

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 1675 of 2018

Md. Moshiar Rahman and another
.....Convict-appellants.

-Versus-

The State
.....Respondent.

Mr. Md. Abdul Bari, Advocate
.....For the convict- appellants.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G.
.... For the respondent.

Judgment on 21.03.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Moshiar Rahman and another is directed against the impugned judgment and order of conviction and sentence dated 11.09.2017 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Sessions case No. 263 of 2013 arising out of G.R. No. 24 of 2013 corresponding to Modhukhali Police station case No. 06 dated 13.02.2013 convicting the accused appellants under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentencing them thereunder to suffer rigorous imprisonment for a

period of 02(two) years and to pay fine of Tk. 2,000/- (two thousand) in default to suffer simple imprisonment for 2(two) months each.

The prosecution case, in short, is that one, Md. Rafiqul Islam, DAD, (Nayeb Subeder)/6651, RAB-8, Company No. 2, Faridpur as informant on 13.02.2013 at about 01.35 hours lodged an Ejahar with Modhukhali Police Station, Faridpur against the accused appellants stating, inter-alia, that while the informant along with other police forces were on mobile duty on 12.02.2013 at 17.30 p.m. got a secret information that two drug peddlers are bringing Phensedyls keeping in oil tank of walton motorcycle and accordingly, on 12.02.2013 at 17.50 p.m. near about north side of Kamarkhali Gorai Bridge toll plaza of village Arpara under Modhukhali police station found the accused persons were coming by a black coloured motorcycle and then police team gave signal them to stand but the accused persons ignoring the signal tried to escape and then the informant party encircled the motorcycle and made search therein in presence of witnesses and recovered total 61 bottles of Indian made Phensedyl syrup from oil tank of that motorcycle, which valued at Tk. 24,400/-. On a query the accused persons disclosed that they used to collect phensedyls from Kolaroa Thana of Satkhira District and

thereafter, they sold it in Faridpur District. Police seized those phensedyls by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Modhukhali Police station case No. 06 dated 13.02.2013 under table 3(kha) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 (as amended in 2004) was started against the accused appellants.

Police after completion of usual investigation submitted charge sheet No. 34 dated 11.03.2013 under table 3(kha) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 (as amended in 2004) against the accused-appellants.

Ultimately, the accused appellants were put on trial before the learned Additional Sessions Judge, 2nd Court, Faridpur to answer a charge under table 3(kha) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 to which the accused-appellants pleaded not guilty and claimed to be tried stating that they have been falsely implicated in the case.

At the trial, the prosecution examined in all 7(seven) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Additional Sessions Judge, 2nd Court, Faridpur by the impugned judgment and order dated 11.09.2017 found the accused-appellants guilty under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentenced them thereunder to suffer rigorous imprisonment for a period of 02(two) years and to pay fine of Tk. 2,000/- (two thousand) in default to suffer simple imprisonment for 2(two) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 11.09.2017, the accused-appellants preferred this criminal appeal.

Mr. Md. Abdul Bari, the learned Advocate appearing for the convict appellants submits that the convict appellants have been made scapegoat in this case, in-fact, no incriminating Phensedyl syrups were recovered from the exclusive possession and control of the accused appellants. The learned Advocate next relying on the decision reported in 5BLC 248, 43 DLR(AD) 6 submits that in this case during search provisions of section 103 of the Code of Criminal Procedure was not at all complied and seizure list witness namely PW-2, Riad Hassan was examined but he stated nothing against the accused appellants and

another seizure list witness has not been examined by the prosecution which creates serious doubt as to truthfulness of the prosecution case and benefit of this doubt should go to the accused appellants although the trial Court below without considering all these vital aspects of the case mechanically found the accused appellants guilty under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentenced them thereunder to suffer rigorous imprisonment for a period of 02(two) years and to pay fine of Tk. 2,000/- (two thousand) in default to suffer simple imprisonment for 2(two) months more, which does not deserve to be sustained.

Ms. Kohenoor Akter, the learned Assistant Attorney General, on the other hand, supports the impugned judgment and order of conviction, which was according to her just, correct and proper. She submits that prosecution examined in all 7 (seven) witnesses to prove the allegation of carrying and possessing total 61 bottles of Indian made Phensedyl syrup and all the witnesses testified that the incriminating phensedyl syrups were recovered from the exclusive possession of the accused appellants and as such, question of interference does not arise at all.

Having heard the learned Advocate and the learned Assistant Attorney General, perused the memo of Appeal, F.I.R, Charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order. Now the only question that calls for consideration in this appeal is whether the trial Court committed any error in finding the accused- appellants guilty of the offence under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990.

