

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 4385 of 2018

Md. Somrat Ali

.....Convict-appellant.

-Versus-

The State

.....Respondent.

No one appears

.....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 29.02.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Somrat Ali is directed against the impugned judgment and order of conviction and sentence dated 16.04.2018 passed by the learned Judge, Metropolitan Special Tribunal No. 2, Rajshahi in Metropolitan Special Tribunal Case No. 684 of 2013 arising out of M.G.R. No. 1468 of 2012 corresponding to Rajpara Police Station Case No. 06 dated 07.12.2012 convicting the appellant and another under Section 25B(2) of the Special Powers Act, 1974 and sentencing

him thereunder to suffer simple imprisonment for a period of 3(three) years and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer imprisonment for 6(six) months more each.

The prosecution case, in short, is that one, Sree Prodip Kumar Shil, P.S.I, Rajpara Police Station, Metropolitan Rajshahi as informant on 07.12.2012 at 21:30 hours lodged an Ejahar with Rajpara Police Station against the convict appellant and another stating, inter-alia, that while the informant along with a contingent of police force were on Special duty as per G.D. No. 464 dated 07.12.2012 under Rajpara Police Station area, at about 19: 15 hours informant party gave signal to a Motorcycle for stopping but ignoring that signal 2 accused persons tried to go away quickly when the accused persons lost control over the Motorcycle, resulting they fallen to the ground and thereafter, the informant party apprehended the accused appellant and another in presence of witnesses and on search, recovered total 78 bottles of Indian made phensedyl kept in a bag from them, which valued at Tk. 39,000/-(thirty nine thousand). Thereafter, police seized those Phensedyls by preparing seizure list in presence of witnesses.

Upon the aforesaid First Information Report, Rajpara Police Station Case No. 06 dated 07.12.2012 under Section 25B(2) of the Special Powers Act, 1974 was started against the accused appellant and another.

Police after completion of usual investigation submitted charge sheet No. 368 dated 31.12.2012 under Section 25B (2) of the Special Powers Act, 1974 against the accused-appellant and another.

Ultimately, the accused appellant and another were put on trial in the Court of the learned Judge, Metropolitan Special Tribunal No. 2, Rajshahi in which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in the case and trial was held in-absentia against another accused.

At the trial, the prosecution side examined in all 8(eight) witnesses and also exhibited some documents to prove its case, while the defence examined none.

On conclusion of trial, the learned Judge, Metropolitan Special Tribunal No. 2, Rajshahi by the impugned judgment and order dated 16.04.2018 found the accused-appellant and another guilty under Section 25B (2) of the Special Powers Act, 1974 and sentenced them thereunder to suffer simple imprisonment for a

period of 3(three) years and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer imprisonment for 6(six) months more.

Aggrieved convict-appellant then preferred this criminal appeal.

No one found present to press the appeal on repeated calls in spite of fact that this criminal appeal has been appearing in the list for hearing with the name of the learned Advocate for the appellant for a number of days.

In view of the fact that this petty old criminal appeal arising out of 3(three) years sentence, I am inclined to dispose of it on merit on the basis of the materials on record.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State supports the impugned judgment and order of conviction and sentence dated 16.04.2018, which was according to her just, correct and proper. She submits that in this case 78 bottles of Indian phensidyl syrups were recovered from the exclusive possession and control of the accused appellant and it is on record that the prosecution witnesses namely, PW-1, PW-2 and PW-3 in their respective testimony stated in one voice that the convict-

appellant and another were apprehended along with 78 bottles of Indian phensidyl syrup. The learned Deputy Attorney General further referring section 8 of the Drug Control Ordinance, 1982 submits that brand name phensidyl is contraband item, phensidyl syrup is prohibited drugs and thus, it is not at all necessary to hold chemical examination for proving the phensidyl syrup is a prohibited drugs. Besides in the case during trial no one raised any question that seized phensidyl syrups were not actually prohibited drugs or contraband drugs and in the facts and circumstance of the case the learned Metropolitan special tribunal Judge justly found that the accused-appellant and another guilty under section 25B(2) of the Special Powers Act, 1974 and sentenced them thereunder to suffer simple imprisonment for a period of 3(three) years and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer imprisonment for 6(six) months more each.

