

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 2267 of 2017

Md. Tahazzel Mandal

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. Md. Amir Hossain, Advocate

.....For the convict-appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

Heard and Judgment on 13.02.2024.

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Md. Tahazzel Mandal is directed against the impugned judgment and order of conviction and sentence dated 06.09.2016 passed by the learned Joint Sessions Judge, Additional Court, Jessore in Sessions Case No. 570 of 2009 arising out of G.R. No. 41 of 2009 corresponding to Sarsha Police Station Case No. 08 dated 18.04.2009 convicting the accused-appellant under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Tk. 2,000/-

(two thousand) in default to suffer imprisonment for 1 (one) month more.

The prosecution case, in brief, is that one, Md. Solimulla, Inspector, Madok Drabnya Niontran Department, Banapol Circle, Jessore as informant on 18.04.2009 at about 18:35 hours lodged an Ejahar with Sarsha Police Station, Jessore against the accused appellant stating, inter-alia, that on 18.04.2009 on the basis of a secret information the informant along with other police forces rushed to the tin shed house of accused appellant under Sharsha Police Station and encircled that house and thereafter in presence of witnesses police team started search therein and recovered 9 bottles of phensedyl Syrups from on the bed, which valued at Tk. 2,700/-(twenty seven thousand). Police seized those phensedyl syrups by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Sarsha Police Station Case No. 08 dated 18.04.2009 under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 was started against the accused appellant.

Police after completion of investigation submitted charge sheet against the accused appellant, vide charge sheet No. 192 dated 19.07.2009 under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990.

Ultimately, the accused appellant was put on trial before the learned Joint Sessions Judge, Additional Court, Jessore to answer a charge under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 in which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in the case.

At the trial, the prosecution has examined in all 6(six) witnesses to prove its case and exhibited some documents, while the defence examined none.

On conclusion of trial the learned Joint Sessions Judge by the impugned judgment and order dated 06.09.2016 found the accused appellant guilty under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Tk. 2,000/- (two thousand) in default to suffer imprisonment for 1 (one) month more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 06.09.2016 the accused-appellant, Md. Tahazzel Mandal, preferred this criminal appeal.

Mr. Md. Amir Hossain, the learned Advocate appearing for the convict-appellant in the course of argument takes me through the F.I.R, Charge sheet,

deposition of witnesses and other materials on record and then submits that in this case admittedly no incriminating phensedyl syrups were recovered from the direct possession and control of the accused appellant and it is on record that in this case occurrence took place on 18.04.2009 at 11:00 a.m. and on knowing about the fact of the case the accused appellant voluntarily surrendered on 04. 10.2009 which speaks that no incrementing articles were recovered from the possession and control of the accused appellant. The learned Advocate further submits that to prove the case the prosecution examined in all 06 (six) witnesses out of which seizure list witnesses namely PW-3 and PW-4 did not support the prosecution case in any manner whatsoever and rest witnesses being member of the raiding party inconsistently deposed before the trial Court as to recovery of phensedyl syrups from the tin shed house of the accused appellant. Finally, the learned Advocate submits that in this case there is nothing on record to show that no local witness identified or stated anything that the convict appellant is owner of the house in question and it is on record that the seizure list witnesses namely, PW-3 and PW-4 stated nothing before the investigating officer and as such it is apparent that the investigation of this case is defective and police after completion of perfunctory investigation submitted charge sheet.

Ms. Kohenoor Akter, the learned Assistant Attorney General, on the other, supports the impugned judgment and

order of conviction and sentence dated 06.09.2016 which was according to her just, correct and proper. She submits that in this case investigating officer in his cross examination stated that he obtained chemical examination report and he examined the witnesses under section 161 of the Code of Criminal Procedure.

Having heard the learned Advocate and the learned Assistant Attorney General, perused the memo of Appeal, deposition of witnesses and other materials on record including the impugned judgment. Now the only question that calls for my consideration in this appeal is whether the Court below committed any error in finding that the accused-appellant is guilty of the offence under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990.

On scrutiny of the record it appears that one Md. Solimulla, Inspector, Madok Drabbya Niontran Department, Banapol Circle, Jessore as informant on 18.04.2009 at about 18:35 hours lodged an Ejahar with Sarsha Police Station, Jessore against the accused appellant stating, inter-alia, that on 18.04.2009 on the basis of a secret information the informant along with other police forces rushed to the tin shed house of accused appellant under Sharsha Police Station and thereafter in presence of witnesses police team started search therein and recovered total 9 bottles of phensedyl syrups from on the bed, which valued at Tk.

