondal received 220 litres of kerosene oil on 17.11.1988 and on comparison of the opening balance and the cash memo, it appears to him that balance stock of the kerosene oil should be 24 litres of kerosene oil but on physical verification, he found 45 litres of kerosene oil in the stock of the accused and on account of such excess stock of 21 litres, it has been stated in the said written complaint that the accused Barun Chandra Mondal had violated the provision of Para 12 of the West Bengal Control Order, 1968 and conditions of the licence of the authority for not maintaining the true and correct accounts and Para 3(2) of the West Bengal Declaration of Stock and Price of Essential Commodities Order.
7. In the said written complaint, it was stated further that he further noticed that the rate board of the kerosene oil was not displayed in the shop of the dealer. He stated further that after preparation of the weighment chart of the kerosene oil

and by executing a seizure list, he seized various materials as has been mentioned in the said written complaint. It has been stated further in the said written complaint that out of the said seized materials, the excess 45 litres of kerosene oil, the half litre measurement tin pot and one empty tin were kept in the zimma of one Radheshyam Mondal. He, thereafter, arrested the accused.

8. On the basis of the said written complaint, Santari P.S Case No. 9 of 1988 dated 26.11.1988 under Section 7(1)(a)(ii) of the said Act read with Section 9 of the said Act was started. Investigation was taken up and on conclusion of the same, charge-sheet was submitted under Section 7(1)(a)(ii) of the said Act against the accused.
9. Trial Court record reveals that July 17, 1989 was the date fixed for examination of the accused under Section 251 Cr.P.C. On the said day, the learned trial Court examined the accused under Section 251 Cr.P.C., and in course of plea, the accused pleaded his innocence and claimed to be tried and thus, before the learned trial Court, trial proceeded.
10. In order to bring home the accusations, the prosecution has examined seven witnesses in all and some documents and materials have been exhibited on their behalf. On behalf of the defence, no witness has been examined. However, from the trend of cross-examination and the answers as given by the accused in his examination under Section 313 Cr.P.C., it appears that the defence case is based on clear denial and false implication.

11. In course of her submission Ms. Das, learned advocate duly led by Ms. Mitra, at the very outset draws attention of this Court to the evidence of the P.W.s. 1, 2 and 6. It is submitted by Ms. Das that from the evidence of P.W. 1 who is an independent witness to the alleged seizure, in course of his cross-examination, categorically stated that he was all along present during seizure and at that time, he found one stock-cum-rate board at the grocery shop of the present appellant especially, when he put his signature on the weighment chart in the seizure list. It is further submitted on behalf of the appellant that P.W. 1 went on saying further that stock-cum-read board was a slate whereupon the stock and price of the kerosene oil of the said shop of the accused was found to be written on the relevant day.
12. While drawing attention to the evidence of P.W. 2, Ms. Das, learned advocate for the appellant argued that from the evidence of P.W. 2, it would reveal that he is also an independent witness to the alleged seizure. However, in his cross-examination, it would reveal that the kerosene oil which was put in his zimma, was not measured in his presence by the I.O. While drawing attention to the cross-examination of P.W. 6, it is submitted on behalf of the appellant that in his cross-examination, P.W. 6 though initially stated that on the relevant day and hour, the I.O. had measured the kerosene oil in question but subsequently, he categorically stated that the said I.O. did not measure the said kerosene oil by himself.
13. It is thus submitted that a serious doubt arises with regard to

the alleged violation of the rules and the alleged seizure of the excess stock of kerosene oil. It is thus submitted by Ms. Das that a serious discrepancy arises from the evidence of the prosecution witnesses with regard to the genuineness of the prosecution story for which the appellant is entitled to benefit of doubt. It is thus submitted that it is a fit case for allowing the instant appeal by setting aside the judgment impugned.

