

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

Present:

The Hon'ble Justice Tirthankar Ghosh

**CRA (SB) 187 of 2023
with
CRAN 1 of 2024**

***Raisuddin Mia*
versus
The State of West Bengal**

For the Appellant : Mr. Sujoy Sarkar
Mr. Rahul Chachan
Ms. Sneha Srivastava
Mr. Musharf Alam

For the State : Mr. Rana Mukherjee
Mr. Arif Ekbal Molla

Heard On : 24.07.2024

Judgment On : **26.07.2024**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 17th August, 2023 and 18th August, 2023 passed by the learned Additional Sessions Judge, 4th Court, Berhampore, Murshidabad in connection with Sessions Trial No. 01(July)/2012 arising out of Sessions Case No. 421/2009 wherein the learned trial court was pleased to convict the appellant under Section 489C IPC and sentenced him to suffer

rigorous imprisonment for six years and also to pay fine of Rs.10,000/- i.d., further rigorous imprisonment of three months.

The genesis of the present case relates to Berhampore P. S. Case No. 310/2007 dated 12-07-2007 under Sections 489A/489B/489C of IPC.

The brief facts of the case related to three accused persons namely Majibar @ Mujibor Rahaman, Tofajul Sk. and the present appellant, Raisuddin Mia.

It has been alleged in the letter of complaint which was submitted by the Inspector of Police, DDI, Murshidabad, DD (CID West Bengal) on 12-07-2007 to the Inspector-in-Charge, Berhampore PS to the effect that there were seizure from the aforesaid three accused persons wherein from the chest pocket of the shirt of accused Majibar @ Mujibor Rahaman 49 pieces FICN of denomination of Rs.1000/- were seized, 101 pieces of FICN of denomination of Rs.500/- each were recovered from chest pocket of the shirt of accused Tofajul Sk. and 80 pieces of FICN of denomination of Rs.500/- each were seized from the chest pocket of the shirt of the present appellant, Raisuddin Mia.

Learned advocate appearing on behalf of the appellant drew the attention of the court in respect of the judgment delivered in CRA (SB) 169 of 2023 which was preferred by two of the aforesaid accused persons namely, Majibur @ Mujibor Rahaman and Tofajul Sk.

The co-ordinate Bench while deciding the said appeal has mainly emphasized on the factum of seizure not being proved along with the vital evidences not being examined, particularly the complainant and investigating officer of the case not being produced in support of the prosecution case in course of the trial.

The basis of acquitting the two accused persons viz. Majibur @ Mujibor Rahaman and Tofajul Sk. has been evaluated by the appellate court and the coordinate Bench of this Hon'ble Court in the following paragraphs of the judgement dated 22.05.2024 passed in CRA (SB) 169 of 2023, held:

“24. According to prosecution case, Inspector Ganguly received one source information and to work out that information the raid party (PW1 & PW3) under leadership of Inspector Ganguly reached the P.O., ambushed there and ultimately apprehended the accused including the appellants and seized FICN from the possession of those accused. PW1 testified that Inspector Ganguly lodged G.D. after returning to office. It is pertinent to mention here that no copy of G.D. has been admitted in evidence in order to prove the action of raid party on receipt of source information.

25. Entire seizure was made, as it appears from the evidence, by one inspector Bibhash Kumar Ganguly who has not been examined in this case. From the evidence it appears that at the relevant point of time 30 to 40 persons assembled over there and P.O. is surrounded by a lot of shops but none of those persons or any of the shop keepers was made a witness to the seizure. Two seizure witnesses (PW2 & PW5) could not satisfy the reason of their presence at the scene of occurrence on the alleged date. PW2, Hawker, was asked to be seizure witness who is not a localite rather his house is adjacent to the CID office, Murshidabad. On the other hand,

another public witness (PW5) could not satisfy the purpose of his appearance at the scene of occurrence at the relevant date. In addition to that neither of the seizure witnesses/public witnesses could identify the accused/appellants.

26. *Thereby, prosecution could not explain as to why Inspector Ganguly, leader of the raid party chose PW2 & PW5 as seizure witnesses instead of any local credible witness.*

27. *None of the witnesses could explain that where those three seized envelopes were kept prior to sending of it to the CFSL for expert opinion. Such explanation could have been given either by Inspector Ganguly or Investigating Officer of this case. Unfortunately, neither of them were examined causing considerable prejudice to the accused/appellants.”*

The co-ordinate Bench of this Court also relied upon a judgement of the Hon’ble Apex Court in ***Habeeb Mohd. Vs. State of Hyderabad*** reported in **(1953) 2 SCC 231** and proceeded to make the following observations in Paragraph 30 of the judgement dated 22.05.2024 passed in CRA (SB) 169 of 2023 :

“30. *In **Habeeb Mohd** (supra) the Hon’ble Apex Court pointed out that it is the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based. In my opinion, appellants were considerably prejudiced by the omission on the part of the prosecution to examine the complainant (Inspector Bibhash Ganguly) and Sub Inspector Sk. Jamal Hossain who investigated this case in the circumstances of this case. Conviction of appellants, in my humble opinion, based on the testimony of the CID personnel (members of raid party), in the absence of Inspector Ganguly*

who was admittedly present on the scene and acted as recovery officer, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

On an assessment of whole of the evidence, the co-ordinate Bench was pleased to acquit the two accused persons viz. Majibur @ Mujibor Rahaman and Tofajul Sk. The present appellant viz. Raisuddin Mia was apprehended under similar and identical circumstances as is reflected in the complaint as also in the charge-sheet so submitted before the jurisdictional court. The supporting witnesses who were relied upon by the prosecution have placed the same evidence. Having considered the situational parity of the present appellant along with the two appellants viz. Majibur @ Mujibor Rahaman and Tofajul Sk. who have been acquitted of the charge under Section 489C of the Indian Penal Code, I have no issues to differ with the findings of the co-ordinate Bench. Accordingly, the judgement and order of conviction and sentence dated 17.08.2023 and 18.08.2023 passed by learned Additional Sessions Judge, 4th Court, Berhampore, Murshidabad is hereby set aside. The appellant viz. Raisuddin Mia is acquitted of the charges.

If the appellant is in jail, he may be released forthwith, if he is not wanted in connection with any other case.

With the aforesaid observations, the appeal being CRA (SB) 187 of 2023 is allowed.

Pending connected application is consequently disposed of.

Department is directed to communicate this order to the learned trial court as well as the concerned jail authorities immediately.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

[Tirthankar Ghosh, J.]