2,700/-(twenty seven thousand). Police after completion of investigation submitted charge sheet against the accused appellant under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990. It further appears that the prosecution to prove its case examined in all 6 witnesses out of which PW-3 and PW-4 as seizure list witnesses stated nothing against the accused appellant as to recovery of the seized phensedyls. PW-3, Md. Anwar Mallik, stated in his cross-examination that-“ আমি যখন স্বাক্ষর করি তখন এই কাগজে কিছু লেখা ছিল না। আমি কোন মালামাল দেখিনি। দোকানে বসে ছিলাম। কোথা থেকে কি মাল পেয়েছে তা জানি না। পুলিশের কাছে আমি কোন জবানবন্দী দেয়নি।”। PW-4, Abdul Alim, stated in his cross- examination that “যখন স্বাক্ষর করি তখন কাগজে কিছু লেখা ছিল না। আমাকে কোন ফেনসিডিল দেখানো হয়নি। পুলিশের কাছে জবানবন্দী দেয়নি। ফেনসিডিল কোথা থেকে পেয়েছেন তাও আমাকে বলেননি। আসামীর বাড়ী আমাদের গ্রামের। সে ভাল ছেলে। সে কোন ফেনসিডিল বিক্রি করে না বা খায় না।” It further appears that PW.1, PW.2, PW.5. in their respective evidence stated that 9 bottles phensedyl syrups were recovered from the house of the accused appellant. PW-6 Md. Badrul Hasan, investigated the case and submitted charge sheet against the accused appellant. It further appears from the evidence of PW-1, PW-2, PW-5, PW-6 that the witnesses in their respective evidence stated nothing specifically that the convict appellant was owner of the house i.e. place of occurrence. PW-1, Md. Solimulla Inspector, Madok Drabya Niontran Department, Banapol Circle, Jessore stated in his cross examination that “ঘটনাস্থলে পৌছানোর সময় ঐ

বাড়ীতে লোকজন ছিল। কতজন লোকজন ছিল তা জানাননি। আসামী ছিলনা। বাড়ীটা যে আসামীর সে মর্মে স্থানীয় মেম্বারের সার্টিফিকেট নেইনি বা কাগজপত্র জন্ড করিনি বা স্থানীয় মেম্বারকে ডাকিনি। কাশিপুর উত্তরপাড়া ও কাশিপুর দক্ষিন পাড়া পাশাপাশি। জন্ড তালিকায় সাক্ষীদের বাড়ী দক্ষিনপাড়া।” PW.2, A.S.I. Hawlader Md. Obaidullah, stated in his cross-examination that “আমি ঘরের মধ্যে ঢুকিনি। জন্ড তালিকা অপার্ট ঘটনাস্থলে বসেই লেখেন। মামলা করার সময় আমরা সবাই থানাই যাই। এজাহার বাদীর কথামতো লেখে। তার নাম জিন্নাত আলী শেখ। বাড়ীটা যে আসামীর সে মর্মে কাগজপত্র জন্ড করা হয় কিনা তা বাদী জানেন। স্থানীয় মেম্বারকে ডাকা হয়নি। তার কাছেও কাগজপত্র নিইনি।” PW.5, Constable, Md. Asadur Rahman, stated in his cross-examination that ঐ বাড়ীর লোকজনকে আসামী বা সাক্ষী করিনি। গ্রামের মেম্বর ডাকা হয় কিন্তু পাওয়া যায়নি।” PW-6, Md. Badrul Hasan, investigating officer of the case stated in his deposition that “পালাতক আসামীকে প্রেফতারের চেষ্টা করি। বাদী কর্তৃক প্রেরিত নমুনা রাসায়নিক পরীক্ষার রিপোর্ট প্রাপ্ত হই।”

From the above quoted evidence, it appears that prosecution could not show any clear oral and documentary evidence that the present appellant was owner of the house in question (place of occurrence) beyond doubts.

In view of the attending facts and circumstances of the case and evidence on record, I am constraint to hold that the prosecution has failed to prove the charge against the convict appellant beyond reasonable doubts. The learned Joint Sessions Judge failed to consider the case from a correct angle thereby reaching a wrong decision that the accused appellant is guilty for the offence under under table 3(ka) of

section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 which occasioned a failure of justice.

In the facts and circumstance of the case and the evidence on record it must be held that the prosecution has failed to prove the charge of carrying and possessing phensedyl syrups against the accused appellant beyond reasonable doubts. Consequently the appeal succeeds.

In the result, the appeal is allowed. The the impugned judgment and order of conviction and sentence dated 06.09.2016 passed by the learned Joint Sessions Judge Additional Court, Jessore in Sessions Case No. 570 of 2009 arising out of G.R. No. 41 of 2009 corresponding to Sarsha Police Station Case No. 08 dated 18.04.2009 convicting the accused-appellant under table 3(ka) of section 19(1) and 19(4) of the Madok Drabya Neyontran Ain, 1990 is set-aside and the appellant Md. Tahazzel Mandal is acquitted of the charge levelled against him.

Convict appellant Md. Tahazzel Mandal is discharged from his bail bond.

Send down the lower Court records at once.