(2014) 11 CAL CK 0075

In the Calcutta High Court

Case No : C.R.A. No. 138 of 1985

Sampatlal Sharma APPELLANT

Vs

The State of West Bengal RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437A
Essential Commodities Act, 1955 — Section 7(1)(a)(ii)

Citation : (2014) 11 CAL CK 0075

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Subir Banerjee, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—The appeal is directed against the judgment and order dated 28.03.1985 passed by the learned Judge, Special Court, E.C. Act, Darjeeling in Special Court Case No. 10 of 1983 convicting the appellant for commission of offence punishable under section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 3(2) of West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 (hereinafter referred to as the Order of 1977) and to suffer simple imprisonment till rising of the Court and to pay a fine of Rs. 500/- only, in default, to suffer simple imprisonment for 50 days.

2. Prosecution case, as alleged, against the appellant is to the effect that on 29.04.1983 PW 6 (D.B. Chettri), Inspector of Police attached to DEB along with others visited and inspected the shop of the appellant situated at Tharbu T.E. within P.S. Mirik. They found that the appellant was dealing in rice but did not display stock-cum-rate list in Form B as required paragraph 3(2) of the Order of 1977 in a conspicuous place of business. List which was displayed was written up to 29.04.1984 showing opening balance of rice as 16 quintals 10 kgs. whereas stock register showed opening balance of rice of 19 quintals 90 kgs. on 29.04.1983. On physical verification PW 6 found 21 quintals 50 kgs. rice in the

shop. Stock of rise, stock register and stock-cum-rate list were seized under a seizure list in presence of the witnesses. The appellant was arrested and on the basis of written complaint of PW 6 first information report was registered as Mirik P.S. Case No. 3/5 dated 29.04.1983 under section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 3(2) of the Order of 1977 and 5(a) and 18(1) of the West Bengal Rice and Paddy Licence and Control Order, 1967 (hereinafter referred to as Order of 1967).

3. In conclusion of investigation, charge sheet was filed against the appellant Substance of accusation was read over to the appellant. He pleaded not guilty and claimed to be tried.

4. In course of trial, prosecution examined as many as 6 witnesses and exhibited a number of documents.

5. The defence of the appellant was one of innocence and false implication. It was the specific defence of the appellant that the stock-cum-rate list was displayed and maintained properly in accordance with law.

6. In conclusion of trial, learned trial Judge was of the view that there was no violation of paragraph 5(a) and 18(1) of the Order of 1967. He however, by judgment and order dated 28.03.1985 convicted the appellant for commission of offence punishable under section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 3(2) of West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 and sentenced him to suffer simple imprisonment till rising of the Court and to pay a fine of Rs. 500/- only, in default, to suffer simple imprisonment for 50 days.

7. Mr. Banerjee, learned Additional Public Prosecutor submitted that the quantity of rice as recorded in the stock register did not tally with the opening balance disclosed in the stock-cum-rate list. Accordingly the conviction ought not to be disturbed.

8. PW 6 (D.B. Chettri), who is the de facto complainant and the most vital witness in the instant case, stated that on 29.04.1983 he along with other officers attached to DEB had inspected the shop of the appellant around 3.30 p.m. Upon inspection it was detected that stock-cum-rate list which was written upto 29.04.1983 showed opening balance of rice as 16 quintals 10 kgs. He verified the stock register which showed opening balance of rice as 19 quintals and 90 kgs. On physical verification 21 quintals 50 kgs. of rice was found in stock. Since there was discrepancy, he seized the rice, stock register, licence and stock-cum-rate board were seized. He arrested the appellant and lodged written complaint marked as Exhibit 2 at police station which was treated as first information report in the instant case. He conducted the investigation and filed charge sheet.

9. In cross-examination, he stated that he did not prepared a copy of the stock-cum-rate board.

10. PW 1 (R.B. Bagdas), PW 5 (C.M. Prodhan) were members of the raiding party. They have corroborated the evidence of PW 6. Other members of the raiding party, namely, PW 3 (Prabhu Singh) and PW 4 (Balaram Lama) were tendered for cross-examination.

11. PW 2 (Lakman Tamang) is an independent witness of seizure and he stated that the inspector did not weigh all the bags of rice. He however proved his signature on the seizure list.

12. From the evidence on record it appears that there was a stock-cum-rate list in the shop. It is the evidence of PW 1, 5 and 6 that the opening balance of rice in the stock-cum-rate list was 16 quintals 10 kgs. whereas the opening balance in the stock register was 19 quintals 90 kgs. Physical stock was found as 21 quintals 50 kgs. Learned trial Judge came to a finding that the physical weighment of the seized rice was not accurate as all the bags were not weighed. Accordingly it cannot be said what was the actual quantum of rice seized from the shop of the appellant was proved. Licence of the appellant was proved. Hence, the appellant was acquitted of the allegation of violation of paragraph 5(a) and 18 of Order of 1967. Trial Court however came to a finding the appellant had violated paragraph 3(2) of the Order of 1977 as the opening balance in the stock board is alleged to be at variance with the opening balance in the stock register.

13. Stock-cum-rate board which was produced in Court did not show any entry against open balance. Explanation given was that the writings which were in chalk and had rubbed off. No contemporaneous record in the form of a copy of the stock-cum-rate board was prepared at the time of inspection. In the absence of such contemporaneous record, it would be unsafe to rely on the mere ipse dixit of the official witness particularly when there is evidence on record that the actual weighment of the stock was not properly conducted by the members of the raiding party during inspection. PW 2, the independent witness, had also not corroborated the prosecution case of incorrect entry as to opening balance in the stock-cum-rate board.

14. For the aforesaid reasons, I am of the opinion that the appellant ought to be given the benefit of doubt with regard to the allegation of not properly maintaining the stock-cum-rate board in the instant case.

15. Accordingly, the appeal is allowed.

16. judgment and order of conviction is set aside. Rule issued for enhancement of sentence is accordingly discharged. Appellant shall be released from bail bond after expiry of six months from date in terms of Section 437A of Cr.P.C.

17. Lower court records along with copy of judgment be sent down to the trial Court at once.

