

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 128 OF 1994
PROMODE KUMAR GUPTA
VS
STATE OF WEST BENGAL

For the Amicus Curiae : Mr. Asif Dewan, Adv.
For the State : Ms. Sreyashee Biswas, Adv.
Last heard on : 03.12.2025
Judgement on : 16.12 .2025
Uploaded on : 16.12.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against an order of conviction and sentence dated April 7, 1994 passed by the Learned Special Court (EC) at Alipore in special case no. 4 (5) (90) in connection with Ultadanga Police Station case no 54 dated May, 22,1990 where by order of conviction was passed against the present appellant under Section 7 (1) (a) (ii) Essential Commodities Act (X/55) for alleged violation of para 3 (2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 and sentencing the appellant/accused a minimum sentence of 3 months and forfeiture of the seized Musur Dal and Kalai Dal.

Brief fact

2. The prosecution case in nutshell is that on May 22, 1990 a raid was held at the shop of M/s Anathnath Bhandar at 24/B , Mohanlal Street, P.S. Ultodanga by the Enforcement Branch Officer and found 5/6 bags of Musur Dal and 3 bags of Kalai Dal to be in excess as per stock register of the said shop. Further the case is that the said stock was not been displayed in the stock cum rate board of the shop in question and on such allegation the case was rated against the petitioner/appellant on the ground of violation of para 3 (2) of the West Bengal Declaration of Stock and Prices of Essential Commodities order 1977 and on such allegation petitioner was arrested and charge sheeted under Section 7 (i) (a) (ii) of the E.C Act. The appellant was examined under Section 251 of the Code of Criminal Procedure and pleaded not guilty accordingly the trial commenced. Three witnesses were produced by the prosecution and considering the evidence and the submission advanced the Learned Court found the appellant guilty of the said offences and passed the aforesaid order of conviction.

Submissions

3. The Learned Amicus Curiae as appointed the submits that there is no ingredient in support of the alleged violation of para (2) of the West Bengal Declaration of Stock and Prices of Essential Commodities order, 1977 having been substantiated by the evidence on record laid by the prosecution, the impugned order of conviction and sentence is patently illegal and based on no evidence. It is further submitted that the prosecution case is inconsistent and self-contradictory and therefore it is liable to be set aside. It is the contention

of the Learned Advocate that under the said order 1977, a shop keeper is not liable to keep and show the accurate quantity in the stock register as well as the stock prices board. It is argued that the Learned Judge fail to consider that the prosecution could not explain as to why another private witness namely Suresh Kumar Shop was not examined and erroneously held the evidence adduced by the private witness has got no value. Hence prayed for setting aside the order of conviction.

Analysis

4. In order to prove the case of the prosecution adduced three witnesses. P.W. 1 Paresh nath Shaw on S/A deposed that he knew the accused being the owner of the shop and he identified him. He further said that E.B. Police came to his shop about 3 years back and he identified his signature in the weighment and in the copy of stock board. The witness further depose that he does not know what happen in the shop and then he was declared as hostile by the prosecution. The P.W.2 Tushar Kanti Shaw on S.A deposed that he was the inspector of rationing under Food and Supply Department on the basis requisition of E.B and he visited the shop name and styled as Anathnath Bhandar at 24 B Mohanlal Street and after going there he found E.B encircled the shop and there was excess of 6 bags of musur dal and 3 bags of kalai dal of 75 kgs each bag in the stock of the shop. He further deposed that on physical verification chart he identified his signature and also on the copy of stock and rate book which were seized vide the seizure list. In his cross-examination he said he was present when the seizure was made and weight of each standard bag from identical bag was taken in his presence. He further said that he had no authority to make inspection of pulses but as per

requisition of E.B he went there and as the licensing authority is Rationing Officer whenever it is necessary to them to inspect the shop in connection with the licence, they used to verify the shop the accused. The accused had a licence which got renewed but did not take delivery of the same. This witness filed the formal FIR and started the case and he took up the investigation and examined witnesses and filed a prayer for confiscation of the article before the Learned Collector. He examined witness Paresh nath Shaw and recorded his statement and he said before him that there was three bags of Kalai Dal weighing 75Kg each and 6 bags of Musur Dal weighing 75 Kg each which were found in excess than that of stock cum rate board. In his cross-examination he further deposed that they got information about the incident and probably it was recorded in the G.D, but he did not produce G.D .He could not remember whether he went to the place by Govt. vehicle or by which vehicle.

