

CRA 15 of 1999

With

IA No.:CRAN 1 of 2004 (Old No. CRAN 618 of 2004)

In the matter of : **Mongal Kumar Mondal @ Mangal Chandra Mondal**

....Appellant

Mr. Prabir Majumder,
Mr. Snehansu Majumder
Mr. Debraj Shil,
Mr. Saugata Chakraborty,
Ms. Sangeeta Chakraborty,
Ms. Anindita Kundu

.....for the Appellant

Mr. Debasish Roy, Ld.PP
Mr. Faria Hossain, Ld. APP
Mr. Asif Dewan

.....for the State

(Dictated in Court)

1. The impugned judgment and order of conviction dated 24.02.1998 passed by the Learned Judge Special Court, E.C. Act, Murshidabad in connection with E.C. Case No. 26 of 1992 corresponding to T.R. No. 118 of 1992 is assailed in this appeal.
2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 7(1)(a)(ii) of the Act X, 1955 and was sentenced to suffer simple imprisonment for three months along with the fine of Rs. 500/-and in default of payment of fine to undergo further simple imprisonment for one month.

3. Being aggrieved and dissatisfied with the said impugned judgment, the present appeal is preferred at the behest of the appellant.
4. The material particulars of the prosecution version are set out hereunder:-

“A complaint was lodged on 12.02.1992 by the de facto complainant stating, inter alia, that he along with others intercepted the lorry being no. WMQ 4236 loaded with sand and 16 bags of rice weighing 8 quintals at Islampur bazaar. On demand the driver of the vehicle (appellant) could not produce any licence/permit for carrying and possessing the said rice. Thereafter the complainant seized the rice under a seizure list in presence of witnesses. On asking, the accused stated that the rice was loaded at Kulibazar by some unknown person of Islampur. But the accused failed to produce any licence or cash memo or challan of the said rice. The complainant seized the lorry under a seizure list. The accused was arrested. A complaint was lodged before O.C. to Islampur being Islampur P.S. case no. 12/1992 dated 12.02.1992 under Section 7(1)(a)(ii) of Act X, 1955. After completion of the investigation charge-sheet was submitted against the accused persons under Section 7(1)(a)(ii) of Act X, 1955 for violation of para 4 and 8 (a) of the West Bengal Rice and Paddy Licensing Control Order, 1967.”

5. In this case two witnesses were examined by the side of the prosecution and documents were marked as exhibits. Neither any oral nor any documentary evidence was adduced by the side of the accused.
6. Mr. Pabir Majumder, learned Advocate for the appellant has said that there are apparent contradictions and omissions in the statements of the witnesses adduced on behalf of the prosecution which creates doubt about the truthfulness of the story of the prosecution. The learned Advocate has vehemently contended that in the present case, the complainant himself acted as the investigating officer, which has caused serious prejudice to the appellant and has resulted in a clear breach of the principles of fair procedure. It is said that the fairness of an investigation is the very foundation of a fair trial, and when the complainant assumes the dual role of investigator, it gives rise to a reasonable apprehension of bias and partiality, thereby striking at the root of the credibility of the prosecution case.
7. It has further been submitted that the alleged recovery in this case was effected solely by the informant, without the presence of any independent or local witnesses to corroborate such seizure. The seizure list does not contain the signatures of any person from the locality, nor is there any evidence that attempts were made to secure independent witnesses from the nearby area. In absence of

such independent corroboration, the alleged recovery cannot be said to have been proved beyond reasonable doubt.

