

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 492 of 1986

Prachhya Chowdhury & Anr.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Arindam Jana,
Mr. Kamal Chaudhury,
Mr. Yuvraj Chatterjee,**

For the State : **Ms. Faria Hoosain, Ld. APP
Mr. Karan Bapuli.**

Hearing concluded on : **02.05.2025**

Judgment On : **22.05.2025**

Prasenjit Biswas, J:-

1. This instant appeal is preferred at the behest of the appellant challenging the impugned judgment and order dated November 19, 1986 passed by the learned Judge, Special Court, Howrah in connection with Special Court Trial No. 9 of 1985.

2. By passing the impugned judgment and order this appellants are found guilty for commission of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, for violation of paragraphs 4 and 21 of the Fertilizer (Control) order, 1957 and is sentenced to suffer rigorous imprisonment for a period of four months along with a fine of Rs. 200/- each and in default of payment to suffer further simple imprisonment for a period of one month and forfeited the seized goods to the State.

3. In short campus the story of the prosecution is delineated hereunder:

“On 25.01.1984 at 10:00 hrs. the de-facto complainant who was the Inspector of Police attached to D.E.O., Howrah along with other staffs on the basis of secret information visited the fertilizer shop of the accused Prolay Chowdhury which is situated at Ghoraghata Bazar, Bagnan, Dist- Howrah. At the time of visiting by the officials the owner of the shop namely, Prolay Chowdhury was not present but the other accused Prachhya Chowdhury was found present in the shop and he was selling fertilizer to the customers. The police officials served a notice to the accused Prachhya Chowdhury for production of all the relevant records, books of account for dealing in fertilizer but the Prachhya Chowdhury failed to produce any cash memo, credit memo, sale register, stock register etc. Thereafter, the police officials made physical verification of different kinds of fertilizer found in the shop which did not tally to stock-cum-rate board. The police officials seized the fertilizer and the stock-cum-rate board by preparing the seizure list in presence of the witness

and the accused Prachhya Chowdhury. The seized fertilizer and the licence were given 'zimma' to the accused Prachhya Chowdhury after preparing zimmanama. The accused Prachhya Chowdhury was arrested and brought to Bagnan Police Station where a written complaint was lodged on which a police case being Bagnan P.S. Case No. 12/dated 25.01.1985 was started. Thus, the criminal law was set in motion. Police investigated the case and submitted the charge-sheet against these appellants."

4. In this case, four witnesses were cited by the side of the prosecution and the defence has examined three witnesses.
5. Mr. Arindam Jana, learned Advocate for the appellant submitted that the impugned judgment is full of surmises and conjectures not borne out by any materials on record. It is said by the learned Advocate that at the time of alleged raid only Prachhya Chowdhury was present. In the written complaint it is stated by the defacto complainant that on reaching at this spot he found the said Prachhya Chowdhury was present but the owner of the shop i.e. appellant no. 1 Prolay Chowdhury who happens to be elder brother Prachhya Chowdhury was absent but at the time of giving deposition PW1, Santosh Chakraborty stated that both the accused was present in the shop on 25.01.1985 when he visited therein which is purely contradictory to the statement made in the written complaint. It is said that at the time of giving deposition PW4 sub-inspector Anil Bhattacharyya specifically stated that he had no source of information that the accused was selling fertilizer without cash memos and there was no reason to

believe that an offence had been, was being or was about to be committed and as such, the entire entry in the seizure was illegal and the impugned proceeding does not stand under the eye of law.

6. The learned Advocate further assailed that PWs 1, 3 and 4 at the time of giving deposition stated that at the time of raid no customers had been found present in the shop. As per submission of the learned Advocate the appellant no. 2 Prolay Chowdhury had been lying ill in bed since for a month and the said fact of illness of the appellant no. 2 was corroborated by the depositions made by DW1 and DW2. It is further said by the learned Advocate that PW4 categorically stated that one of the appellants namely Prachhya Chowdhury informed them that the appellant Prolay Chowdhury was ill. PW1 had admitted that the accused Pralay was not present at the time of his visit and Prachay told that Pralay was in the house. It is said by the learned Advocate that it is the defence case that the appellant Prachhya was coming with medicine of Prolay and handed over the medicine to D.W.1. As per submission of the learned Advocate the search and seizure was not made in accordance with law and the same was conducted in violation of the mandatory provision of law and as such, conviction and sentence passed solely upon the same is liable to be set aside. The attention of this Court is drawn to the deposition of DW3, Banshibadan Maity, Agricultural Development Officer, Bagnan, Block-I who examined the relevant books on accounts, register both prior to and after the raid and he found no discrepancies therein.

