

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

CRA 201 of 1989

In the Matter of: **Madhab Mandal**

.... appellant

Ms. Shabiha Naaz, (learned *amicus curiae*)

Mrs. Faria Hossain, Ld. A.P.P.

Ms. Suparna Chatterjee

.. for the State

1. The instant appeal is preferred at the behest of the appellant, challenging the impugned judgement and order of conviction passed by the learned Judge, Spl. Court (E.C. Act), Murshidabad, in connection with Special Court G.R. No. 86 of 1985, arising out of Beldanga Police Station Case No. 6 dated 18.8.1085 (G.R.E. No. 43 of 1985) dated 13.5.1989 finding this appellant guilty for commission of offence punishable under Section 7(i) (a)(ii) of the Essential Commodities Act, 1955 for violation of provisions of para 3(i) (b) of the West Bengal Rice and Paddy (Licensing & Control) order, 1967, and Section 6 (2)(a)(d) of the West Bengal Anti Profiteering Act and as well as para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities order, 1977 and sentenced him for rigorous imprisonment for three months along with fine in default to undergo further simple imprisonment for 15 (fifteen) days.
2. The story of the prosecution in a nutshell is delineated hereunder-

“The de facto complainant lodged this complaint stating interalia that on 18.8.1985 when he was posted as D.E.O., Beldanga in between 9 hours to 11 hours he inspected the shop of the accused Madhab Chandra Mondal at Mahula, Police Station, Beldanga in presence of witnesses. It was found that the shop of the appellant was open and he exposed rice for sale. On asking the license for selling the rice, the accused failed to produce stock book, rate-cum-stock-board, license, stock-cum-price board, sale registrar, purchase registrar etc. and as such the accused violated the provision of Para 3 of West Bengal Rice and Paddy (Licensing and Control) order, 1967 read with para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 as well as Section 6 (2)(a)(d) of the West Bengal Anti Profiteering Act, 1958. Thereafter, eight quintals of rice were seized by the de facto complainant in presence of the witnesses after preparing seizure list. The seized articles were given in ‘jimba’ to the accused person under ‘jimbanama’. Over the complaint the case was started being Beldanga P.S. case no. 6 dated 18.8.1985. Thus the criminal law was set in motion. After completion of investigation charge-sheet was submitted by the prosecuting agency under Section 7(i) (a)(ii) of the Essential Commodities Act, 1955 for violation of section 6(2)(a)(d) of the West Bengal Anti Profiteering Act and para 3(2) of the West Bengal Declaration of Stocks and Prices of E.C. Order.”

3. In this case, two witnesses were examined by the side of the prosecution. On the side of the defense, two witnesses were adduced.
4. It is said by the learned *amicus curiae* on behalf of the appellant that there are apparent contradictions and omissions in the statements of the witnesses. It is said that the *de facto* complainant investigated the case which is bad in law and has seriously prejudiced the appellant accused and the same was not done in accordance with Law. It is said that the independent witnesses to the seizure who cited as prosecution witnesses did not state anything which may prove the factum of the seizure by the prosecution.
5. The attention of the Court is drawn to the deposition of P.W.2 wherein, he stated that he signed the paper in the house where Narayan Roy, Police Officer resided. It is said by the learned *amicus curiae* that D.W.2 at the time of giving deposition stated that this appellant had lands and he retained 10/15 quintals of rice and wheat which were usufructs of lands and he kept it for his own consumption. D.W.1 also deposed in the same line of D.W.2.
6. As per the submission of the learned *amicus curiae* that there is no evidence to show that the P.W.1 had reasonable grounds to believe to enter and search the premises of the accused of the appellant and had contravened the provisions as enumerated in the Act. So, it is submitted that the impugned judgement and order of conviction is not

sustainable under the provision of law and it may be interfered with.