8. It is assailed by the learned Advocate that the only witness to the seizure is police personnel, who is admittedly a member of the same raiding team and subordinate to the investigating officer. Their testimony, though not to be discarded merely for being official witnesses, must be approached with due caution, particularly when no independent evidence is forthcoming. The presence of only police witnesses, without any neutral or disinterested corroboration, gives rise to a legitimate doubt about the fairness and transparency of the entire investigation process. The learned counsel submits that such a situation inherently undermines the impartiality of the investigation, since the complainant being directly interested in securing conviction cannot be expected to act with the detachment and neutrality required of an investigating officer. The lack of supervisory oversight or participation by any higher-rank officer further aggravates the situation, leaving the entire case dependent upon the uncorroborated testimony of the informant himself.
9. In these circumstances, the learned Advocate contends that the investigation suffers from a serious procedural infirmity, which has caused manifest prejudice to the appellant. The absence of independent witnesses, coupled with the

complainant's dual role as investigator, casts grave doubt on the genuineness of the alleged recovery and renders the prosecution version unreliable. Accordingly, the benefit of such doubt must necessarily enure to the appellant.

10. Lastly, it has been submitted by the learned Advocate appearing on behalf of the appellant that the present case has been pending for an inordinately long period of time. The proceedings in this matter were initiated as far back as in the year 1992, and since then, more than three decades have elapsed without the case reaching its logical conclusion. This prolonged pendency, according to the learned Advocate, cannot in any manner be attributed to any fault or negligence on the part of the appellant. The appellant has duly cooperated with the judicial process at every stage and has faced the ordeal of a long-drawn criminal proceeding for several years, which itself has caused immense mental, social, and financial hardship.

11. It has been further contended that such an extraordinary delay in the final disposal of the case has subjected the appellant to undue suffering, which, in the spirit of justice and equity, ought to be taken into consideration by this Court while determining the quantum of sentence, if any. The learned Advocate has emphasized that the appellant has already undergone the strain of litigation for more than thirty years, during which period he has maintained good

conduct and has not been involved in any other criminal offence. Therefore, in the event this Court ultimately finds the appellant guilty of the alleged offence, it is humbly prayed that the appellant may be extended the benefit of the Probation of Offenders Act, 1958.

12. Mr. Asif Dewan, the learned Advocate appearing on behalf of the State has vehemently opposed the contention of the appellant and submitted that there is no illegality, infirmity, or material irregularity in the impugned judgment and order of conviction passed by the learned Trial Court. It has been urged that the impugned judgment is well-reasoned, based on proper appreciation of evidence, and does not suffer from any procedural or substantive defect warranting interference by this Court in appeal.
13. The learned Advocate for the State has pointed out that, on the relevant date and time, the concerned lorry being driven by the appellant was lawfully intercepted by P.W.2. Upon inspection, 16 bags of rice weighing about 8 quintals were found loaded in the said vehicle, which was parked upon the sand. The appellant was immediately questioned about the possession and transportation of the said rice, but he failed to produce any valid document, licence, permit, or challan authorizing him to carry such quantity of rice. This conduct of the appellant clearly indicated that the rice was being transported without lawful authority, constituting a

violation of the relevant control orders and statutory provisions.

14. It has further been submitted that both P.W.1 and P.W.2, who are official witnesses, have fully supported the prosecution case in all material particulars. Their testimonies are consistent, trustworthy, and corroborated by the documentary evidence on record. There are no material contradictions or discrepancies that would render their evidence unreliable. The seizure list prepared at the spot and duly proved during trial further substantiates the prosecution version beyond reasonable doubt.
15. The learned Advocate for the State has therefore contended that the prosecution has been able to successfully establish the guilt of the appellant through clear and cogent evidence, and there exists no ground to disbelieve the version put forth by the prosecution. The defence, on the other hand, has failed to adduce any credible evidence to rebut the prosecution case or to explain the lawful possession of the seized rice.
16. In view of the above circumstances, it is argued that the findings recorded by the learned Trial Court are fully justified and supported by the evidence on record. The judgment and order of conviction are neither perverse nor contrary to law. Consequently, it has been submitted that

the impugned judgment passed by the learned Trial Court deserves to be affirmed in its entirety, and the present appeal filed by the appellant challenging the same is devoid of merit and liable to be dismissed.