Having heard the learned Deputy Attorney General for the State and having gone through the materials on record, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant and another guilty of the offence under Section 25B(2) of the Special Powers Act, 1974.

On scrutiny of the record, it appears that Sree Prodip Kumar Shil, P.S.I, Rajpara Police Station, Metropolitan Rajshahi as informant on 07.12.2012 at 21:30 hours lodged an Ejahar with Rajpara Police Station against the convict appellant and another on the allegation that on 07.12.2012 the accused appellant and another were apprehended along with 78 bottles of Indian made phensedyl, which valued at Tk. 39,000/- (thirty nine thousand) and thereafter, police prepared seizure list in presence of witnesses. It further appears that police after completion of investigation submitted charge sheet against the accused appellant and another, vide charge sheet No. 368 dated 31.12.2012 under section 25B(2) of the Special Powers Act, 1974. At the trial the prosecution side examined in all 8 witnesses out of which PW-1, Sree Prodip Kumar, PSI, Rajpara Police Station, as informant stated in his deposition that on 07.12.12 under the leadership of S.I. Shodidul Islam along with other forces during special duty under Rajpara Police Station at 19:15 hours saw two persons were coming by a motorcycle and then the police team gave signal to them for stopping but ignoring that signal they tried to go away while the accused persons lost control over the Motorcycle resulting they fallen to the ground near about Nazibul's shop. Thereafter, police

apprehended them and recovered total 78 bottles of phensedyl kept in a bag in presence of local witnesses. Thereafter police seized those phensedyl syrups by preparing seizure list in presence of witnesses. This witness proved the FIR as exhibit-1 and his signature thereon as exhibit 1/1 and proved the seizure list as exhibit-2 and his signature thereon as exhibit 2/1. The defence cross examined but failed to find out any contradiction in the evidence of P.W. 1, PW-2, Constable, Md. Al Hadi, PW-3, Constable, Md. Matiur Rahman both of them corroborated the evidence of PW-1 in respect of all material particulars, PW-4, Constable, Md. Anwar Hossain, was tendered, PW-5, Md. Insan, seizure list witness, who was declared hostile by the prosecution. This witness in his deposition stated that- “৪/৫ বছর আগের ঘটনা। ঘটনাস্থল বাকির মোড়। আমি সাইকেল নিয়ে উঠে এসেছিলাম। পুলিশ আমাকে দাড়া করিয়ে স্বাক্ষর চাইলে স্বাক্ষর দেই। জব্দতালিকায় স্বাক্ষরীর ক্রমিকের ২ নং স্বাক্ষর আমার প্রদ-২/১।” PW-6, Md. Putul, was declared hostile by the prosecution. This witness in his deposition stated that- “৩/৪ বছর আগে আমি পানি নিয়ে আসার সময় পুলিশ ডেকে স্বাক্ষর নেয়। জব্দতালিকার স্বাক্ষরীর ক্রমিকের ০১ নং স্বাক্ষর আমার প্রদ-২/৩।” PW-7, Sheikh Liton stated nothing as to the phensedyls. PW-8, S.I. Md. Mostak Ahamed, investigating officer, who stated in his deposition that during investigation he visited the place of occurrence,

prepared sketch map, examined the witnesses under section 161 of the Code of Criminal Procedure.

On a reading of section 25-B(2) of the Special Powers Act together with the first information report, it appears to me that the ingredients of the said section is very much present in this case.

