13.11.2025
Sl.16
Nandita
Court No.655

CRA 284 of 1999

In the matter of **: Dilip Kumar Mondal**

....Appellant

Dr. Achin Jana,
Mr. Prosenjit Ghosh,
Mr. Bhaskar Dalui,
Ms. Chetna Rusagi

.....for the Appellant

Mr. Avishek Sinha,
Ms.Jonaki Saha

.....for the State

(**Dictated in Court**)

1. This appeal is filed at the instance of the appellant challenging the impugned judgment and order passed by the learned Judge, Special Court (E.C. Act), Murshidabad in connection with E.C. Case No. 136 of 1992, T.R. No. 71 of 1993 arising out of Daulatabad P.S. Case No. 99 of 1992 dated 27.12.1992.
2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 7(I)(a)(ii) of the E.C. Act, 1955 and was sentenced to suffer simple imprisonment for a period of six months along with fine of Rs. 500/- and in default of payment of fine to suffer further simple imprisonment for one month.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction passed by the learned

Trial Court, the present appeal has been preferred at the behest of the appellant-convict.

4. To encapsulate the prosecution's narrative in brief and orderly form, the facts, as alleged, may be set forth thus:

> *"On 27.11.1992 at about 15:30 hours, the complainant, accompanied by other members of the anti-smuggling team, conducted a raid at Daulatabad, during which they purportedly discovered the present appellant transporting sixty bags of rice in a matador vehicle bound for Jalangi–Narasinghapur. The vehicle was intercepted, and upon interrogation, the accused is said to have produced photocopies of a license, an authorization letter, and a cash memo in support of the transportation of the rice. According to the complaint, these documents were subsequently found to be fictitious or otherwise not genuine. Consequently, the complainant seized the rice bags from the possession of the appellant, preparing a seizure list in the presence of witnesses. The rice was duly weighed, and a weighment chart was prepared. The seized goods were thereafter entrusted in 'jimma' to one Giasuddin Sarkar and the cash memo was given 'jimma' to Shambhu Saha under an appropriate 'jimmanama'. Based on this incident, a written complaint was lodged with the Officer-in-Charge of Daulatabad Police Station, leading to the registration*

of Daulatabad P.S. Case No. 99/92 dated 27.12.1992 under Section 7(1)(a)(ii) of the Essential Commodities Act (X). Thus, the machinery of the criminal law was set in motion, culminating in the submission of a charge-sheet against the present accused after completion of investigation."

5. In the present case, the prosecution examined two witnesses in support of its allegations and also tendered several documents, which were duly exhibited. On the other hand, the defence produced one witness, who was examined as D.W. 1 to substantiate its version of the events.

6. Mr. Dr. Achin Jana, learned Advocate for the appellant, has strenuously argued that the prosecution case is riddled with material contradictions and omissions which strike at the very root of its credibility. According to the learned Advocate, the evidence adduced by the prosecution does not inspire confidence and, therefore, the narrative sought to be projected cannot be safely relied upon to uphold the conviction. It is submitted that the prosecution has miserably failed to establish the alleged seizure and recovery of the rice bags from the conscious possession of the accused. In the absence of any cogent and reliable evidence proving such seizure, the learned Trial Court, without any legal or factual basis, proceeded to conclude that the

appellant was guilty of the alleged offence, which according to the defence is wholly unsustainable.

7. The learned Advocate further points out glaring contradictions between the version narrated in the First Information Report and the statements of P.W. 1 before the Court. Attention is drawn to the testimony of P.W. 1, who stated in his deposition that, upon demand, the driver of the vehicle failed to produce any license, permit, cash memo or other documents relating to the transportation of the rice. However, this statement stands in stark contrast to what has been specifically mentioned in the FIR, wherein it is recorded that, upon being asked, the appellant, who was the driver of the vehicle, actually produced a cash/credit memo, an authorized bill and a Xerox copy of his rice license, which upon verification were allegedly found to be false.

8. Dr. Jana further contends that the chain of inconsistencies does not conclude there. According to P.W. 2, the appellant, during interrogation, produced a Xerox copy of the license accompanied by an authorization letter, a version that stands in direct conflict with the testimony of P.W. 1. Such mutually contradictory accounts, it is argued, strike at the very foundation of the prosecution's case. The learned Advocate submits that these discrepancies, particularly the divergence between the FIR narrative and the evidences of the witnesses, are not minor or peripheral but go to the root

of the matter. They substantially impair the credibility of the prosecution and render its entire story inherently doubtful.