17. Having heard the learned counsels for the respective parties and considered their rival submissions, I proceed to decide the matter.
18. An investigation, by its very essence, requires objectivity, neutrality, and an open mind in order to arrive at the truth. The role of the investigating officer is to collect evidence both in favour of and against the accused, without any personal bias or preconceived notion. However, when the complainant assumes the role of the investigator, this fundamental principle of fair and impartial investigation stands violated. The complainant's personal interest in the outcome of the case is likely to influence the collection and presentation of evidence, resulting in a tainted and biased investigation.
19. It is trite law that investigation should not only be fair but must also appear to be fair, free from any suspicion or partiality. If the complainant himself conducts or controls the investigation, it gives rise to a reasonable apprehension that the investigation has been carried out with a predetermined objective to secure conviction rather than to

discover the truth. This undermines the very foundation of criminal justice, which demands that justice should not only be done but also manifestly seen to be done.

20. In earlier decision rendered by the Apex Court in case of **Mohan Lal v. State of Punjab**¹ it was held that the informant/complainant and the investigator should not be the same — and in cases with strong indicators of prejudice that led to automatic vitiation, the accused could be acquitted. But a later Constitution-Bench ruling in **Mukesh Singh v. State (Narcotic Branch of Delhi)**² clarified that the mere fact that the informant/complainant and the investigating officer are the same does not automatically vitiate the investigation or trial, the question must be decided on the facts of each case and whether prejudice or unfairness is proved. The later Three Judges' Bench considered the fallout from Mohan Lal and indicated that the rule in Mohan Lal should be applied prospectively, i.e., care was required about its application to pending prosecutions, courts would need to examine facts of each case.

21. In the present case, it is pertinent to note that there is no independent corroboration of the alleged seizure, nor is there any evidence to show the presence of any local and

¹ (2018) 17 SCC 627

² (2020) 10 SCC 120

impartial witnesses at the time of such seizure. The entire prosecution story rests solely upon the version of the informant himself, who not only initiated the case but also took an active part in the investigation. In absence of any witness from the locality to substantiate the alleged recovery, the authenticity of the seizure becomes doubtful and lacks the assurance of impartiality which the law demands in a criminal investigation.

22. P.W.2, in his deposition before the Court, stated that he had seized the rice in question under a formal seizure list prepared at the spot and in the presence of witnesses. He further deposed that one Ajad Ali had signed the said seizure list as a witness to the seizure, and that the appellant himself had also put his signature on the same document in his presence. This part of the testimony is relied upon by the prosecution to establish the authenticity of the seizure and to demonstrate that the recovery of the seized rice was made lawfully and in compliance with procedural requirements.

23. However, a closer examination of the record reveals a significant omission which casts doubt upon the credibility of the prosecution's case. Although P.W.2 categorically claimed that Ajad Ali was present at the time of seizure and had signed the seizure list as a witness, the said Ajad Ali was never examined during the trial. His testimony, which

could have provided independent corroboration to the version of P.W.2, was conspicuously withheld by the prosecution without any explanation for such omission. The non-examination of an independent witness who allegedly witnessed the seizure creates a serious gap in the chain of evidence. In criminal jurisprudence, especially in cases involving seizure or recovery of property, the presence and testimony of neutral, independent witnesses from the locality play a crucial role in lending credibility to the prosecution case. The failure to examine such a material witness like Ajad Ali raises a legitimate doubt as to whether the seizure was actually conducted in the manner alleged by the prosecution.

24. Moreover, the entire case of the prosecution on this aspect rests solely on the testimony of the informant and official witnesses, without any corroboration from local, independent persons. This absence of corroboration diminishes the evidentiary value of the seizure list and makes the version of the prosecution appear one-sided and unsubstantiated. The law is well settled that where independent witnesses are available and yet not examined, the Court must approach the prosecution case with caution and scrutiny.

25. Therefore, the failure to examine Ajad Ali, who was purportedly an eyewitness to the seizure, creates a serious

infirmity in the prosecution's version. This lapse not only weakens the credibility of P.W.2's testimony but also casts a shadow of doubt on the genuineness of the seizure itself. In the absence of any independent corroborative evidence from the locality, the claim of lawful and proper seizure of the rice by P.W.2 cannot be accepted with complete confidence, thereby creating reasonable suspicion regarding the veracity of the prosecution story.

