
(1994) 07 CAL CK 0024

Calcutta High Court

Case No: Criminal Appeal No. 367 of 1986

Bibuti Bhusan Nandy

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 14, 1994

Acts Referred:

- Essential Commodities Act, 1955 - Section 7(1)

Citation: (1995) 2 CALLT 305

Hon'ble Judges: Mukul Gopal Mukherji, J; Basudev Panigrahi, J

Bench: Division Bench

Advocate: M. Chowdhuri, for the Appellant; Sasanka Ghosh, for the Respondent

Final Decision: Allowed

Judgement

Basudev Panigrahi, J.

The appellant called in question the legality, validity and propriety of the judgment passed by the Special Judge, E.C. Act, Howrah in S.C.T. No. 131 of 1984 dated on 28.8.86 convicting the appellant u/s 7(i)(a)(ii) of the E.C. Act for violation of the provisions of West Bengal Kerosene Control Order, 1968 and directing him to undergo sentence of S.I, for four months and pay fine of Rs. 200/-, in default to suffer a further period of S.I. for one month.

2. The skeletal picture of the prosecution story narrated in the judgment is that on 27.9.84 a raiding party consisting of P.W. 4 Santosh K. Chakrafooty, P.W. 5 Brojomohan Sengupta and P.W. 1 Bholanath Mondal, raided the business premises of the appellant's (hereinafter be called as accused) firm M/s. Progressive Kerosene Agency situated at 248, Panchanantala Road, P.S. Howrah. At that time they found that the accused Karu Das (since discharged) was present. On demand by the raiding party, he failed to produce the stock register, sale register, licence and other relevant documents. They served a notice upon the proprietor of the firm which was duly received by the said employee Karu Das for production of books of account.

When the employee in spite of the notice failed to produce the books of account, the raiding party suspected about the conduct of the firm and insisted for physical verification of the stock which was displayed at the business premises. They found that it was shown to have possessed 454 litres of kerosene. But, on physical verification the raiding party found only 360 litres of kerosene oil in 3 barrels which were measured with the help of a "measuring rod". Police seized those 3 barrels containing 360 litres of kerosene oil, iron rod and 34 empty drums and prepared the seizure list. One such copy of the seizure list was handed over to the other accused Karu Das who was taken to Howrah P.S. whereupon on the basis of a F.I.R. lodged by P.W. 4 a case was registered against them. The case against the accused with his other companions viz. Boka Babu and Karu Das was lodged under the provisions of West Bengal Kerosene Control Order, 1968, punishable u/s 7(i)(a)(ii) of the E.C. Act.

3. The accused claims to have been falsely implicated in this case by P.W. 4 and other official witnesses. The Learned Special Judge recorded a conviction and sentence against the accused while acquitting and discharging the other accused Boka Babu and Karu Das respectively.

4. The learned counsel for the appellant Mr. Chowdhury has seriously contended that the findings of the learned Court below are based on parody of reasons. It is further contended that the learned Trial Court has committed a gross illegality in totally believing the official witnesses without examining their testimony in its correct perspective. He further contended that the accused had received 12000 litres of kerosene oil on 24.9.84 and as per the government notification 1% to 2% margin is given to the dealer for leakage, handling and operational loss or shortage. Ironically, even though such concession has been given by the government, the learned Special Judge has not taken into consideration of this aspect and had hastily jumped at the conclusion that there was shortage of kerosene oil of 94 litres.

5. The learned counsel for the respondent-state Mr. Ghosh has, however, supported the findings of the Special Court Judge and contended that there is no serious vulnerability so as to reach a different conclusion than the one already reached by the Trial Court. He highlighted incourse of hearing that the accused-appellant on his own showing has displayed on the stock-cumrate board that he had the stock of 454 litres of kerosene oil but on physical verification it was found out only 360 litres.