In the case of Md. Mahfuzur Rahman and another vs. The State reported in 18 MLR 490, it has been held as follows:

With regard to the absence of any chemical examination report on the contents of the seized phensedyl bottles, as pointed out by the learned Advocate for the appellants, we hold that no chemical examination report is necessary in the present case. It is in evidence that the seized bottles contain labels with the words "PHENSEDYL RHONE PULENC Made in India" and such a description about the contents of the bottles is sufficient to prove that those were Indian made phenedyl. Than "Phensedyl" is a contraband item is clearly spelt out in section 8 of the Drug Control Ordinance, 1982 read with SL. No. 52 of schedule III of the ordinance. The said section is quoted below:

8.- Prohibition of Manufacture, etc, of certain medicines.- (1) On the commencement of this Ordinance, the registration or licence in respect of all medicines mentioned in the Schedules shall stand cancelled, and no such medicine shall, subject to the provisions of sub-section (2),

be manufactured, imported, distributed 4 [, stocked, exhibited or sold] after such commencement.

(2) Notwithstanding anything contained in sub-section (1),-

(a)

(b)

(c) the medicines specified in Schedule III may be manufactured, imported, distributed and sold for a period of 7 [eighteen months] after the commencement of this Ordinance, and thereafter there shall not be any manufacture, import, distribution 8 [, stock, exhibition or sale] of such medicines.

Section 8(2)(c) clearly prohibits the manufacture, importation, distribution and sale of the items mentioned Schedule III after eighteen months of the commencement of Ordinances, 1982. Against SL. No. 52 of Schedule III specifies “Drug Admin Code No. 004-62-40, name of produce phensedyl”. Thus the aforesaid provision has clearly indentified phensedyl as a contraband item. So the possession of phensedyl for the purpose of sale falls within the purview of section 25 B(2) of the Special Powers Act, 1974, which prohibits possession of contraband goods for the purpose of sale.

I have already noticed that by passage of time, the phensidyl brand name has been declared prohibited medicine in law which has been duly and thoroughly discussed in the case of Md. Mahfuzur Rahman and another Vs. The State reported in 18 MLR 490. Besides,

in this case the defence during trial could not raise any point even by way of cross-examination to the PWs that the seized phensidyls were not actually contained codeine or any contraband medicine or not prohibited whatsoever.

On an analysis of the evidence of PWs, it appears that PW-1, PW-2 and PW-3 were members of the raiding party they categorically testified in their respective testimony that the accused appellant and another were apprehended along with 78 bottles of contraband phensedyl syrups and seizure list witness namely PW-5 and PW-6 were declared hostile although both of them in their respective evidence stated that they put their signature on seizure list and identified the same and PW-7 as local witness stated in his deposition that police simply asked him as to the matter. Therefore, it appears that most of the prosecution witnesses namely PW-1, PW-2 and PW-3 were the eye witnesses of the occurrence, by their testimony proved the prosecution case and corroborated each other in support of the prosecution case. Prosecution witnesses proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused appellant beyond reasonable doubts.

On an analysis of the impugned judgment and order of conviction and sentence, I find no flaw in the reasonings of the trial Court below 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 and another guilty for the offence section 25 B(2) of the Special Powers Act, 1974. I find no reason to interfere therewith.

In the result, the appeal is dismissed, the impugned judgment and order of conviction and sentence dated 16.04.2018 passed by the learned Metropolitan Special Tribunal No. 2, Rajshahi in Metropolitan Special Tribunal Case No. 684 of 2013, arising out of M.G.R. No. 1468 of 2012 corresponding to Rajpara Police Station Case No. 06 dated 07.12.2012 convicting the appellant under Section 25B(2) of the Special Powers Act, 1974 and sentencing him thereunder to suffer simple imprisonment for a period of 3(three) years and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer imprisonment for 6(six) months more is hereby affirmed.

Since the appeal is dismissed, the convict-appellant, Md. Somrat Ali, is directed to surrender his

bail bond within 3 (three) months from today to suffer his sentence in accordance with law, failing which the trial Court shall take necessary steps against the convict-appellant, Md. Somrat Ali, to secure arrest.

Send down the lower Court records at once.