26. Furthermore, there is a complete absence of supervisory participation or monitoring by any higher-ranked officer during the course of investigation. The record does not reveal any form of oversight, direction, or verification by a superior authority to ensure that the investigation was conducted in a fair and unbiased manner. This omission assumes significance because when the same officer acts as both the complainant and the investigating officer, the possibility of bias or pre-determined conclusions cannot be ruled out. The very purpose of a fair and impartial investigation is frustrated when no independent or superior authority supervises the process.

27. In the present case, it is significant to note that both the witnesses examined by the prosecution are police personnel. The complainant himself, who recorded the formal First Information Report (FIR), was a member of the police force, and the other witness was a Home Guard attached to the

same local police station at the relevant time. Both these witnesses, by virtue of their position and official involvement, are interested witnesses, as they belong to the same department responsible for investigating and prosecuting the case. When the evidence of prosecution witnesses consists solely of police officials, their testimonies must be approached with great caution. The statements of such witnesses cannot be treated as wholly reliable unless they are corroborated by independent witnesses who are not connected with the police or the prosecution. The rationale behind this caution lies in the fact that police witnesses, being part of the investigating machinery, may have a tendency to support the prosecution version or shield procedural lapses in the investigation.

28. In the present case, no independent witness from the locality was examined to support the prosecution's version of events. Despite the alleged occurrence having taken place in a public area or within a locality where independent witnesses could have easily been available, the prosecution failed to produce any such witness to corroborate the seizure, recovery, or other material facts of the case. The non-examination of independent witnesses, therefore, creates a serious doubt about the fairness of the investigation and the authenticity of the prosecution story.

29. Hence, in the absence of any corroboration from neutral or independent witnesses, the testimonies of these two police witnesses cannot be considered sufficient to prove the prosecution case beyond reasonable doubt. The benefit of such doubt must necessarily go to the accused, as the cardinal principle of criminal law demands that the prosecution must stand on its own legs and prove its case with clear, cogent, and trustworthy evidence.
30. The informant's testimony thus stands as the sole foundation of the prosecution case. Without corroboration from independent witnesses, documentary evidence, or supervisory confirmation, the evidentiary value of such testimony becomes highly suspect. When the informant is also the investigating officer and there is no external verification of the crucial steps such as recovery and seizure, the investigation cannot be said to be beyond reproach.
31. In such circumstances, the Court is justified in drawing an inference that the investigation may not have been conducted with the degree of fairness and objectivity required under law. The situation inevitably creates a reasonable apprehension of bias, and therefore, prejudice can be said to have been caused to the appellant. When the entire case hinges upon the uncorroborated version of an interested witness, without the safeguard of independent

corroboration or supervisory review, the credibility of the prosecution's case stands materially weakened.

32. Accordingly, the absence of independent witnesses and supervisory participation not only affects the reliability of the alleged seizure but also undermines the overall integrity of the investigative process. Such infirmities render the evidence of the informant-investigator insufficient to establish the prosecution's case beyond reasonable doubt, entitling the appellant to the benefit of doubt.
33. The findings of the learned Trial Court to the conviction of this appellant are, therefore, unsustainable in law as it is based on conjectures and presumptions rather than on substantive proof. As such, the impugned judgment and order of conviction passed by the learned Trial Court deserves to be set aside and the appellant is liable to be acquitted.
34. Accordingly, the instant appeal be and the same is hereby **allowed**.
35. The impugned judgment and order of conviction dated 24.02.1998 passed by the learned Trial Court in connection with E.C. Case No.26 of 1992 is hereby set aside.
36. The appellant is on bail. He is to be discharged from his respective bail bonds and be set at liberty if, he is not wanted in any other cases.

37. In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), it is incumbent upon the appellant to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.
38. Any pending applications, if existing, are hereby disposed of.
39. Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
40. Urgent Photostat Certified Copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)