

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 122 OF 1992
DAIBAKINANDAN GHOSH
VS
THE STATE OF WEST BENGAL

Amicus Curiae : Mr. Aniruddha Bhattacharyya, Adv.
For the State : Ms. Faria Hossain, Ld. APP.
Ms. Baisali Basu, Adv.
Last heard on : 17.09.2025
Judgement on : 07.11.2025
Uploaded on : 07.11.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This is an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 read with Section 12 AB of the Essential Commodities Act, 1955 against the judgement and order dated 31.3.1992 passed by the Judge, Special Court (E.C) at Malda in Special Court case no. 49 of 1990 whereby the Learned Special Court passed the order of conviction against the present appellant and directed each of the convict to suffer sentence of R.I for three months and to pay a fine of ₹250 i.e to suffer R.I for further one month on each of the two counts of the offence punishable under Section 7(1) (a)(ii) of Act X of 1955.
- 2.** The facts of the case in a nut shell is that on 25.10.19 at 4.55 P.M at Kanchantar within P.S English Bazar, S.I, S.C. Saha of E.B.P.S along with his

force intercepted a Truck bearing no. W.G.R.671 and found carrying 25 bags of rice, each bag containing about one quintal of rice. The present appellant was the driver of the said Truck who along with four other accused persons were within the said truck. On interrogation, accused Nakul disclosed that out of 25 bags of rice, four bags belong to him and rest belong to other occupants of the truck who jointly deals with rice. The Police Officer seized the 25 bags of rice as the accused persons failed to produce any valid license or permit to show their business and for transport of the same, and thereafter, the truck was also seized in presence of local witnesses. The accused persons were also arrested and brought at E.B.P.S, where the said Officer lodged the written complaint.

3. The case was entrusted to S. I, R.N. Sarkar, attached to D.E.B, Malda for the purpose of investigation, and accordingly, he took up the investigation and after completion of the said investigation, he submitted the charge sheet punishable under the aforesaid provision for contravention of para (4) of W.B. Rice and Paddy (licensing and control) order, 1967, against all the accused persons. The content of the said charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried, and accordingly the trial commenced. The learned Special Court after assessing the evidence adduced by the prosecution witnesses, and after hearing the submissions of both the Learned Counsels passed the order of conviction. Being aggrieved, thereby this appeal has been filed.

4. The Learned Amicus Curiae appointed by this Court argued that the Learned Special Court failed to consider that the appellant was merely a truck driver and was carrying the rice like other drivers of other vehicles who were never

questioned .Furthermore the appellant being a driver of the vehicle cannot be described as a dealer within the meaning of the West Bengal, Rice and Paddy. (licensing and control.) 1967, and the Learned Judge has erred in not considering the aspect of the case. There was no evidence on record as to whether the alleged place of interception of the truck, namely Kanchantar is within the prohibited area from the international border. That apart most of the witnesses were police witness and the owner of the truck and the seizure list witness were declared hostile. They failed to identify all the accused persons. It is specifically argued that the case Truck was not intercepted at kanchantar and it was not carrying any rice and the truck was merely standing on the roadside at Rathbari more ,empty and the police personnel stacked the rice which were lying at the side of N.H. 34 on the case truck with the help of other accused persons who were taking tea in a nearby shop and then made the driver to move at E.B.P.S and falsely implicated the accused persons with this appellant . The prosecution miserably failed to bring home the charges levelled against this appellant and hence the judgement and the order of conviction is liable to be set aside.

5. The prosecution on the other hand submits that the police seized 25 bags of rice and other than the appellant there were four other persons in the said truck and the appellant being the driver failed to show his license on demand and other co accused admitted that some of the bags belong to them.
6. In order to bring home the charges, 8 witnesses were cited, the articles were seized after inception and the present appellant failed to show any document as claimed and the charges were proved against the accused persons. Accordingly prayed for dismissal of this appeal.

7. Heard the submissions. The point for consideration as it appears after hearing the submissions of both the prosecution as well as the learned Amicus Curiae that as to whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt. In order to ascertain the truth it is necessary to assess the evidences adduced by the prosecution witnesses before the Learned Court.

8. P.W.2, Sagar Chandra Saha, the S.I of Police deposed that on 25.10.90, he was attached to English Bazar Police station and on that date he along with his force went to Mahandipur for mobile duty and on their way back, they detected a truck bearing number WGR-671 at Kanchantar carrying 25 bags of rice, each bag containing one quintal of rice. On demand, the accused persons failed to produce any license or other papers for transport of the rice and accordingly he seized the said rice and the truck under the seizure list in presence of local witnesses. According to this witness, the P.O was within 1 km from Bangladesh border. In his cross examination, he admitted that many shops were there in the vicinity of the P.O and he entered in the Thana G.D book that he went for a mobile duty to Mahndipur however he could not say the number of such GD entry concerning his departure and after return; also he did not record any G.D himself.

