

Ranjit Kumar Mondal and anr. Vs. the State of West Bengal

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Court : Kolkata

Decided On : Nov-17-2000

Reported in : (2001)1CALLT446(HC)

Judge : Pradyot Kumar Sen, J.

Acts : [Essential Commodities Act, 1955](#) - Section 7(1A and 2);; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 420;; West Bengal Pulses Edible Oil Seeds, Edible Oil (Dealers Licensing) Order, 1978

Appeal No. : Criminal Appellate Jurisdiction C.R.A. No. 169 of 1988

Appellant : Ranjit Kumar Mondal and anr.

Respondent : The State of West Bengal

Advocate for Def. : Mr. R.N. Chakraborty and ;Mr. Swapan Mullick, Adv.

Advocate for Pet/Ap. : Mrs. Pranati Goswami, Adv.

Judgement :

ORDER

P.K. Sen, J.

1. This appeal is at the instance of a convict and Is directed against a Judgment and order of conviction passed by Sri. A.K. Chatterjee, Judge, Special Court,

Mldnapore.

2. The facts leading to the prosecution of this convicts (hereinafter referred to as the appellants) are that on 28.8.86, the complainant and his raiding party had been to the shop of the appellant and conducted a raid In between 11.30 hrs. and 13 hrs. At that time, the appellant was not present while his brother Amiya was then running the sale transaction of the said shop. During Checking, 18 bag of Til containing 61 Kgs. in each bag was found Inside the shop room. On demand, the appellant could not produce any licence or document for running business In Til. Stock cum Rate Board also was not found Inside the shop. Thus, FIR was lodged for violation of provisions of Para 3(1) and 3 of the West Bengal Pulses edible oil seeds, edible oil (dealers licensing order) 1978. After completion of Investigation, a charge-sheet was submitted under section 7(1)(a)(ii) of the Essential Commodities Act for having violated the provisions as stated above.

3. The appellant pleaded not guilty of the charge and this defence was that some villagers kept the seed in the shop. After completion of trial, the Judge found the appellants, guilty and convicted and sentenced him to S.I. for six months each and to pay a fine of Rs. 1000/- each in default of which to suffer S.I. for one month more. The period of detention were set off under 420 Cr.PC. There was a further order of disposal of the seized property for the period of appeal is over.

4. On being agrieved by such order of conviction, the instant appeal has been preferred before this Court which came up for hearing before this Bench.

5. Thus, the point for consideration is whether a Judgment and order of conviction can stand in appeal or not.

6. The learned advocate, Mrs. Pranati Goswami, appearing for the appellants has submitted before me that the instant judgment and order of conviction suffers from illegality inasmuch as evidence on record do not Justify such order and Till seed does not come within the purview of the West Bengal Pulses edible oil seeds, edible oil (dealers licensing order) 1978, and, therefore, there cannot be any question of any violation under section 7(1)(a)(ii) of the Essential Commodities Act. Now, at the outset, it has been pointed out that the learned Judge who heard

the case had delivered the Judgment relying upon the evidence of D.W.I and what the appellant had stated in his cross-examination under section 313 of the Code of Criminal Procedure. Strongly enough, the trial Judge started to write out the Judgment with the following words namely, 'before entering into the merit of the prosecution case, let it be seen how far defence taken by the accused stands. The prosecution is required to prove its own case. When the said agency submitted a charge-sheet, it is the duty of the prosecution to prove the case beyond any shadow of doubt. Any order of conviction cannot be recorded on the defence willness as stated in evidence or what accused stated while he was examined under section 313 Cr.PC. The examination of the accused is a privilege between the Judge and the accused, and, therefore, prosecution cannot lake advantage of that privilege which legislators had given to the accoused persons. The prosecution, as I find, examined these witnesses in all. Let us see what they had stated.

7. P.W.1 who conducted the raid stated in his evidence that description of place of seizure as given In the Seizure List Is not correct. It strikes at the root of the prosecution case because the Seizure List does not show the acutal place seizure. The prosecution case must fall. P.W.2 was present at the time of raid as stated in his examination-in-chief that but he cannot say whether the accused could produce document in support of the possession against the said bags of Til. Therefore, he was not sure as to whether the accused had produced any documents in support of possession. It only indicates that he was not present at the time of seizure. He further stated that bags of Til were found in an unfinished room attached to the grocery shop of the accused. That is to say the seizure was not made from the shop room Itself. It negatives the prosecution case. Similar is the statement of P.W.3. P.W.4 is a sub-inspector and was present at the time of raid could not remember whether any welghment chart was prepared. He even could not say who else was present at the time of seizure. P.W.5only drew up the final FIR having no knowledge about the incident. P.W.6 that is the I.O. stated that the did not seize document or any paper to show that the appellant was owner to the disputed shop. It may be that the shop belongs to somebody.

8. In any case, from the evidence adduced by the prosecution it is not clear as to whether the seized articles were found inside the shop of the appellant. There is every doubt as to whether such seizure was made from the said shop room. It is, therefore, a circumstances which goes in favour of the defence. Smt. Goswami had referred to an unreported decision on this score as was decided In C.O. 10023(W) of 1987 wherein a single Bench held that Til seed does not come under the purview of the West Bengal Pulses edible oil seeds, edible oil (dealers licensing order) 1978.

9. On perusal of the relevant provision of the said order, I also do not find anything from the schedule that Til is a seed coming within the meaning of edible oil seed. I find that the seed is not an edible oil seed, and, therefore, it is not fit for consumption definitely as an item of food. It was submitted that there cannot be any punishment or prosecution when apparently the appellant had not clearly committed any offence in this regard Inasmuch as Til seed had nowhere being treated or described as edible oil seed in any of the Control Order. It is apparent that the prosecution had lodged the FIR on a total misconception of the provisions of law, in this regard all proceedings initiated on the basis of such FIR was illegal and not maintainable in law.

10. The admitted position is that the West Bengal Pulses edible oil (dealers' licensing order) 1978 does not expressly provide any definition treating that Til seed is an item of edible oil seed. On the contrary, with respect to declaration of Stocks and Prices of Essential Commodities Order 1977 provides definition of the Essential Commodities, but Til seed had not been categorically or specifically included within the definition of the essential commodities or in the list appended to in the schedule.

11. The learned advocate appearing for the respondent has submitted before me that the un-reported Judgment is not applicable to the present facts and circumstances of the case. But the fact remains that the Til seed has not included in the said schedule, and, therefore, the question of any violation cannot and does arise. Thus, I find the prosecution was bad in law and the trial conducted on that prosecution was equally bad in law. In view of the above, the judgment and order

of conviction are liable to be set aside and they are accordingly set aside. In the result, the appeal succeeds. The judgment and order of conviction are set aside. The appellant be released from bail bond forthwith.

12. Appeal succeeds

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