5. The next witness P.W. 3 Debasish Sarkar Deposed that he was the sub-inspector of Police attached with E.B Calcutta on May 22, 1990 and on that date he lodged a GD being GD no, 1179 dated 22.5.1990. On that day he being accompanied other Officers conducted a raid at Anath Bhandar at 24 B Mohonlal Sarani Kolkata 14 and after inspecting they found 6 bags of Musur Dal 3 bags of Kalai Dal in excess then the article shown in the rate cum stock board. He seized the article and arrested the accused .In this case the point taken on behalf of the accused that he being the owner of the said shop used to deal with pulses but he was not given any opportunity to enter the stock in the stock board which he received on the very date of the raid. There was no material to show that the consignment reached the shop in question on the relevant day however he prayed for liberty to prove the case by adducing DW.

In the examination of accused person under Section 364 of the Criminal Procedure Code the accused denied the allegations levelled against him. The Learned Court after considering the evidence adduced and the argument advanced was of the view that the stock cum rate board was not identical with the stock shown and P.W. signed on the same as a witness and no suggestion was given to him that it was not properly prepared and only because the stock cum rate board was not produced. The prosecution has failed to prove the case. Hence pass the order of conviction.

- 6.** On careful perusal of the material available before this court it can be found the prosecution did not produce the seized stock cum rate board to prove the stock position which is the foundation of the instant case. The witness specially the P.W. 1 who has described himself as an agent of pulses at Shyambazar and who was the seizure list witness turned hostile. Before that he identified his signature in then vehement and in the copy and stock board market but he deposed that he was not aware what happened in the shop during his cross-examination by the prosecution he identified that he was examined by the I.O., the P.W. 2 who was the Inspector of Rationing under Food and Supply Department visited the shop conducted the raid seized the alleged excess bag and he took up the investigation of the case and recorded the statement under Section 161 Cr.Pc. Primarily it can be said that he did not produce the GD and he could not remember that how he reached there nothing can be found that P.W. 1 Paresh nath Shaw was an agent of pulses and no address or other documents were produced to show he was there in the shop room when such alleged seizure list was prepared .The said witness in whose presence it was alleged that the stock board was seized was never

produce before the Court those alleged bags which were found to be excess were not sealed or labelled and were not produced before the Court. It is not the case of the prosecution that on the basis of a complaint they were there but as licensing authority he was supposed to be there to inspect the shop in connection with licence but here a raid was conducted by him and P.W. 3 only accompanied him. Nothing has been mentioned as to who are the persons who accompanied him during the raid.

7. It is found admitted by P.W. 2 that the accused had a licence which was renewed only he did not take the delivery of the same. Therefore it cannot be said that the accused did not have the licence despite one of the seizure list turned hostile the prosecution did not find it proper to adduce the evidence of the other witness. The P.W. 2 said that he was there only on the requisition made by the EB but neither that requisition was placed nor any person from EB was examined. The Learned Court observed that the P.W. 2 being the responsible Officer of the rationing Department went there on the basis of the requisition of EB and he had no enmity with the accused person and therefore there is no reason to disbelieve him. This observation according to the view of this Court was correct but this Court is unable to accept that since there was no suggestion by the defence that there was no excess of Kalai Dal and Musur Dal in the stock than the shows in the stock cum rate board. The case of the prosecution can be proved when only one independent witness became hostile and the said stock cum rate board was never produced before the Court. In criminal jurisprudence the Onassis on the prosecution to prove the case by adducing cogent evidence in order to bring whom the charges and the order of conviction cannot be pass on account of any deficiency on the part of the

defence and or because of not putting any suggestion about the fact that the stock cum rate board was not correctly prepared. The prosecution instead of producing the stock cum rate board which was seized produce before the Court only a copy which was proved but subsequently P.W. 1 sole independent witness cum the seizure list witness denied of any seizure.

Conclusion

8. Therefore in view of the facts and circumstances this Court do not find any merit in his order passed and hence the order of conviction is liable to be set aside.
9. Accordingly this criminal appeal stands allowed. The judgement and the order of conviction is hereby set aside.
10. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)