7. To buttress the submission made by the learned Advocate for the appellant he cited a decision rendered by the Hon'ble Apex Court in case of **Nathulal- vs- State of M.P.**¹ The attention of this Court is drawn to the paragraph no. 4 of the said report. Relying upon the said decision learned Advocate for the appellant said that mensrea is an essential ingredient of a criminal offence and in this case mensrea is absolutely absent. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be executed from the statute. So, it is said by the learned Advocate that there is material irregularity and illegality in the impugned judgment and order of conviction passed by the learned Trial Court and as such, the said order of conviction and sentence may be set aside.
8. Ms. Faria Hossain, learned Advocate for the State submits that there is no illegality or irregularity in the impugned judgment and there is nothing material in the record for which the said judgment and order of conviction passed by the learned Trial Court may be set aside. The attention of this Court is drawn by the learned Advocate to the relevant portion of the impugned judgment and order wherein it is stated that DW3, Banshibadan Maity, an Agricultural Development Officer of Bagnan, Block-I deposed that he gave page certificate in the sale register and stock register. It is said that the said certificate was issued after subsequent to the raid conducted by the police personnel. It is further said that the

¹ **1965 SCC OnLine SC 31**

learned Trial Court correctly hold that the accused Prolay Chowdhury submitted monthly return to the Agricultural Development Office, Bagnan and he submitted monthly statement from January, 1985 onwards and the same was done after conducting raid by the police personnel. It is said by the learned Advocate that all the witnesses cited by the prosecution supported the contentions of the written complaint and there is nothing in the record for which their depositions can be disbelieved. As per submission of the learned Advocate the instant appeal may be dismissed outright and the judgment and order of conviction passed by the learned Trial Court may be affirmed.

- 9.** I have considered the rival submissions advanced by both the parties. Perused all the materials gathered in the record.
- 10.** It appears from the written complaint that on 25.01.1985 at about 10 hrs. PW1, an Inspector of Police attached to D.E.O. Howrah along with other staffs visited the fertilizer shop of the accused Prolay Chowdhury. It is admitted position that Prolay Chowdhury is the owner of the fertilizer shop where the alleged raid was conducted by PW1 and his team. In the said written complaint the de-facto complainant stated that at the time of visiting the shop he found the appellant no 1, Prachhya Chowdhury was present. In his deposition PW1 stated that both the accused persons were present in the shop on 25.01.1985 when they visited which is contrary to the statement made in the written complaint regarding the presence of the appellant no. 2 Prolay Chowdhury in the shop. PW1 further said in cross-examination that he did not get any independent witnesses as none came

forward and this witness approached Sristidhar Santra, owner of stationary shop. Sk. Khorab, green vegetable seller, Panchugopal Mukherji, decorator in front of the shop but none of them came forward to be a witness and at the time of seizure no other gentleman was available. The only witnesses in the seizure list are watcher constables and beside them no independent witness was there in the seizure list. It is specifically stated by PW1 that the at the time of seizure beside the witnesses to the seizure, people were passing through the road but he did not call any public from the road to be a seizure list which casted doubt regarding the factum of seizure as allegedly made by the police personnel.

- 11.** PW4 deposed that the appellant no. 2, Prolay Chowdhury, the brother of appellant no. 1 was ill at the relevant date and time. The fact of the illness of the appellant no. 2 is corroborated by DW1 and DW2. DW1 stated in his examination-in-chief that this appellant no. 2 Prolay was then suffering from illness and appellant no. 1, Prachhya was coming with the medicine of Prolay and he handed over the medicine to this DW1 as he was late on opening the shop and told this witness to hand over the medicine in the house of Prolay. DW2 also stated in the same line of DW1 that Prolay was suffering from brain tumour from the last one month and at that time the appellant no. 1, Prachhya used to look after the business of appellant no. 2. PW1 stated in his deposition that they have been informed that the appellant no. 2 Prolay was at home. Moreover, D.W.2 stated that the appellant no. 1 used to write the registers of the shop at night at home. So, it appears from the deposition of those witnesses that at the relevant

point of time appellant no. 2 Prolay, the owner of the fertilizer shop was ill and was not present in the shop due to his illness. Although, PW1 stated that both the appellants, i.e. Prolay and Prachhya was present in the shop on 25.01.1985 when they visited therein. I have already stated that in the written complaint it is specifically stated by PW1 that on reaching the shop of Chowdhury Fertilizer at Ghoraghata at 25.01.1985 at 10 hrs. with his staffs he found only Prachhya Chowdhury therein and the owner of the shop i.e. Prolay Chowdhury who happens to be an elder brother Prachhya Chowdhury was absent.