9. P.W3, Ram Pradesh Choubay , a constable attached to Sadar court deposed that on 25.10.90, he accompanied S.I. , S.C Saha , to Mahandipur and on their way back at about 4.30/ 5 PM they intercepted the above mentioned truck, which was proceeding towards Mahandipur, carrying 25 bags of rice weighing about 25 quintals. On being asked it was claimed the rice to be of them and they were carrying the rice for sale from Malda town. They failed to

produce any license and the Officer seized the rice and the truck in presence of local witnesses and all the accused persons were arrested. This witness could recognise only the present appellant/driver and failed to recognise the other accused persons. From his cross-examination presence of five police personnel in the police Jeep can be found and further 20 to 25 people assembled after such interception of truck who were all local people. He also said that signatures of all were taken on the seizure list and they stayed at the P.O for 1 or 1 and 1/2 hour.

10. The owner of vehicle, Sharadindu, Shekhar Roy deposed that on 13.11.19, the I.O seized R.C book, driving license, etc. from his custody under a seizure list who admitted that the accused/appellant was the driver of the said truck at the relevant time but he did not give the truck to anybody on hire on 25.10.90 and his driver also did not give the truck for the same purpose to anybody. On that day, the truck was standing empty near to the South of a petrol pump, which was at the side of N.H. 34. Some rice was lying stacked near the petrol pump by the side of road and S.I., S. Saha got the seized rice forcibly loaded on the side truck and took it to E.B.P.S. The owner raised protest but of no result. Later, he came to know that the truck has been falsely implicated in this case. This witness was then declared as hostile by the prosecution.

11. P.W.5, Jitendra Nath Mondal, a Muharrar by profession and also a secretary of Ashram at Kanchantar named Haribol dham , the seizure list witness who primarily supported the case of the prosecution but failed to identify the accused persons on the ground that the incident took place long ago. In his cross-examination, he deposed that he was at English Bazar P.S

when the truck was intercepted. He signed the seizure list at English Bazar after the truck and accused persons were brought to P.S. along with rice. Therefore the credibility of the witness gets diluted with this evidence as this clearly established that the seizure was not done in his presence. That apart this witness was also declared as hostile by the prosecution.

12. In this case, Sudhanshu Das the alleged local witness being the other seizure list witness deposed as P.W.1, and denied about any seizure in his presence by the police, and he put his signature on the seizure list on the next date. This witness was also declared hostile by the prosecution

13. Ananda Mohan Sheth, P.W.6 was attached to E.B.P.S on 25.10.90 as police driver and his testimony corroborates with the version of other police personnel as on that day in the afternoon he along with S .Saha with force went to Mahandipur and on their way back, they intercepted the lorry which was carrying 25 bags of rice weighing 25 quintals. He identified all the accused persons but failed to say the names of the accused persons. According to him, they started at about 4:30 PM from Mahandipur and found four occupants were sitting on the rice bags. He deposed that the rice bags were not brought down or weighed at the P.O.

14. P.W.7, the constable was placed for cross examination by prosecution which was declined. P.W. 8, the S.I of police, D.E.B Malda, Rabindranath Sarkar, the I.O of the case deposed as P.W 8 and said that the relevant documents concerning the truck were seized from the owner. In cross-examination, he admitted that he did not examine any other resident of Kanchantar excepting P.W.1. No sketch map of the place of occurrence was prepared and no witness at Rathbari More area was examined. Interestingly

said P.W. 1 put his signature at the English Bazar Police Station. The P.O. has been described at Kanchantar which is 1 km away from Bangladesh border but the distance between English Bazar Police Station and the place of occurrence was not mentioned.

15. Therefore on assimilation of the entire evidence it is clear that the independent and so called local witnesses who put their signatures on the seizure list were declared hostile witness as they did not support the case of prosecution.

16. In this case, the accused persons were placed with the incriminating materials when they were examined under Section 313 of Cr.Pc and the present appellant denied the same and claimed to be innocent. The defence cited Sujit Kumar De as D.W1, being an employee of medical store. According to him, the incident took place on 25.10.90 at 4.30/5 PM to the South of Rathbari petrol pump when the truck no. WGR- 671 was standing at the same place. He further deposed that 20 to 25 bags of rice were kept stored a little away from the truck and police came and called some labourers who were taking tea in nearby shop, loaded the rice bags with their help and took the loaded truck and the labourers. The truck owner and the driver objected. From his cross-examination name of one Tapu Chatterjee is disclosed as the owner of the medical stores. No paper was produced to show that he worked in the medicine shop. He also could not say the name of person hired the trucks from that areas as medicine shop remains busy with sales. By virtue of the seizure list dated 25.9.90 21 bags each having approx 200 kg rice and 4 bags each having approx. 100 kg rice along with the truck, WGR671, are found to be seized where the place of seizure is shown as Malda Mahandipur State

Highway. The name of witness includes one Enamul Sheikh and Jatindra Nath Mondal . This J.N Mondal deposed as P.W.5 works as a Muharrar who said the seizure was made at the Police Station .This witness failed to identify any accused and he was declared as hostile on the prayer made by the prosecution. The said Enamul Sheikh has not been cited as witness.

