

(2014) 11 CAL CK 0076
In the Calcutta High Court
Case No : C.R.A. No. 37 of 1991

Ratan Kumar Agarwala

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Essential Commodities Act, 1955 — Section 7(1)(a)(ii), 7(i)(a)(ii)

Citation : (2014) 11 CAL CK 0076

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Tirthankar Ghosh and Kaushik Kundu, Advocate for the Appellant;
Subir Banerjee, Ld. A.P.P, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—The appeal is directed against judgement and order dated 11th December, 1990 passed by the learned Judge, Special Court, under E.C. Act, Malda, in Special Court Case No. 13/90 arising out of D.G.R. Case No. 48/89, convicting the appellant for commission of offence punishable under section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 (hereinafter referred to as "the Order of 1977") and sentencing him to suffer rigorous imprisonment for three months and to pay a fine of Rs. 250/- in default to suffer rigorous imprisonment for one month more.

2. The prosecution case as alleged against the appellant is that on receipt of source information that the dealer was storing huge quantity of lubricating oil in his godown for carrying on clandestine business, S.I., B.C. Das, D.E.O., Sadar, (P.W. 3), S.I. N.R. Das (P.W. 4) being led by Inspector D.E.B., Malda, Sri S.P. Chatterjee (P.W. 2), held a raid in the godowns of the appellant situated at Sarbamangala Pally and Ramkrishna Pally on 18.9.1989 around 9-00 A.M. The appellant was present in his office at Sarbamangala Pally. On demand, the appellant produced the stock registers, licence and cash memo concerning his

stocks of lubricating oil. On scrutiny it was found that on 18.9.1989 the accused has shown opening stock as follows : Brake Oil - 180 Litres, Grease - 1026 Kgs., Gear Oil - 128 Litres and Mobile Oil - 3892 Litres. The appellant had sold 5 litres of Mobile oil on that day. The police party made physical verification of the stocks of lubricant oils in the godown of the appellant and it was detected that 67 litres of mobil oil, 19 litres of brake oil and 157 litres of gear oil were in excess of the stocks as shown in the registers and 29 kgs. of grease was found to be short. The stock and price board displayed at the shop was also not maintained properly. Accordingly, the stock of oils, books of accounts, stock-cum-rate board were seized under seizure list and written complaint was lodged at English Bazar Police Station resulting in registration of English Bazar Police Station Case No. 277/89 dated 18.9.1989 under section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for violating the condition of licence under the West Bengal Lubricating Oil Licensing Order, 1967 and paragraph 3(2) of the Order of 1977.

3. In conclusion of investigation, charge sheet was filed under section 7(i)(a)(ii) of the Essential Commodities Act for violation of provisions of the West Bengal Lubricating Oil Licensing Order, 1967 and also for violation of paragraph 3(2) of the Order of 1977. Substance of accusation was read over and explained to the appellant. The appellant pleaded "not guilty" and claimed to be tried.

4. In the course of trial, the prosecution examined as many as four witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, the learned trial judge by judgement and order dated 11th December, 1990 convicted the appellant for commission of offence punishable under section 7(i)(a)(ii) of the Essential Commodities Act for violation of paragraph 3(2) of the Order of 1977 and sentenced him to suffer rigorous imprisonment for three months and to pay a fine of Rs. 250/- in default to suffer rigorous imprisonment for one month more.

5. Mr. Ghosh, learned counsel appearing for the appellant submitted that substance of accusation did not refer to violation of paragraph 3(2) of the Order of 1977. The appellant had not been put on proper notice with regard to such accusation. As such conviction of the appellant for breach of paragraph 3(2) of the Order of 1977 was impermissible in law. He further submitted that the evidence on record did not show that there was any breach of paragraph 3(2) of the Order of 1977 or that the said Control Order relating to seized stock of oils. He, accordingly, prayed for acquittal of the appellant.

6. Mr. Banerjee, learned Additional Public Prosecutor submitted that the appellant was throughout aware of the accusation levelled against him. First Information Report related to breach of paragraph 3(2) of the Order of 1977, so was the charge sheet. Inadvertently, there is no reference to the said Control Order in the substance of accusation although the factual matrix relating to breach of paragraph 3(2) of the Order of 1977 has been set out with sufficient clarity. No prejudice has been caused to the appellant. Prosecution evidence established the case beyond reasonable doubt. He prayed for dismissal of the appeal.

