courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 08/01/2026

(1986) 12 CAL CK 0004

Calcutta High Court

Case No: None

Patit Dhibar and Another	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision: Dec. 17, 1986

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Citation: (1988) CriLJ 747

Hon'ble Judges: Sudhansu Sekhar Ganguly, J; Jitendra Nath Chaudhuri, J

Bench: Division Bench

Judgement

Sudhansu Sekhar Ganguly, J.
This revisional application is directed against the order dated 22-9-1984 passed by Shri D. Dutta Gupta, the learned Judge, Special Court at Asansol in T. R.. No. 24 of 1984 convicting the petitioners u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 and sentencing them to 3 months'' R.I. and also to a fine of Rs. 200/- each, in default to R.I. for 15 days more.

2. The prosecution case seems to be that S.I. S.K. Ganguly of Sripur I/C attached to Jamuria Police Station (P.W. 3) and others including one Constable (P.W. 1) held a raid at Satgram village when they found 30/35 persons under the leadership and guidance of the accused Monoranjan Banerjee, since acquitted, engaged in cutting coal by extraction of earth from Satgram open quarry with pick axe, baskets etc. On seeing them the said persons started running away when the police party managed to arrest the present two petitioners. Some amount of coal and some implements were seized by the Police. Ultimately they stood their trial in the court of the learned Special Judge for allegedly violating Clauses 12E and 14 of the Colliery Control Order, 1945 punishable u/s 7(1)(a)(ii) of the Essential Commodities Act.

3. In the trial that followed, the prosecution examined 3 witnesses including S.I., Ganguly and one of the Constables who allegedly accompanied him during the raid

(P.Ws 1 and 3). The learned Judge relying upon their evidences has held the prosecution case fully established against the present petitioners. Holding further that Clause 14 but not Clause 12E of the Colliery Control Order, 1945 was violated by the present petitioners, he has sentenced the petitioners u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 in the manner stated above. Hence, the present petition for revision.

4. The learned Advocate for the petitioners has assailed the judgment passed by the learned Special Judge on several grounds.

5. He urges at the first instance that even Clause 14 of the Colliery Control Order, 1945, has no application to the facts of this case. Clause 14 prohibits (1) opening of any Coal Mine or seam or section of a seam, and (2) commencement of working in a Coal Mine or seam or section of a seam, the working whereof has been discontinued for a period exceeding 6 months without the prior permission in writing of the Central Government and except in accordance with the directions as the Central Government may give to the owner, agent or Manager of a Coal Mine. The learned Advocate urges that since the present petitioners are not owners, agents, or Managers of the Coal Mines in question, Clause 14 of the aforementioned order has no application to their case.

6. It appears that this argument was also made before the learned Special Judge. He pointed out that as per Clause 14 no Coal Mine or seam or section of a seam could be opened except with the prior permission in writing of the Central Government and in accordance with the directions of the Central Government as may be given to the owner, agent or Manager of the Coal Mine. He pointed out further that since the petitioners had not taken any permission from the Central Government in writing their case was well-covered by clause 14. We are in agreement with his conclusion in this regard. It strikes us that the Clause 14 was meant to apply to the case of a Mine which was going to be opened as well as to the case of a Mine the work in which has been discontinued for a period exceeding 6 months. In either case work cannot be started without prior permission in writing of the Central Government, and this permission was not taken in this case. This argument, therefore, does not strike us as very substantial.

7. It is urged next that S.I. Ganguly, (P.W. 3) was both the complainant and the investigating officer in this case and that this has prejudiced to the present petitioners.

8. This argument was also made before the learned Special Judge and he refused to be impressed by it. The learned Advocate for the petitioners cites Bhagwan Singh Vs. The State of Rajasthan, in support of his argument. This decision did not lay down that investigations done by a Police Officer, who himself is the informant is absolutely prohibited and must be struck down as bad in all cases. That was a case where investigation was made by a head constable who was himself the person to

whom bribe was alleged to have been offered and he himself lodged F.I.R. as informant or complainant. In view of the peculiar facts of the case it was remarked in that judgment by the Hon''ble the Supreme Court that this was an infirmity which was bound to reflect on the credibility of the prosecution case. The facts are not quite the same here. In this case the informant cum the I.O. was not personally involved with the facts of the case as in the reported case. The decision cited cannot therefore have any application to the facts of the present case.

Investigation in such a case as the present may be considered as bad where prejudice has been established. In this case, however, the learned Advocate for the petitioners cannot show how the fact that informant himself was the I.O. in this case has affected the petitioners prejudicially. In that view of the matter we are of the view that the learned Special Judge has very properly disregarded this argument.

9. It is urged next that at the time of trial the articles allegedly seized from the place of the occurrence were not produced before the learned Judge. This appears to be so. It appears that the learned Judge refused to put any importance to this aspect of the case as he felt that the seizure list exhibited in the case could be relied upon. The learned Judge being the Judge of facts, we are not inclined to interfere with his findings in this regard.

10. It is also urged by the learned Advocate that the conviction in this case rested on the evidence of P.Ws. 1 and 3 both of whom are police personnel. He urges that in view of the fact that there was no independent witness in this case the learned Judge ought not to have convicted the petitioners. We do not find any great merit in this argument also. There is no law that police personnel should not be relied upon as witnesses. Besides it appears that there is evidence on record that no public witness was present at the time of the seizure, the nearest village being situated at a distance of one and a half kilometer from the place of the occurrence. In the circumstances stated the learned Judge held that the presence of public witnesses at the relevant place and time was not expected. In that view of the matter we are not inclined to put any great importance to this argument also.

11. Next it is urged that Section 7(1)(a)(i) of the E.C. Act and not Section 7(1)(a)(ii) of the same Act has application to the facts of the present case. We are not inclined to agree with this view as on a perusal of both the provisions we are of the opinion that the very opposite is the case.

12. Lastly, the learned Advocate urges that the present petitioners being poor labourers should be given a lesser sentence. The learned Judge has given the petitioners the legal minimum sentence. Surely it can be cut down for adequate and special reasons. Alleged poverty of an accused against whom the prosecution charge has been established cannot be considered as an adequate or special reason. This argument also, therefore, fails.

Considering all the circumstances we are of the view therefore that there is no merit in the present revisional application and that it shall have to be rejected.

Hence, the revisional application is hereby rejected. The judgment and order passed by the learned Special Judge in T.R. 24 of 1984 are hereby confirmed. The lower court be informed The records, if called for, be sent down immediately. The petitioners, if on bail, do submit to their bail bonds and serve out the sentence, subject to legal set off, if any.

Jitendra Nath Chaudhuri, J.

13. I agree.