9. Moreover, the appellant has emphasized that no proper verification was conducted with respect to the alleged cash memos seized during the investigation. Although P.W. 2 claimed to have verified such cash memo at the shop of one Shambhu Saha of Gorabazar, it is extremely surprising and, as argued, fatal to the prosecution that this very Shambhu Saha was neither cited as a witness nor examined during the trial. The prosecution has offered no explanation whatsoever for such an omission. According to the learned Advocate, the non-examination of this crucial witness, whose testimony could have conclusively established or disproved the authenticity of the documents, raises serious doubts regarding the fairness and reliability of the prosecution's case.

10. It is further submitted by the learned Advocate for the appellant that the testimony of P.W. 2, who is projected by the prosecution as a material witness to the alleged seizure, suffers from serious inconsistencies and weaknesses. During his examination-in-chief, P.W. 2 stated that the cash memo book in question had been issued up to serial numbers 715 and 716, and that the remaining serial numbers had not been issued to any customer. He further stated that serial number 720 was still intact in the book, as it too had never been issued. However, the credibility of

this statement becomes doubtful upon a close scrutiny of his cross-examination. In cross-examination, P.W. 2 candidly admitted that the cash memo book containing serial numbers 715 to 750 had not been produced before the Court. Even more significantly, he stated that he was not in a position to produce the very cash memo which was allegedly seized in the instant case. This inability on the part of a prosecution witness to produce the primary documentary evidence, which is claimed to constitute an important piece of incriminating material, severely undermines the truthfulness and reliability of the prosecution's narrative. According to the learned Advocate, such lapses cast serious doubt on whether any genuine or lawful seizure was made at all.

11. The learned Advocate further contends that, apart from the two official witnesses, who are police personnel, no independent witness has been cited or examined to support the alleged seizure. The evidence on record reveals that several persons were present at the spot at the time of the raid, yet the prosecution chose not to examine any of them. The absence of independent seizure witnesses, despite their availability, creates a substantial dent in the prosecution's case.

12. Mr. Avishek Sinha, the learned Advocate for the State has argued that the prosecution witnesses have consistently supported the case of the prosecution, both in their

examination-in-chief and during cross-examination. According to the State, the testimonies of these witnesses are coherent, trustworthy, and sufficiently corroborated by the surrounding circumstances of the case. It is contended that nothing has been elicited from their cross-examination that would render their statements unworthy of belief or shake the foundation of the prosecution's narrative.

13. Mr. Sinha further submits that the witnesses examined by the prosecution have remained steadfast and consistent on all material particulars, thereby establishing the prosecution case beyond reasonable doubt. It is pointed out that minor discrepancies, if any, do not affect the core of the prosecution's version and are natural in the ordinary course of human perception. Therefore, such minor variations cannot be magnified to reject the otherwise reliable evidence of the prosecution witnesses.

14. It is further argued that the allegations of contradictions or omissions raised by the defence are either inconsequential or relate to trivial matters that do not strike at the substance of the prosecution case. According to the State, the Trial Court rightly appreciated the evidence on record and correctly reached the conclusion that the guilt of the appellant stood proved.

15. In view of the consistent and credible evidence adduced by the prosecution, the learned Advocate for the State submits that there is no perversity, irregularity, or illegality

in the findings recorded by the Trial Court. Consequently, it is urged that the present appeal lacks merit and should, therefore, be dismissed outright, affirming the conviction and sentence imposed by the Trial Court.

16. I have given my anxious and thoughtful consideration to the rival submissions advanced on behalf of both parties and has meticulously examined all materials available on the record.

17. P.W. 1, a member of the raiding party, has deposed that on the relevant date and time, an anti-smuggling raid was conducted during which a matador vehicle carrying 60 bags of rice was intercepted at Daulatabad while it was proceeding towards Jalangi. According to this witness, the vehicle was being driven by the present appellant. P.W. 1 has categorically stated in his examination-in-chief that upon being asked to produce the requisite documents, such as license, permit, cash memo, or any other authorization, relating to the transportation of the rice, the appellant failed to produce any such document before the raiding team.

18. However, this version of P.W. 1 stands in stark contradiction to what has been clearly stated in the written complaint lodged at the initialstage of the case. In the complaint, it is specifically recorded that the appellant was directed to produce the relevant documents or license for carrying the sixty bags of rice, and upon such demand, the appellant in fact produced (i) one cash/credit memo, (ii) one

authorized bill, and (iii) a photocopy of a rice license. It is further mentioned in the complaint that upon verification, the cash/credit memo was found to be false or fabricated.

19. Thus, at the very foundation of the prosecution case, there emerges a significant inconsistency between the earliest version reflected in the written complaint and the later deposition of P.W. 1 before the Court. While the complaint asserts that the appellant produced certain documents which, upon verification, were found to be false, P.W. 1 has given an entirely different account by asserting that the appellant failed to produce any document at all. These two versions cannot coexist, and the contradiction strikes at the core of the prosecution's narrative regarding the conduct of the appellant and the circumstances under which the seizure was allegedly made.

