

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 4753 of 2018**

Md. Shahjalal

.....Convict-Appellant.

-Versus-

The State.

.....Respondent.

Mr. Al Faishal Siddique, Advocates

.....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 on 25.01.2024 and**

**Judgment on 05.02.2024**

**Sheikh Abdul Awal, J:**

This Criminal Appeal at the instance of convict appellant, Md. Shahjalal is directed against the judgment and order dated 24.04.2018 passed by the learned Special Sessions Judge, Jananirapatta Bighnakari Aparadh Daman Tribunal, Khulna in Sessions Case No. 140 of 2012 arising out of G.R No. 160 of 2011 corresponding to Sonadanga Model Police Station Case No. 06 dated 07.02.2011 convicting the accused-appellant under table 3(ka) to section 19(1) of the Madok

Drabya Niyantaran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Taka 1,000/- (one thousand) in default to suffer simple imprisonment for 01(one) month more.

The prosecution case, in brief, is that one, Md. Mamun Khan, Inspector, D.B, Khulna Metropolitan Police, Khulna as informant on 07.02.2011 at about 21.15 hours lodged an Ejahar with Sonadanga Police Station against the accused appellant and another stating, inter-alia, that while the informant along with a contingent of police force were on mobile duty got a secret information as to deal of phensidyl and then they rushed to Banagati Government Primary School area under Sonadanga police station while sensing the presence of police some young men tried to run away by crossing wall of school when police apprehended one accused (appellant) in presence of witnesses Masudur Rahman and Md. Shahidul Kabir. On interrogation the accused, Md. Shahjalal disclosed that accused Masud was somehow managed to escape and before arresting he sold 3 bottles of phensidyl and thereafter he admitted that he kept more phensidyl syrups contained in plastic bag kept behind safety tank of the school and thereafter, the informant party seized those phensidyl syrup

totalling 27 bottles by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Sonadanga Model Police Station Case No. 06 dated 07.02.2011 under table 3(kha) of section 19(1) and 19(4)/25 of the Madok Drabya Niyantran Ain, 1990 was started against the convict-appellant, Md. Shahjalal and another Md. Masud Sheikh.

Police after completion of usual investigation submitted charge sheet against appellant and another, vide charge sheet No. 115 dated 27.04.2011 under table 3(kha) of section 19(1) and 19(4)/25 of the Madok Drabya Niyantran Ain, 1990.

Thereafter, the case record was sent to the court of learned Metropolitan Sessions Judge, Khulna, wherein it was registered as Sessions Case No. 140 of 2012. Ultimately, the case was transmitted to the Court of the learned Special Sessions Judge and also Judge of Jananirapatta Bighnakari Aparadh Daman Tribunal, Khulna for disposal, wherein the accused appellant and another were put on trial to answer a charge under table 3(kha) of section 19(1) and 19(4)/25 of the Madok Drabya Niyantran Ain, 1990 in which the accused

persons pleaded not guilty and prayed to be tried stating that they have been falsely implicated in this case.

At the trial, the prosecution side examined as many as 06(six) witnesses to prove its case, while defence examined none.

On conclusion of trial, the learned learned Special Sessions Judge and also Judge of Jananirapatta Bighnakari Aparadh Daman Tribunal, Khulna by the impugned judgment and order dated 24.04.2018 convicted the accused-appellant under table 3(ka) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Taka 1,000/- (one thousand) in default to suffer rigorous imprisonment for a further period of 01(one) month while acquitted another accused, Md. Masud Sheikh from the charge levelled against him.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 24.04.20, the convict-appellant preferred this criminal appeal.

Mr. Al Faishal Siddique, the learned Advocate appearing on behalf of 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 including the impugned judgment and thereafter submits that the convict-appellant is innocent, who has been falsely implicated in this case out of previous altercation with the police personnel. He next submits that in this case PW-2, only local independent witness stated in his deposition stated that he did not see the recovery of phensidyls and rest police witnesses inconsistently deposed before the Court as to recovery of phensidyl syrups. The learned Advocate further submits that there is nothing on record to suggest that the phensidyls in question were recovered from the direct possession and control of the accused-appellant although the learned Judge of the trial Court below most illegally held that the accused-appellant is guilty under table 3(ka) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Taka 1,000/- (one thousand) in default to suffer rigorous imprisonment for a further period of 01(one) month more, which is liable to be set-aside. Finally, the learned Advocate submits that in the facts and circumstances of the accused-appellant is entitled to get benefit of doubt for the ends of justice.

Ms. Kohenoor Akter, the learned Assistant Attorney-General appearing for the State supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper. She submits that in this 6 witnesses were examined and all them testified in one voice that the convict-appellant was apprehended with 27 bottles of phensidyl. She adds that the seized phensidyl was examined by the chemical examiner, who found ingredients of codeine in the seized phensidyls and as such, question of interference does not arise at all, the appeal is liable to be dismissed.

Having heard the Advocate and the learned Assistant Attorney General, perused the record including the first information report, charge sheet, deposition of witnesses and other materials on record.