7. Firstly, let me deal with the issue raised by the learned counsel for the appellant that the latter suffered prejudice due to lack of reference of paragraph 3(2) of the Order of 1977 in the substance of accusation in the instant case. The substance of accusation in the instant case reads as follows:

"It is alleged that you on 18.09.89 at 9 a.m. at Sarbamangala Pally and Ram Krishna Palli within P.S. English Bazar stored lubricating oil, grease, brake oil, mobile oil in godowns other than those approved by the licencing authority that you did not maintain proper accounts of stock of the lubricating oil, grease etc. that you did not also display in your stock and price board correct account of stocks 67 liters of mobile oil 19 liters of brake oil, 157 liters of gear oil were found excess and 29 kgs. of grease in shortage. You have there by violated the conditions of your licence granted under the West Bengal Lubricating Oil Licencing Order, 1967 and para 12(2) of the Control Order and committed offence punishable u/s 7(1)(a)(ii) of the Act, 1955."

8. It is true that in the substance of accusation there is no reference to paragraph 3(2) of the Order of 1977. Paragraph 3(2) of the Order of 1977, inter alia, provides:

"3. Display of stock and price lists.

(1)

(2) Every wholesaler and every retailer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form B indicating the opening stock and the wholesale or retail price, as the case may be of each essential commodity held by him on each day."

9. According to the said paragraph every dealer and retailer is required to display conspicuously at a place near the place of business a stock-cum-rate list in prescribed form indicating open stock, wholesale, retail price of essential commodities held by him on that day.

10. A plain reading of the aforesaid accusation would show that the factual matrix of breach of paragraph 3(2) of the Order of 1977 was stated therein as follows:--

".....that you did not also display in your stock and price board correct account of stocks ..."

11. Accordingly, I am of the opinion that breach of paragraph 3(2) of the Order of 1977 was substantially stated in the substance of accusation and the appellant was not taken by surprise or prejudiced in that regard in any manner whatsoever.

12. Mr. Ghosh has further argued that seized articles, namely brake oil, gear oil or mobile oil do not fall in the category of essential commodities notified under the Order of 1977. Entry 23 in Schedule I of Order of 1977 enumerates the following essential commodities to which the said Order applies :

"23. Petrol and High Speed Diesel ex-pump and motor oils in sealed tins."

13. There is no dispute that gear oil, brake oil and mobile oil which were seized are used for running motors and would fall within the category of motor oil in Entry 23, as aforesaid. Definition of motor oil in the Control Order of 1967 lends credence to such interpretation. Entry E of Schedule 22 of the said Order defines "motor oil and specialities" as follows :--

"E. High Grade Motor Oils and Specialities -

(1) Engine Oils,

(2) Gear and Transmission Oils,

(3) Break Oil and other Specialities."

14. Hence, there is little substance in the submission of Mr. Ghosh that seized gear oil, brake oil mobile oil or grease do not fall within the category of essential commodities to which Order of 1977 applies.

15. Coming to the evidence on record I find that the seizure of the stock of motor oil from the godown and shop of the appellant has been proved. Members of the raiding party, namely P.Ws. 3, 4 and 5 deposed that they raided the place of business and godown of the appellant and verified the stocks of motor oils maintained therein along with the books of account. Physical weighment of the stock showed that there was excess of 67 litres of mobile oil, 19 litres of brake oil, 157 litres gear oil and a shortage of 29 kgs. of grease when compared with the entries in the stock registers as well as the entries in the opening stock as provided in the stock-cum-rate board displayed in the place of business. Stock-cum-rate board was, accordingly, seized.

16. In view of the aforesaid discussion, I am of the opinion that the prosecution has been able to prove its case beyond reasonable doubt. Conviction and sentence imposed upon the appellant is, accordingly, upheld.

17. The appeal is dismissed. Bail bond of the appellant is cancelled. The appellant is directed to surrender to his bail bond within one month from date and serve out his sentence failing which trial court shall take necessary steps for execution of the sentence.

18. The period of detention suffered by the appellant shall be set off from the sentence in terms of section 428 Cr.P.C., 1973.

19. Lower court records along with a copy of the judgement be sent down to the trial court at once for necessary action.