20. Such a material discrepancy is not a mere omission or minor inconsistency that can be overlooked; rather, it concerns an essential part of the prosecution story—namely, whether any documents were produced by the appellant and, if so, what their nature and authenticity were. This contradiction, therefore, casts a serious doubt upon the credibility of P.W. 1 and the reliability of the prosecution case as a whole.

21. P.W. 2, who has been presented by the prosecution as a key witness in support of the alleged seizure, appears to suffer from several material inconsistencies that

fundamentally weaken the prosecution case. In his examination-in-chief, P.W. 2 stated that the cash memo book in question had been issued only up to serial numbers 715 and 716, and that no further serial numbers had been issued to any customer. He further asserted that serial number 720 was still intact in the cash memo book, as it had never been used or issued to anyone. At first glance, this statement was intended to lend support to the prosecution's claim that the cash memo produced by the accused was fabricated or unauthorized.

22. However, when his testimony is examined in greater detail, particularly during cross-examination, the credibility of P.W. 2 becomes seriously doubtful. In cross-examination, he categorically admitted that the cash memo book containing serial numbers 715 to 750 had not been produced before the Court. This omission is of considerable significance, as the production of the cash memo book was essential to verify whether the disputed serial numbers were in fact unused or intact, as claimed by the witness.

23. More importantly, P.W. 2 conceded that he was not in a position to produce the very cash memo that was allegedly seized during the operation. This particular cash memo is said to form a central piece of documentary evidence upon which the prosecution seeks to prove the illegality of the transportation of rice. The inability of a prosecution witness to produce such a critical document raises serious

questions as to whether the alleged seizure actually took place in the manner described, and whether the document was ever seized at all.

24. The absence of the primary documentary evidence, coupled with the unexplained failure to produce the corresponding cash memo book, severely undermines the prosecution's narrative. These omissions are not minor or technical in nature; rather, they go to the root of the prosecution's attempt to establish that the documents relied upon by the accused were forged or invalid. When the very documents claimed to be incriminating are not produced before the Court, the reliability and truthfulness of the prosecution version stand substantially shaken.

25. P.W. 2 has further stated in his deposition that, after the alleged seizure, he proceeded to verify the cash memos at the shop of one Shambhu Saha, who was the purported issuer of the documents in question. According to P.W. 2, this verification was an important step in confirming that the cash memo allegedly produced by the appellant was false or fabricated. However, despite the prosecution's reliance on this verification to establish the falsity of the document, the said Shambhu Saha, arguably a vital and material witness was not examined before the Court.

26. The non-examination of such a crucial witness, whose testimony could have either substantiated or contradicted the prosecution's claim regarding the authenticity of the

cash memo, remains entirely unexplained by the prosecution. No reason has been offered as to why this witness, whose presence was indispensable for proving a key link in the chain of circumstances, was not brought to the witness box. This omission, particularly in a case that hinges significantly on documentary verification, casts serious doubt on the thoroughness and fairness of the prosecution's investigation.

27. Furthermore, P.W. 2 stated in his evidence that the formal FIR in this case was filled up by one Nanigopal Pal. Yet, surprisingly, this individual was also not examined by the prosecution. The formal FIR is a foundational document in any criminal case, and the person who prepared it often possesses material knowledge regarding the circumstances under which the case was initiated. The prosecution's failure to examine the very person who filled the FIR deprives the Court of the opportunity to assess the accuracy and authenticity of the contents of the FIR.

28. The cumulative effect of these omissions is significant. The absence of the testimony of both the alleged issuer of the cash memo, Shambhu Saha, and the officer who drafted the formal FIR, Nanigopal Pal, creates serious evidentiary gaps. These missing links in the prosecution's case weaken its attempt to present a coherent and credible narrative. In the absence of these key witnesses, the prosecution's

version remains uncorroborated on critical points, thereby rendering the case doubtful.

29. Apart from the two official witnesses examined by the prosecution, both of whom are police personnel; no independent witness has been cited or produced to corroborate the alleged seizure in this case. The reliability of a seizure, particularly in cases involving alleged illegal transportation of essential commodities, is greatly strengthened when supported by the testimony of neutral and independent persons who have no interest in the outcome of the proceedings.

30. The evidence on record clearly indicates that, at the time when the vehicle carrying 60 bags of rice was intercepted, several persons were present at the spot. The situation, therefore, afforded the prosecution ample opportunity to associate independent, local witnesses with the seizure process. However, despite this availability, the prosecution made no attempt to examine any of these individuals. No explanation has been furnished as to why the presence of these independent persons was not utilized to lend credibility to the seizure.