On scrutiny of the record, it appears that one, Md. Rafiqul Islam, DAD, (Nayeb Subeder)/6651, RAB-8, Company No. 2, Faridpur as informant on 13.02.2013 at about 01.35 hours lodged an Ejahar with Modhukhali Police station against the convict appellants on the allegation that on 12.02.2013 the accused appellants were apprehended along with 61 bottles of Indian Phensedyl Syrup kept inside the oil tank of walton motorcycle by special method and police seized those phensedyl Syrups by preparing seizure list in presence of witnesses. Police after completion of investigation submitted charge sheet against the accused appellants on 11.03.2013 under table 3(kha) of section 19(1) of the Madok Drabbya Niontron Ain, 1990. It further appears that during investigation police obtained chemical examination report given by the chemical examiner

which shows that the seized Phensedyl Syrups contained the ingredients of contraband “codeine”. It further appears that at the time of trial the prosecution examined in all 7 witnesses to prove its case out of which PW-1, Md. Rafiqul Islam, DAD, RAB-8, Company No. 2, Faridpur as informant stated in his deposition that on 12.02.2013 the informant along with S.I. Rezaul Karim, A.S.I. Layekuzzaman, A. S.I, Abdur Rashid, constable Shahidul Islam and car driver constable, Md. Shamsul Alam were on mobile duty for anti drug activities and then the informant party got a secret information at 17.30 p.m. that two drug paddlers are coming through a Walton motorcycle keeping phensedyls by a special method inside oil tank and accordingly as per order of the higher authority mobile team rushed near about toll plaza of Arpara Garai bridge at 17.50 p.m. and formed a cheque post and thereafter, they found at 18.10 p.m. 2 persons were coming through a black coloured motorcycle while police team gave signal to stop but motorcycle driver accused Idris Mollah and another ignoring that signal tried to escape and then the informant along with his police force encircled the motorcycle and in presence of witnesses opened the oil tank of motorcycle and found total 61 bottles of phensedyl syrup keeping inside the oil tank by special

method, which valued at Tk. 24,400/- and thereafter, police seized those phensedyls by preparing seizure list in presence of witnesses. This witness also stated that on a query accused persons disclosed that they used to sale Phensedyl bringing the same from Kolarowa, Satkhira. This witness proved the FIR and his signature thereon as exhibit-1, 1/1 and also proved the seizure list. In cross examination the defence side could not able to discover anything as to the credibility of the witness on the matter to which he testifies. PW-2, Reaz Hasan, seizure list witness stated in his deposition that “ফেব্রুয়ারী মাসের সময় বিকাল অনুমান ৫.৩০ ঘটিকা থেকে ৬টা। আমি মাগুরা থেকে গাড়ীতে করে বাসায় ফিরছিলাম। কামার খালী টোল প্লাজার কাছে উপস্থিত হলে পুলিশ আমাকে থামিয়ে আমাকে বলেন যে, তারা ফেনসিডিল উদ্ধার করেছেন। আমাকে স্বাক্ষর করতে বলেন। আমি জব্দ তালিকায় স্বাক্ষর করি। আমি ধৃত লোকটিকে দেখি আমাকে কোন উদ্ধার কৃত মালামাল দেখায় নি। জব্দ তালিকায় আমার স্বাক্ষর সনাক্ত করিলাম।” This witness in his cross-examination stated that police obtained his signature on blank paper. PW-3, S.I. Md. Rezaul Karim, member of the raiding party, PW-4, S.I. Md. Abdur Rashid, member of the raiding party. PW-5, constable, Md. Shahidul Islam, member of the raiding party, PW-6, constable, Md. Shamsul Haque another member of the raiding party, all these witnesses in their respective testimony supported the prosecution case and gave

similar type of statement as like as PW-1 in respect of all material particulars. PW-7, S.I. Abul Kalam Azad, investigated the case, who stated in his deposition that during investigation he visited the place of occurrence, prepared sketch map, index and recorded statement of the witnesses and also obtained chemical examination report and thereafter, having found prima-facie case and submitted charge sheet No. 34 dated 11.03.2013 against the accused appellants. This witness proved all the documents including chemical examination report in accordance with law.

On an analysis of the above quoted evidence, it appears that informant, PW-1, PW-3, PW-4, PW-5, PW-6, who were the eye witnesses of the occurrence, by their testimony proved the prosecution case and corroborated each other in support of the prosecution case and the informant, P.W 1 deposed that the accused appellants admitted that they used to sell phensedyl bringing the same from kolarowa, District, Shatkhira and all the prosecution witness namely P.Ws. 1-6 proved the prosecution case as to the time, place and manner of occurrence and thus, the prosecution proved the guilt of the accused appellants beyond reasonable doubt. Therefore, I find no substance in either of the

contentions as raised by the learned Advocate for the appellants.

On a close perusal of the impugned judgment and order of conviction and sentence, I find no flaw in the reasonings of the learned trial Judge or any ground to assail the same. The learned trial Judge appears to have considered all the material aspects of the case and justly found the accused appellant guilty of the offence under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990, I find no reason to interfere therewith.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant appeal must fail.

In the result, the appeal is dismissed, the impugned judgment and order of conviction and sentence dated 11.09.2017 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Session case No. 263 of 2013 arising out of G.R. No. 24 of 2013 corresponding to Modhukhali Police station case No. 06 dated 13.02.2013 convicting the appellants under table 3(ka) of section 19(1) of the Madok Drabbya Niontron Ain, 1990 and sentencing them thereunder to suffer rigorous imprisonment for a period of 02(two) years and to pay

fine of Tk. 2,000/- (two thousand) in default to suffer simple imprisonment for 2(two) months more is hereby maintained.

Since the appeal is dismissed, the convict appellant Nos.1, Md. Moshiar Rahman and 2, Md. Idris Ali Molla are directed to surrender their bail bonds within 3 (three) months from today to suffer their sentence, failing which the trial Court concerned shall take necessary steps to secure arrest against them.

Send down the lower Court records at once.