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Gour Chandra Dutta and Others Vs State of West Bengal

C.R.A. 63 of 1991

Court: Calcutta High Court

Date of Decision: Nov. 25, 2013

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Milan Mukherjee, for the Appellant; Manjit Singh, ld. P.P. and Mrs. Kakali Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Kanchan Chakraborty, J.
This appeal is directed against judgement and order dated 16.1.1991 passed by the learned Judge, Special

Court (E.C. Act), Barasat, 24 Parganas North thereby convicting the appellant u/s 7(1)(a)(ii) of the Essential Commodities Act and sentencing

them to suffer R.I. for 6 months and to pay a fine of Rs. 500/- each. The judgement impugned was passed in Special case No. 116/1988/Barasat

P.S. case No. 25(9) of 1988. On 12.9.1988, K.C. Mondal, Inspector of Police, DEB together with the other police personnel had been to the

factory ""Haribol sugar candy"" owned by Basudam Mondal and Bisnupada Das and searched the factory-cum-godown in presence of local

witnesses. In all, 130 quintals and 50 kgs of sugar in 183 bags were recovered from that godown-cum-factory. Gour Chandra Dutta, the Manager

of the factory was present there at that time. On demand, he could not produce any authority, whatsoever, for possessing that huge quantity of

sugar. So, Mr. Mondal seized the bags of sugar under a seizure list in presence of witnesses and kept those bags of sugar in the custody of one

Gopal Chandra Mondal. Gopal Chandra Mondal disclosed the names of owners Basudam Mondal and Bisnupada Das at the time he was

arrested. One F.I.R. was lodged by Mr. Mondal against Gour Chandra Dutta, Biswanath Das and Basudam Mondal for prosecuting them u/s 7(1)

(a)(ii) of Act X of 1955 for violating the provisions of para 3(a) of West Bengal Sugar dealer (licensing) order, 1980. Charge sheet was filed

against them after investigating into the case. The appellants faced the trial as they pleaded not guilty to the charge. The prosecution examined 9

witnesses and filed some documents, which were admitted by the trial Court on behalf of the prosecution. The appellants, in their defense had

taken the plea that the sugar seized by DEB personnel was supplied by their customers for making ""Batasa"" and ""Candy"". In support of such

defense, the appellants examined 11 witnesses and filed some documents in Court some of which were admitted into evidence and marked exhibit.

2. Upon consideration of evidence on record adduced by both the sides, the learned Judge came to a conclusion that the appellants violated the

rule and, as such, they are guilty of the offence charged with.

3. Mr. Mukherjee, appearing on behalf of the appellants that the appellants never denied that the factory ""Horibal Sugar Candy"" was belonging to

appellants Biswanath and Basudam and appellant Gour Chandra Dutta was the Manager of the factory. It is also not denied that 130 quintals and

50 kgs. of sugar was seized from that factory on 12.9.1988 by DEB personnel. The appellant Biswanath and Basudam had a valid license in

dealing with thousand quintal of sugar. They had been maintaining proper accounts of the sugar procured by them. It is, Mr. Mukherjee contended,

the specific case of the appellants that the sugar seized was supplied by different customers for the purpose of making ""Batasa"" and ""candy"". That

fact had well been reflected in exhibits B and C. Mr. Mukherjee contended that chalan, ledger, Zabdakhata (exhibit B and exhibit C) established

the plea taken by the appellants in course of trial besides the oral evidence of the 11 defense witnesses. But, the learned Trial Court ignored the

entire case of appellant on filmsy grounds. The judgement, Mr. Mukherjee contended is not based on proper appreciation of evidence, and,

therefore, is liable to be set aside.

4. Mr. Singh, learned public prosecutor contended that the trial Court ought to have given importance on the exhibit B and C as well as the oral

deposition of the defense witnesses. He contended further that a period of 23 years has already been elapsed from the date of filing of the appeal.

It would be unjust and contrary to justice if the appellants are asked to go behind the bars. He contended that to meet the ends of justice, Court

should take a proper and reasonable view.

5. I have carefully gone through the entire evidence of both the parties and the documents filed on their behalf"s. It appears that the appellants filed

the valid license in original in course of trial to establish that they had authority to deal with thousand quintals of sugar. The license was issued by

the Government of West Bengal in the name of ""Haribol Sugar Candy"" owned by Biswanath Das and Basudam Mondal. The license in original

was not admitted into evidence as it was not proved. That apart the exhibit B and C together shows that huge quantity of sugar was supplied by

different customers to ""Haribol Sugar Candy"" factory. The DW 1 to 10 have categorically stated that they were the customers who supplied sugar

to the factory for the purpose of making ""Batasa"" and ""candy"". I find that the learned trial Court ignored the entire evidence, oral and documentary,

adduced on behalf of the defense on the ground that those were prepared for the purpose of the case. I find no justified reason for the trial Court

to come to such a conclusion. A sugar candy factory is supposed to make sugar candy and for that purpose it has to procure sugar directly from

market as well as some customers who sales Batasa and in wholesale market. The appellants were not given opportunity to prove the license

which was filed in original. There was no case to the effect that the license so filed was manufactured and forged one. Therefore, the Court below

ought to have given the appellants an opportunity to prove the license that they had authority to deal with one thousand quantity of sugar. There is

no reason for the trial Court to ignore the evidence of the DW 1 to DW 11. They had no interest in the proceeding but in the sugar they supplied to

the factory for making batasa and candy.

6. Amongst the witnesses examined on behalf of the prosecution, the P.W. 1 Shib Nath Saha stated categorically that the Manager of factory Gour

Chandra Dutta informed DEB personnel that the sugar bags were belonging to the customers. The P.W. 2 stated also that Manager Gour Babu

informed police that customers supplied sugar for manufacturing sugar candy and Batasa. P.W. 4 in his cross-examination stated that he supplied

8.5 quintal of sugar for manufacturing of sugar candy and Batasa. The other prosecution witnesses are DEB personnel who stated about the raid

and seizure of sugar. Amongst them, however, the P.W. 5 S.I. D.K. Chandra stated in his cross-examination that the Manager of the Factory

informed that the customers deposited the sugar for manufacturing sugar candy and Batasa. The evidence of prosecution witnesses also supported

the version of the defense. However, the learned Court below failed to put reliance on them, which, in my opinion, was neither correct nor

appreciable. In other words, it appears to me that the learned Court below failed to appreciate the entire evidence in a proper manner and

recorded conviction on the appellants without any basis. This order impugned is not tenable in view of the facts, circumstance and evidence on

record. Again, the trial Court did not extend the benefit of section 360 of Criminal Procedure Code to the appellants without assigning any reason.

In a case of like nature where there was a valid licence and plea of defense was well supported by witnesses, the trial Court ought to have given

the appellants the benefit of section 360 of Code.

7. This apart a period of 23 years has already been elapsed as noticed by learned P.P.. There is no use to reopen the trial in order to give the

appellants an opportunity to prove the license, which is on record. Any effort to that extent would be amounting to abuse of the process of the

court and miscarriage of justice.

8. In view of the discussion above, I am of opinion that the judgement impugned is liable to be set aside. Accordingly, the appeal is allowed. The

judgement impugned is set aside. The appellants are found not guilty to the charge and are set at liberty. They be discharged at once from their

bonds.