31. The failure to examine independent witnesses becomes even more significant in light of the fact that the case rests heavily on the legality and authenticity of the alleged seizure. It is a well-established principle that while the evidence of police witnesses cannot be discarded merely on

the ground of their official status, the non-examination of independent witnesses, when they are admittedly present and available does cast a shadow of doubt upon the fairness and transparency of the investigation. The prosecution should, wherever possible, secure the testimony of independent witnesses to dispel any apprehension of fabricated or exaggerated evidence.

32. In the present case, the prosecution's choice to rely solely on official witnesses, despite the availability of neutral observers, creates a substantial dent in the credibility of the prosecution's version. It raises a legitimate apprehension that the seizure may not have been conducted in the manner claimed, or that the prosecution sought to avoid scrutiny by failing to bring independent witnesses on record. The absence of such corroborative testimony therefore weakens the evidentiary value of the seizure and undermines the prosecution's attempt to establish the case beyond reasonable doubt.

33. D.W. 1, who has been examined on behalf of the defence, has provided testimony that significantly supports the version put forth by the appellant. This witness has stated in clear terms that he was a regular purchaser of rice from the shop of Shambhu Saha, the very person said to be connected with the cash memos in question. D.W. 1 further affirmed that he had produced before the Court several cash memos evidencing the purchase of rice from Shambhu

Saha's shop. These documents, which were written either by Shambhu Saha himself or by his employee, were duly marked as Exhibit A series in the case. The production and marking of these documents lend substantial corroboration to the defence claim that the rice loaded in the vehicle was in fact purchased lawfully.

34. The witness went on to depose that after purchasing the rice, it was being transported through the vehicle along with all necessary supporting documents, namely the purchase memo, the truck challan, and a Xerox copy of the relevant license. This version of events, if accepted, directly counters the prosecution's allegation that the transportation of rice was unauthorized or supported by forged documents.

35. D.W. 1 was subjected to cross-examination by the prosecution in an attempt to challenge the veracity of his statements. However, despite such cross-examination, the prosecution was unable to extract anything from the witness that would either impeach his credibility or lend support to the allegations contained in the FIR. Nothing adverse was elicited to cast doubt on the authenticity of the cash memos marked as Exhibit A series, nor was anything brought out to contradict the witness's assertion regarding the lawful purchase and transportation of the rice.

36. The inability of the prosecution to shake the testimony of D.W. 1 or to discredit the documentary evidence produced by him further weakens the prosecution case. His

evidence, remaining un-impeached and consistent, provides considerable strength to the defense version and casts serious doubt on the prosecution's allegation that the appellant was transporting rice on the basis of forged or non-existent documents.

37. After a careful and thorough examination of the entire body of evidence brought on record, it becomes evident that the learned Trial Court has misread and misappreciated several material aspects of the evidence. The findings of the Trial Court do not appear to be based on a proper evaluation of the inconsistencies, omissions, and evidentiary gaps highlighted during the trial. Instead, the conclusions reached seem to stem from an incorrect interpretation of the testimony of key witnesses and an improper reliance on evidence that was either unsubstantiated or not proved in accordance with law. The record clearly reflects that the prosecution case suffered from significant contradictions, non-examination of vital witnesses, non-production of crucial documents, and failure to establish the authenticity of the seized items. These deficiencies go to the root of the case and should have been given due weight by the Trial Court. However, the Trial Court overlooked these material shortcomings and proceeded to convict the appellant without ensuring that the prosecution had discharged its burden of proving the case beyond reasonable doubt.

38. Such misreading and erroneous appreciation of evidence has resulted in a conviction that is legally unsustainable. The impugned judgment suffers not only from illegality but also from material irregularity, as it disregards fundamental principles governing the evaluation of evidence and the standard of proof required in a criminal trial.

39. In view of these deficiencies, I am of the considered opinion that the impugned order of conviction cannot be allowed to stand. It is, therefore, liable to be set aside in the interest of justice.

40. Accordingly, the criminal appeal being no. CRA 284 of 1999 is hereby **allowed**.

41. The impugned judgment and order of conviction passed by the learned Trial Court dated 18.08.1999 passed by the learned Judge, Special Court (E.C. Act), Murshidabd in connection with E.C. Case 136/92 (T.R. No. 71/93) is hereby set aside**.**

42. The appellant is on bail. He is to be discharged from the bail bonds and be set at liberty if he is not wanted in connection with any other case.

43. In accordance with the mandate of Section 437A of the Code of Criminal Procedure (corresponding to Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the appellant is required to furnish bail bonds along with

suitable sureties, which shall remain valid and operative for a period of six months from the date of execution.

44. Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.

45. Urgent Photostat Certified Copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)