14. Per contra, Mr. Bose, learned advocate for the State also draws attention of this Court to the evidence of the prosecution witnesses. It is submitted by Mr. Bose that from the evidence of the prosecution witnesses, more specifically, P.W.s. 3, 4 as well as the seizure witnesses namely, P.W.s. 1, 2 and 6, it would reveal that their evidence are consistent and those get due corroboration from the exhibited materials.
15. This Court has gone through the entire materials as placed before this Court including the evidence led by the prosecution witnesses. This Court has also perused the impugned judgment as passed by the learned trial Court. This Court has also given his anxious consideration over the submissions of the learned advocates of the contending parties.
16. Since in the impugned judgment as well as in the trial court record, the deposition of all the prosecution witnesses have been dealt with in detail, this Court considers that discussion over the testimonies of all the prosecution witnesses is not necessary except to the extent the same is required for the purpose of the disposal of the instant appeal.

17. On perusal of the evidence of the P.W. 3 who is the informant in connection with the case in hand, it reveals his examination in chief is practically the replica of the written complaint as lodged by him. This Court finds no much discrepancy in the cross-examination of P.W. 3 since he remained very much consistent at the time of his cross-examination.
18. Admittedly, from exhibit 1/2 i.e., the weighment chart and exhibit 2/2 i.e., the seizure list, it appears that those two documents bear signatures of the P.W.s. 1, 2, 3 and 6 since according to the prosecution, the said witnesses are the witnesses to the alleged seizure and zimma.
19. Out of the aforesaid four witnesses, P.W.s. 1 and 2 are the independent witnesses while the rest two are the police personnel. As rightly pointed out by Ms. Das, learned advocate for the appellant that though P.W. 1 in his examination in chief duly supported the alleged seizure and measurement as well as preparation of the weighment chart but in his cross-examination, the said P.W. 1 testified that on the relevant day and hour in the shop room of the accused, he found a stock-cum-rate board which was a slate over which the stock and price were written. P.W. 2 though supported the case of the prosecution with regard to the alleged seizure and weighment chart and zimma, but he also testified in his cross-examination that in his presence the informant did not measure the kerosene oil. P.W. 6 who is a police personnel, in his cross-examination is found to be not so much trustworthy

in view of the fact in his cross-examination once he said that the informant measured the kerosene oil in question and then said the informant did not do so.

20. In considered view of this Court, the answers of the aforesaid prosecution witnesses in their cross-examination really raises a question with regard to the genuineness of the case of the prosecution. On perusal of the impugned judgment, it appears to this Court that before the learned trial Court, the discrepancy of evidence of P.W.s. 1 and 2 were brought to the notice even then the learned trial Court overlooked such discrepancies as found in the cross-examination of P.W.s. 1 and 2 holding that the prosecution case is true.

21. In considered view of this Court, the learned trial Court while passing the impugned judgment has not taken correct approach in view of the fact that in the event a witness is contradicted in course of his cross-examination, the benefits should have been given not to the prosecution but to the accused. This Court has also noticed that the learned trial Court while passing the impugned judgment, believed the prosecution case on the basis of the oral evidence but he made no venture to assess those oral evidence with the documentary evidence i.e., the materials exhibits especially when those material exhibits are before him. Learned trial Court had every opportunity to go through the contents of the MAT Exhibit 1 (Stock Register), MAT Exhibit 2 (Self-Register) and MAT Exhibit 3 and ought to have come to a finding with regard to the genuineness of the prosecution case prior to

observing that the entries in the said Mat Exhibits are not disputed.

22. In view of the discussion made hereinabove, this Court is of considered view that the instant appeal deserves to be allowed.

23. Accordingly, the instant criminal appeal being **CRA 472 of 1989** is hereby allowed.

24. Consequently, the impugned judgment and order of conviction dated 29.11.1989 as passed in DEBGR Case No. 27 of 1988 by the learned Judge, Special Court (E.C. Act), Purulia is hereby set aside.

25. Consequently, the present appellant, Barun Chandra Mondal is found 'not guilty' under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 in connection with DEBGR Case No. 27 of 1988. He is thus acquitted from the said case.

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

27. With the aforementioned observations, the instant appeal being **CRA 472 of 1989** is disposed of.

28. Department is directed to send down the LCR along with a copy of today's order forthwith.

(Partha Sarathi Sen, J.)

