
(1996) 04 CAL CK 0025
In the Calcutta High Court
Case No : Appeal No. 80 of 1988

Shri Sudarsan Sanki

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 313
West Bengal Lubricating Oil Licensing Order, 1967 — Section 8

Citation : (1996) 2 CALLT 5

Hon'ble Judges : Asish Baran Mukharjee, J

Bench : Single Bench

Advocate : Amit Talukdar, for the Appellant; Ramprasad Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Asish Baran Mukharjee, J.—The appeal arises out of conviction and sentence passed by Judge, special Court under E. C. Act, Midnapore on 30.1.88 in DEBGR Case No. 51/84 arising out of Ghatal P.S. case No. 5 dated 8.9.84 whereby the accused appellant was sentenced to S.I. for 1 year and fine of Rs. 1,000/-in default further S.I. for 1 month.

2. The case of the prosecution in short is that in course of inspection of the shop rooms of the accused appellant on 8.9.84 the Inspector found mobil oil and high speed diesel oil exposed for sale. The stock book for mobil oil was written up to 8.9.84 one stock cum rate board was also found under the name of the accused appellant which was written up to 1.9.84 and stock of mobil oil and HSD oil were shown as 665 litres and 662 litres respectively. The appellant had a licence for lubricating oil but there was no licence for keeping HSD oil whose quantity was found to be 900 litres. Accordingly, for violation of the West Bengal Motor Spirit, and High Speed Diesel Oil (Licensing Control and Maintenance of Supplies) order 1980 and for violation of Section 8(i) and (ii) of the West Bengal Lubricating Oil Licensing Order 1967 a case was started.

3. The Trial Court after scrutinising the evidence given by seven P.W.s and one D.W. and the documents on record found the accused appellant guilty and passed the aforesaid sentence.

4. Being aggrieved the present appeal has been preferred alleging that the evidence of the witnesses have not been scrutinised properly, that proper examination of the accused u/s 251 Cr.P.C. was not done, that the copy of the stock board which has been exhibited was prepared at a subsequent stage, that there was no violation of the control orders as alleged and that the sentence is too severe having regard to the fact that the accused had to face trial for a decade.

5. I have heard the argument advanced on behalf of the appellant and also the State. It has been argued for the appellant that mere storage does not amount to carrying on business and as such the mere finding of the HSD oil is not sufficient to jump to the conclusion that the accused appellant also used to deal with the same oil. It has also been argued that accusation against the accused has not been properly explained to him in course of examination u/s 251 Cr.P.C. and the examination u/s 313 Cr.P.C. is not exhaustive inasmuch as the evidence given by the chemical examiner was not put to the appellant. It has also been argued that the case being of 1984 the sentence is too severe. Argument has also been advanced to the effect that no reason has been assigned for not dealing with the accused under the Probation of Offenders Act. While admitting the finding of HSD oil in one of the Shop rooms, it is submitted that the said oil was for the Husking machine belonging to the father of the accused.

6. On the other hand, it has been argued for the State that finding of 900 litres of diesel oil in one of the shop room clearly shows that the accused used to deal with the said oil alone though he had licence for dealing with the lubricating oil alone. It is also submitted that in order to have diesel oil one should have got his name registered as a consumer and in its absence he is not expected to get it. It is argued that as because the father of the accused was not recorded his name as a consumer to HSD oil hence the defence story can not be believed.

7. The learned Advocate appearing for the appellant has relied on a case reported in 1981 Cr L J 1100 in support of his contention that mere storage would not justify transaction of business. Business postulates continuity of transaction. With regard to the examination of the accused u/s 251 Cr. P. C. reference has been made to 95 CWN 138 in support of the contention that proper examination has not been done.

8. Regarding first point taken by the learned Advocate appearing for appellant, it is true that so far as HSD oil is concerned the control order does not create any presumption from the mere storage of HSD oil whatever be its quantity. Unlike the kerosin control order where storage of certain quantity of kerosin oil raises a presumption in favour of business and makes it an offence. A scrutiny of the evidence given by the P. W. s no doubt reveals that while mobil oil was found in one of the shop rooms HSD oil was found in the other shop room. But it is the

evidence of P. W. 2 that he never finds the accused selling anything other than mobil oil. Therefore, the prosecution cannot meet this evidence of P. W. 2 who has not been declared a hostile witness, it is also the evidence of P. W. 2 that the accused disclosed to the Inspector that the diesel oil found in the other room was meant for running Husking mill belonging to his father. This is also the evidence of P.W. 3. There is also the evidence of D.W. 1, father of the accused on this point. We also get from the evidence of P. W. 1 that the Inspector found one licence for running Husking mill in the name of father of the accused though he stated that the same was not valid on the relevant day. But that is a different aspect and liability if any rests with the father of the accused in case, a case would have been started against him for such violation. It is true, that a copy of the alleged rate cum stock board has been exhibited in this case. As per the evidence of P.W. 1 the Zimmanama as well as the copy was prepared by him though he could not definitely say whether it was in the same pen or not. A scrutiny of the Zimmanama which is Exhibit 2 and the copy of the stock cum rate board which is Exhibit 3 clearly shows that accepting the signature of P. W. 1 appearing at the bottom of Exhibit 3, on other portion is either written in the same pen with which the P. W. 1 signed both the documents and filled up the entire body of Exhibit 2. I have no manner of doubt that this Exhibit 3 cannot be treated as genuine document. The learned Special Court Judge did not at all consider this aspect of the case but he passed his conviction only on the basis of the evidence of finding of HSD oil in one of the shop rooms.

9. Regarding examination of the accused u/s 251 Cr.P.C. the relevant order being order No. 30 dated 7.4.87 shows that there was not at all proper examination of the accused as the law requires. Such examination was not conducted in the specified form. On the other hand it will appear from the relevant order in the order sheet that it must have been written by somebody else and not by the learned judge himself. This will be apparent from the finding of the word "accusation" instead of " accusation ". Therefore, this examination has not also been done properly. Regarding the other objections, so far as it relates to dealing with probation of offenders Act it is not substantiated since I find that the reason has been assigned by the Learned Judge.

10. Regarding the argument advanced on behalf of the State, it may be stated that mere finding of certain quantity of HSD oils does not amount to transacting business. In the event of user of diesel oil not procuring or registering his names as such user may be penalised who in the present case is father of the accused, but that does not strengthen the prosecution case.

11. After giving my careful consideration to the evidence on record, I come to the conclusion that the learned judge was influenced by the finding of considerable quantity of HSD oil but there being no evidence that the accused ever transacted with HSD oil he cannot be saddled with the violation of the control order regarding the said oil. In the result, the conviction and the sentence can not be upheld.

12. It is accordingly ordered that the criminal appeal be allowed on contest. The conviction and sentence stands set aside. In the result the accused appellant stands acquitted of all the charges framed against him, seized articles shall go back to the person from whom the same were seized. Fine if paid shall be refunded to the accused.