6. We had been taken through the evidence of the witnesses examined on behalf of prosecution. Almost all the witnesses had unequivocally stated that the appellant was not present at the time of raid. There was, thus, no occasion for the prosecution party to demand accounts and also other relevant records for production from him. None of the witnesses had claimed that a notice was given to this appellant for production of the accounts, rather, the evidence of the prosecution established that it was Kara Das who was asked to produce the documents. We are at a loss to understand as to how the watchman of the appellant would produce the documents. In the above premises, we are constrained to hold that there was no

demand by P.W. 4 and P.W. 5 for production of accounts book and other documents from the appellant. On the contrary, all the documents and the relevant records had been subsequently seized from him. Therefore, the appellant cannot be faulted for non-production of those documents at the time of raid. P.W. 2 and P.W. 3 do not support the prosecution case. Even if a witness is declared hostile, his entire evidence cannot be effaced to the ground nor will it be obliterated. From the evidence of P.W. 2 and P.W. 3, it appears that the shop was closed. The kerosene oil was found lying in 3 drums, out of which two were little more than half. Intrinsically if evidence of P.W. 2 is considered, it does not help the prosecution in as much as he denied the measurement to have taken place in his presence.

7. In the above circumstances, the evidence of P.W. 2 and 3 does not help the prosecution to bring home the charge to the accused.

8. From the evidence of P.W. 4, it eventually, appears that he gave notice to Karu Das to produce the register and accounts. The declaration board displayed that there was a stock of 454 litres of kerosene oil but on actual verification he claimed to have found only 360 litres kerosene oil in 3 barrels and there were 34 empty barrels. He seized the empty barrels, 3 barrels containing kerosene and also the measuring-rod and prepared the seizure list and thereafter one such copy was given to the accused Kara Das. It was brought out in cross-examination that one mark of measuring rod shows equivalence to 10 litres. The learned counsel for the appellant Mr. Chowdhury has placed the seizure list whereunder one mark in the iron rod has been described as signifying 20 litres. There is no satisfactory explanation about this discrepancy. 34 drums which were allegedly empty had not been opened. P.W. 4 is also not certain whether there was any remnants in those empty drum. P.W. 5 Blojomohan Sengupta who was the S.I. of Police and claimed to have accompanied P.W. 4, deposed in Court that there was slush or sediment in the empty drums. He opened those vacant drums in presence of P.W. 4. The evidence of P.W. 4 and P.W. 5 considered in juxtaposition to each other makes the story appears to be inconsistent, untrustworthy and not beyond reproach in-so-far as the opening of those drums is concerned. They did not take those sediments while measuring exact quantum of kerosene oil as "shortage".

9. The fact which has weighed with the Special Court Judge much was that 70 litres as noted in the register about the loss of kerosene due to handling on 14.9.84 has been taken into consideration. But he lost sight of the fact that 12000 litres of kerosene was received only on 24.9.84 and the raid was conducted on 26.9.84. The loss due to evaporation, handling or leakage can only be determined after the stock is completely exhausted. The learned counsel for the prosecution has however, strongly emphasized about the stock position displayed in the board. From mere display in the board about the stock, no definite conclusion can be deduced that there was no operational loss. It can be only calculated at the exhaustion of the stock. Therefore, merely because the appellant had shown that he had stock of 454

litres of kerosene oil without measuring the same with precision none can bring home the charge against the accused. If one percentage of kerosene oil is given as allowance towards the loss, leakage and for handling loss then evidently there would be no shortage of kerosene oil. Unfortunately, these aspects have not been properly considered by the learned Special Court Judge and he has reached an erroneous conclusion that there was shortage of about 94 litres of kerosene oil.

10. In the result, we are unable to agree with the conclusion of the Special Court Judge and, accordingly, the conviction and sentence passed for violation of Clause 12 of West Bengal Kerosene Control Order, 1968 read with Section 7(i)(a)(ii) of the Essential Commodities Act stand hereby set aside. The appeal is, thus allowed. The bail bond furnished by the appellant is hereby cancelled.

Mukul Gopal Mukherji, J.

11. I agree.