On scrutiny of the record, it appears that on 07.02.2011 on the basis of a secret information the informant party rushed to the place of occurrence and apprehended the convict-appellant and at his pointing out recovered 27 bottles of Indian phensidyl kept behind safety tank of Banargati Primary school and police after completion of usual investigation submitted charge sheet against the convict-appellant and another being charge sheet No. 115 dated 27.04.2011 under section under

table 3(kha) of section 19(1) and 19(4)/25 of the Madok Drabya Niyantaran Ain, 1990. It further appears that at the trial the prosecution side examined in all 6 witnesses out of which PW-1, Constable Aynul Haque, member of the raiding party stated in his deposition that on the basis of a secret information police team under inspector Mamun along with Inspector Shahbuddin rushed to the place of occurrence and arrested the convict-appellant and thereafter at his pointing out 27 bottles of phensidyl syrup were recovered behind the safety tank of school and thereafter, police prepared seizure list in presence of the witnesses. He proved the seizure list as “Ext.-1” and his signature thereon as “Ext.-1/1”. This witness in his cross-examination stated- “এজাহার কোথায় লিখেছে তা আমি জানিনা।”. PW-2, Syed Md. Asaduzzaman stated in his deposition that on the date of occurrence he saw the accused Md. Shahjalal, who known as good boy. This witness also stated that he came to know 26/27 bottles of phensidyl were recovered from the possession of the convict-appellant Shahjalal. This witness in his cross-examination stated that- “তার কাছে কোন ফেনসিডিল দেখি নাই। ফেনসিডিল কার কাছ থেকে কিভাবে উদ্ধার করেছে তা দেখি নাই।”, PW-3, Police Inspector Md. Mamun Khan, informant of the case, who stated in his deposition categorically that on 27.02.2011 on the basis of secret information police

team apprehended the convict-appellant from Banargati Primary School under Sonadanga police station, who used to deal phensidyl business for a long time in that area. This witness in his deposition also stated that- “সাক্ষীদের উপস্থিতিতে আসামী মোঃ শাহজালাল এবং বর্ণনামতে উক্ত স্কুলের সেফটি ট্যাংকে একটি সিমেন্টের বস্তায় রক্ষিত ২৭ বোতল ফেনিডিল সে নিজ হাতে বের করে দেয়। তখন আমি উক্ত আলামত ২৭ বোতল ফেনিডিল জব্দ তালিকা মূলে জব্দ করি।” This witness in his cross-examination stated that- “আসামীর দেহ থেকে তা উদ্ধার করা হয়নি। ০৩ বোতল বিক্রী করেছে মর্মে আসামী নিজেই বলেছে।”, PW-4, constable Md. Khabir, PW-5, constable Rajibul are also members of the raiding party. PW-6, S.I. Md. Abdul Halim, Investigating officer, who during investigation visited the place of occurrence, prepared sketch-map, examined the witnesses under section 161 of the Cr.p.c. and obtained chemical examination report. This witness after completion of investigation submitted charge sheet against the convict-appellant and another. This witness proved the chemical examination report as “Ext.-5”

On a close perusal of the above quoted evidence, it appears that all the witnesses except PW-2 categorically stated that total 27 bottles of phensidyl were recovered at the pointing out of the convict-appellant. Besides, during investigation investigating officer obtained chemical examination report (Ext-5) wherein the chemical



examiner stated that- “একটি কাঁচের বোতলে প্রাপ্ত ১০০ মি.লি. বাদামী তরল পদার্থে অপিয়াম উদ্ভূত ‘কোডিন’ পাওয়া গিয়াছে। সীলমোহর অক্ষত ছিল।” It further appears that PWs in their respective deposition proved the prosecution case as to the place, time and manner of occurrence and the prosecution proved recorded the guilt of the accused-appellant beyond reasonable doubt. Therefore, I find no reason to hold that in the facts and circumstances of the case the convict-appellant is entitled to get benefit of doubt.

It is found that the trial Court below in the facts and circumstances of the case and on due consideration of the entire evidence and materials on record found the accused-appellant guilty under table 3(Ka) of section 19(1) of the Drobbya Niyontron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Taka 1,000/- (one thousand) in default to suffer simple imprisonment for 01 (one) month more. In view of the attending facts and circumstances of the case and the evidence on record, I find no reason to disbelieve the evidence of police witnesses whatsoever. I find no flaw in the reasonings of the trial Court.

However, at the end of the day the learned Advocate for the appellant most empathically submits that the PC/PR of the convict-appellant is nil, who is not

a habitual offender and in the facts and circumstances of the case, the conviction and sentence of 3 years sentence is too harsh which may kindly be reduced to minimum sentence of 2 years. Considering the last submission of the learned Advocate for the appellant sentence of the appellant is reduced to the period of 2 years in place of 3 years.

The appeal is, accordingly, dismissed with above modification of sentence. The sentence of imprisonment for a period of 3 years is, accordingly, reduced to the period of 2 years.

The convict-appellant 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. Shahjalal to secure arrest.

Send down the lower Courts' records at once.