

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 521 of 1988

Swapn Kumar Dutta & Anr.

-Vs-

The State of West Bengal

For the Appellant No.1 : Mr. Sujoy Sarkar

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 20.02.2024, 12.03.2024, 19.06.2024

Judgment on : 14.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 28.11.1988 passed by the Learned Judge, Special Court, (E.C. Act), Midnapore, in D.E.B.G.R. Case No.5 of 1988 convicting the appellants under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for alleged violation of the provisions of paragraph 3 of the West Bengal Rice & Paddy (Licensing & Control) Order, 1967, and sentencing each of them thereunder to suffer simple imprisonment for 1 year and to pay a fine of Rs.2000/- and in default to suffer further simple imprisonment for 1 month each.

2. The prosecution case precisely stated that on 02.02.1988 the informant along with his team intercepted one mini truck loaded with huge quantity of paddy. One Swapan Kumar Dutta a boarder of the truck claimed himself to be the owner of the said paddy. Thereafter informant issued the notice upon the Swapan Kumar Dutta to produce the relevant documents regarding the ownership of the said paddy but he failed to produce the same. Swapan Kumar Dutta and the truck driver namely Dilip Kumar Modal were arrested, and the said truck was seized.

3. Learned Advocate for the appellant submitted that –

i. The defence case was that the paddy seized from the truck actually belonged to M/s. Daruka Rice Mill and not to any one of the appellants and the said truck was engaged by the Manager of the Rice Mill to carry paddy purchased from the local producer to the mill and in spite of the said fact being revealed to the police and relevant document being produced by the appellant no.2 at the time when the truck was intercepted on the road the police refused to consider it.

ii. Under the provisions of the West Bengal Rice and Paddy (Licensing & Control) Order, 1967 a dealer was defined to mean a person engaged in any business or undertaking involving sale, purchase for sale, storage for sale or transfer of rice or paddy, or purchase and storage of paddy for production and sale of rice. Explanation 2(d)(1) of the said order meant a person who being engaged on hire by a rice miller, possessing proper and valid license, merely

transshipped any such schedule commodity from one place to another.

4. The Learned Advocate for the State submitted that on failure to produce necessary documents the appellants have proved their guilt in committing the offence and, therefore, the Learned Trial Court has rightly convicted the appellants and this Court shall not interfere with the same.
5. The circumspection of evidence of the prosecution witnesses states as follows:-

- i. PW-1 Santosh Kumar Chakraborty deposed to have lodged the complaint. He was a member of the raiding party. He testified to have issued the notice to the appellant namely Swapan Kumar Dutta to produce relevant papers or authority letter for carrying the paddy who failed to produce the documents. PW-1 thereafter arrested the appellants and seized the mini truck.
- ii. PW-2 Bhuneswar Tewari reiterated the evidence of PW-1.
- iii. PW-3 Parameswar Jana deposed the truck was seized at the place of occurrence i.e., Bulinpur Road and stayed there for 45 minutes.
- iv. PW-5 Nandalal Ghosh was the witness to the seizure list.
- v. PW-6 Radhaballav Mahata was the witness to the seizure list. PW-1 to PW-3 claimed in their deposition that the appellant had admitted that he was the owner of the said alleged paddy but the

PW-6 stated in his cross examination that the appellant did not claim ownership over the alleged paddy.

vi. PW-7 Tapan Kumar Pratihari was the witness to the seizure list as well as Zimmanama.

vii. PW-8 Akhil Chandra Bir was the Investigating Officer. He admitted in his deposition that the notice was served to the appellant for production of the relevant documents regarding carrying of paddy at the police station.

6. The provisions of paragraph 3(3)(1)(a) of the West Bengal Rice and Paddy (Licensing & Control) Order, 1967 was attracted only when a person acts as a dealer engaging himself in carrying of business in commodities mentioned in the schedule exceeding permissible limit and not when a transporter merely carries any such commodities from one place to another being engaged by a Rice Miller on hire, and when there was no restriction to such movements.
7. The definition in clause 2(d) of the West Bengal Rice and Paddy (Licensing & Paddy) Order, 1967, read with the explanation (1) thereunder shows that before a person was deemed to be dealer under the said explanation it must be shown that the carriage of the schedule commodity by him was for the purpose of carrying on the business and concept of business in that context necessarily postulates continuity of transaction and it was not a single or solitary transaction that would make a person a dealer.
8. In any event mere transshipment of paddy in a truck by a person on one solitary occasion being engaged on hire was not an offence under the

provision of West Bengal Rice and Paddy (Licensing & Control) Order, 1967 and such transaction one occasion could not have been said to have constituted breach of paragraph 3 of the said order of 1967.

9. The appellants claimed the seized material i.e. paddy belonged to M/s. Daruka Rice Mill and filed one duplicate seller receipt vide no.19392 dated 02.02.1988 and Journey receipt ticket vide no.1273 were produced before the Learned Trial Judge, which was not considered.
10. No evidence was led by the prosecution to justify the conclusion that the seized paddy was carried in the truck by the appellants for the purpose of carrying any business and that the appellants were the dealers to be implicated.
11. Under the facts and circumstances, the prosecution has failed to prove its case beyond reasonable doubt and as such the criminal appeal is allowed.
12. Accordingly, the instant criminal appeal being CRA 521 of 1988 stands disposed of.
13. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. 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.)