17. The court emphasizes that for a conviction under section 7, it must be shown which order under section 3 was violated, that the person contravened and the evidence must be cogent. In this case prima facie the mens rea is found lacking for the offence as the prosecution has miserably failed to prove the case beyond the shadow of all reasonable doubts.

18. In terms of Section Clause 7 of the 2005 Order, specifies who is the authorized officer and the manner in which search and seizure of the product is to be done and samples taken thereof. Clause 7 of the order reads as under:

"7. Power of search and seizure -

(1) Any Gazetted officer of the Central Government or a State Government or any police officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order of the Central Government or a State Government, as the case may be, or any officer of the oil company, not below the rank of sales officer, may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this Order or any order made there under has been complied with or there is reason to believe that all or any of the provisions of this Order have been and are being or are about to be contravened.-

(a) enter and search any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer,

(b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;

(c) take samples of the product and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorize the taking of all measures necessary for securing the production of stocks or items so seized before the Collector or District Magistrate having jurisdiction under the provisions of the Essential Commodities Act, 1955 and for their safe custody pending such production;

(d) inspect, seize and remove with, such aid or assistance as may be necessary, books, registers, any other records or documents of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

(2) While exercising the power of seizure provided under sub-clauses (c) and (d) above, the authorized officer shall record in writing the reasons for doing so and a copy of such recording shall be provided to the dealer, transporter, consumer or any other concerned person, as the case may be.

(3) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure

shall, as far as may be, apply to searches and seizures under this Order."

19. Therefore, from the above primarily, it can be seen that the person putting his signature in the seizure list must have seen the articles are seized by the officer at the spot. In this case, it is clearly evident that this witness was called at the police station, the articles were allegedly brought there in and he only put his signature. Furthermore this witness stated about the version of the accused persons who stated on interrogation that they were carrying the rice to Mahandipur for business, and they purchased the rice from the town. Nothing can be seen from the evidence of the I.O that any attempt was made test the veracity of such contention. In fact, the I.O in his cross examination specifically stated that he did not examine any other witness at Rathbari more and he did not examine any villager of the accused persons. Interestingly, the I.O. seized the driving license from the owner of the truck and the owner deposed that the vehicle was not hired on the relevant date. He was also declared as hostile witness on the prayer of the prosecution. P.W.1, who is the M.R. dealer, denied of any seizure in his presence by police and he put his signature on the next date. This witness too was declared hostile. Therefore, the remaining witnesses left to support the prosecution case are only the police personnel who went to Mahandipur area on a mobile duty but did not produce any G.D entry number when left the English Bazar police station to proceed for Mahandipur and or when they returned and reached there. It has also come from evidence that the alleged sacks /bags of rice were not weighed and according to the written complaint, it was 21 bags ,each having 200 kg rice and 4 bags/sacks ,each containing 100 kg rice which is not tallying with the

evidence adduced by the police witnesses who were present when the truck was intercepted.

20. The evidence of D.W. 1 in this case portrays a different version and according to him the other co-accused persons were the labourers however he could not identify the accused persons as those labourers. It is also a fact that no such suggestion was put to any of the prosecution witness to cover this issue. The Learned Court relied upon the testimony of P.W. 5 J.N. Mondal and the evidence adduced by the police personnel and held that the defence case is entirely improbable and false and believed the evidence of P.W 2 S.I. ,S. Saha, P.W. 3 Constable R.K. Chaubey and the police driver P.W. 6 that the accused persons were transporting the rice as seized without any authority .The Learned Special Court held the accused persons as guilty of offence punishable under section 7 (1) (a) (ii) Of Act X of 1955 on two counts for contravention of para 3 of W.B Rice and Paddy (Licensing and Control) order 1967 and para 4 of W.B Rice and paddy (restriction of movement) order 1981.

21. In the above factual backdrop this court is unable to accept the reasoning assigned by the Learned Special Court as the court is to see that the prosecution proved the case beyond the shadow of all reasonable doubts not on the failure of the defence to make out a good defence case. Nowhere in the judgement and the order of conviction, such satisfaction can be found .That apart as regards the driver /appellant the learned court passed the order of conviction on abatement of the contravention of the said control order without having any basis as the owner of the vehicle clearly stated that the vehicle was not hired on that day and he did not deny that the appellant was not engaged as driver of his vehicle. The learned court put reliance on the evidence adduced

by the seizure list witness J.N. Mondal who declared hostile as he failed to identify any of the accused persons and also he narrated the version of the accused persons who stated about the reason to carry those bags. The procedure as enumerated in Section 100 Cr.P.c has not been followed. Therefore from the discussions as aforesaid there is no room to doubt that the prosecution has miserably failed to prove the case beyond the shadow of reasonable doubt so far the present appellant is concerned and hence the judgement and order of conviction is liable to be set aside.

22. Hence this Criminal Appeal stands allowed.

23. The order of conviction passed by the learned Special Court against this appellant is hereby set aside.

24. Let a copy of the order along with the T.C.R be sent down to the concerned Court at an earliest.

25. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)