7. The learned Advocate for the State submits that there is nothing in the record for which the impugned judgement and order of conviction may be interfered with. All the witnesses as cited by the prosecution supported the contentions of the written complaint. As the appellant deliberately violated the provisions of the relevant Act, the learned Trial Court after assessing all the materials placed before him found him guilty and convicted him accordingly. So, as per submission of the learned Advocate for the State that this appeal may be rejected out-right and the impugned judgement and order passed by the learned Trial Court may be affirmed.
8. I have considered the rival submissions advanced by the parties. Perused the materials gathered in the record.
9. The instant complaint was lodged by the *de facto* complainant by stating that on the relevant date and time when a raid was conducted in the shop of this appellant it was found that there was a huge stock of rice and on asking the appellant for production of relevant documents for keeping rice he failed to satisfy the *de facto* complainant by producing paper or license, stock book, rate-cum-stock-board, stock-cum-price board, stock sale registrar, purchase registrar etc. for dealing in rice.
10. It is said by P.W.1 that he seized 800 kgs (eight quintals) of rice which were exposed for sale at the shop including some instruments for

weighment by preparing a seizure list in presence of Sachin Bittar and Md. Jamal (P.W.2).

11. P.W.2 the witness to the seizure stated in his examination-in-Chief that he did not know if P.W.1 raided the shop of this appellant or not, and in cross-examination he said that he signed the paper in house where Narayan Roy, Police Officer resided. This is only witness to the seizure and his statement is not trustworthy to prove the prosecution story.
12. P.W.1 stated in cross-examination that Sachin Bitter, the witness to the seizure, who is not cited by the prosecution as a witness is a rikshaw puller and this P.W.1 went to the P.O. by his rickshaw. This witness stated that both the seizure witnesses hailed from Surulia which is above 10/11 Km. away from Mahula. But, P.W.1 did not cite any witness from Mahula village as a witness to the seizure.
13. D.W.2 stated in his examination-in-Chief that this appellant is a cultivator and he has not yet seen Madhab to do business in rice.
14. D.W.1 also stated in the same voice of D.W.2 stating that this appellant produced sufficient rice and wheat and at any time 8/10 Quintals of rice might be found in his home. It is further said by this D.W.1 that they keep balance and weights in their house to weigh fertilizers, paddy etc.
15. So, the witnesses cited by the defense supported the case of this appellant with regard to the production of rice in his own field and for purpose of his own consumption. From the deposition of these witnesses it is further revealed that this appellant/convict never dealt

in rice and that quantity of rice as found from the appellant was a normal amount to be found which are produced in his own land. Moreover, at the time of examination of this appellant under section 313 of Cr.P.C. he stated that he had land and property of her own and the rice belonged to his house and so question of showing the rate board or keeping registers does not arise.

16. Moreover, in this case the *de facto* complainant investigated the case which resulted that the trial of the appellant was not done in accordance with law.
17. I have already stated that the factum of seizure of rice from the shop of the appellant is not proved. The prosecution failed to prove that the said amount of rice was seized from the shop of the appellant. Since the prosecution failed to prove that this appellant is a rice dealer and there is no evidence of sale, storage for sale, business, so the appellant cannot be said to have violated para 3(i)(b)(ii) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967. Consequently the provisions of para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 have no manner of application in the present case since this appellant is neither a retailer nor a whole saler.
18. I have already said that there is no evidence to show that PW1 had reasonable grounds to believe under Section 7 of the West Bengal Anti Profiteering Act, 1958 to enter and search the premises of the appellant as there has been a contravention of this Act which might lead him to inspect the shop of the appellant. He did not record in writing the grounds of his such belief .

19. All these incidents and evidences brought on record by the side of the prosecution indicate that the prosecution has failed to prove its story beyond all reasonable doubt and as such the benefit of doubt should go in favour of the appellant/convict.
20. Under such circumstances and the discussion made above, I am of the opinion that there is illegality and material irregularity in the impugned judgement and order of conviction passed by the learned Trial Court and as such it is not sustainable under the provision of law.
21. Accordingly, Criminal Appeal being **CRA 201 of 1989** is hereby allowed.
22. The impugned judgement and order of a conviction passed by the learned Trial Court finding the appellant guilty punishable under Section 7(i) (a)(ii) of the Essential Commodities Act, 1955 is hereby set aside.
23. The appellant is on bail. He is discharged from bail bond and set at liberty if he is not wanted in connection with any other cases.
24. I record my appreciation for the able assistance of Learned Advocate Ms. Shabiha Naaz as Amicus Curiae in disposing this appeal.
25. Let a copy of this order along with the Trial Court Records be sent down to the Trial Court immediately.
26. Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary formalities.

(Prasenjit Biswas, J.)