12. PW4, Anil Ch. Bhattacharya, Sub-Inspector of Police stated that he had no source of information regarding the selling of fertilizer by this appellants without cash memo and he had no reason to believe that an offence had been, was being or was about to be committed. It is contrary to the provisions of law. This PW4 further stated that he did not find any customer that the goods were sold without cash memo during his investigation and he did not search for any customer in the bazaar to be a witness. PW2 stated in his cross-examination that the appellant no. 1 Prachhya told him that the registers would be taken from his house and the accused Prachhya gave licence to the police station. DW2 stated that one Sunday morning he came to D.E.B. Office and met PW4 who was the Investigating Officer of the case, but PW4 told this witness that as the case had already been started and for the reason he did not take any register. DW1 stated that Prachhy told him to tell the father of the appellants to go to the shop with the registers of the shop and box of money. DW2 who

happens to be the another brother of the appellants also stated in the same line of DW1 and deposed that his father told this witness that due to fear of police he did not go to the shop along with the registers and told DW2 to take the registers to the police station. PW2 said that the appellant no. 1 Prachhya told them that registers would be taken from his house. So, it is clear that appellant no. 1 Prachhya Chowdhury was present in the shop and he was not allowed by the police personnel to go to his house to bring registers/relevant documents.

- 13.** I have already stated that all the entries, search and seizure were not drawn in the presence of independent witnesses. Although, it is stated by PW1 that people were passing through the road but he did not call any one from the public road to be a witness to the seizure. PW1 further stated that there are other shop owners near to the shop where the alleged raid was conducted but none of them came forward to be a witness to the seizure. So, the doubt is casted about the story of seizure made by the prosecution and the conviction and sentence based solely upon them does not stand under the provision of law. The Police Officer who made raid in the shop of the appellant no.2 merely counted the total number of bags in the shop without ascertaining the varieties of fertilizer contained in those bags.
- 14.** DW3, Banshibadan Maity, Agricultural Development Officer at Bagnan, Block-I stated that there are page certificates given by their office in sale register and stock register. This witness further said that the sale register and stock register in which he gave certificate on 18.02.1985 were started

from 01.01.1985 and he verified the stock and sale cash memo and after being satisfied he gave certificate on 18.02.1985. This witness further said that he checked the stocks in the shop frequently and after checking he endorsed the sale register.

- 15.** It is profitable to quote the observation of the Hon'ble Apex Court in the case of **Nathulal (Supra)**. In the said report at Paragraph 4, the Hon'ble Apex Court held inter alia, that:

“4. The law on the subject is fairly well settled. It has come under judicial scrutiny of this Court on many occasions. It does not call for a detailed discussion. It is enough to restate the principles. Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the

provisions thereof: see Srinivas Mall v. King-Emperor, ILR 26 Pat 460: (AIR 1947 PC 135), Hariprasada Rao v. State, ; and Sarjoo Prasad v. State of Uttar Pradesh, . Most of the relevant English decisions on the subject were referred to in the judgment of this Court in State of Maharashtra v. Mayer Hans George, Cri Appeal No. 218 of 1963, dated 24-8-1964: . How to disprove mens rea has been succinctly stated in Halsbury's Laws of England, 3rd Edition, Col. 10, at p. 288, thus:

"When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and prima facie proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable grounds for a belief is evidence of the honesty of that belief."

- 16.** In the said report it is specifically held by the Hon'ble Apex Court that mens rea is essentially ingredient of criminal offence unless, excluded by the statute and the nature of mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provision thereof. In this case, PW4 Investigating Officer of this case have categorically stated which I referred hereinabove that they had no source

of information that the accused sold fertilizer without cash memo and there was no reason to believe that the offence had been committed by the appellants.

17. In view of the above facts and circumstances and discussion made above. I am opinion that there are several contradictions and omissions in the statements of the witnesses and for which the impugned judgment and order of conviction passed by the learned Trial Court is not sustainable under the eye of law and the same is liable to be set aside.
18. Accordingly, the instant Criminal Appeal be and the same being No. CRA 492 of 1986 be and the same is hereby **allowed**.
19. The judgment and order of conviction passed by the learned Trial Court dated November 19, 1986 in connection with Special Court Trial No. 9 of 1995 is hereby set aside.
20. The appellant is on bail. He is released from bail bond and be set at liberty, if he is not wanted in connection with other case.
21. Let a copy of this order along with the Trial Court Record be sent down to the Trial Court immediately.
22. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)