

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

**Present:**

**Mr. Justice S M Kuddus Zaman**

**And**

**Mr. Justice A.K.M. Rabiul Hassan**

**Criminal Miscellaneous Case No.49633 of 2017**

Md. Saburuddin @ Sabu

.... Accused-Petitioner

-Versus-

The State

.... Opposite Party

Mr. Md. Abu Bakr with

Mr. Mahmud Hasan, Advocates

.... For the petitioner.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), AAG

.... For the State.

**Heard and Judgment on 30.05.2024**

**S M Kuddus Zaman, J:**

On an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment

and order dated 08.07.2015 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court and Special Tribunal No.04, Chapainawabgonj in Special Power Case No.325 of 2011 arising out of Nababgonj Police station Case No.39 dated 25.12.2010 corresponding to G.R. Case No.777 of 2010 under Section 25B(2) of the Special Powers Act, 1974 convicting the petitioner under the above law and sentencing him to suffer a rigorous imprisonment for 02(two) years with a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for further period of 6(six) months more should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that Mr. Aminul Islam, a Habilder of BG13 lodged an ejahar alleging that on 25.12.2010 at 11.00 hours on the basis of secret information they arrested accused Md. Saburuddin @ Sabu they chest and apprehended him and on conducting search recovered 10 bottles of phyensidyle from his waist and 30 bottle Indian liquor.

On conclusion of investigation police submitted charge sheet against accused Md. Saburuddin @ Sabu and on conclusion

of trial the learned Judge of Special Tribunal No.4, Chapainawabgonj convicted the petitioner under Sections 25B(2) of the Special Powers Act, 1974 and sentenced him thereunder rigorous imprisonment for 2(two) years and fine of Taka 10,000/- in default to suffer simple imprisonment for further 6(six) months more.

Mr. Md. Abu Bakr, learned Advocate for the convict-petitioner submits that in this case informant, 6 members of the raiding party and two seizure list witnesses gave evidence as prosecution witnesses. PW2 Sepahi Md. Din Islam did not support the prosecution case of recovery of phynseydyle and liquor from the possession of accused Md. Saburuddin @ Sabu. Two witnesses of the seizure list merely identified their signatures on the seizure list but did not support the prosecution case of recovery of above phyensidyle and liquor. The Investigating Officer of this case did not give evidence at trial. There is nothing on the case record to show that above phyensidyle and liquor were sent for chemical examination nor any chemical examiner or any chemical examination report were produced at trial to show

that seized items were opium and Indian liquor. As such the prosecution has miserably failed to prove the charge leveled against accused petitioner Md. Saburuddin @ Sabu under Section 25B of the Special Powers Act, 1974. But the learned Judge of the Special Tribunal most illegally convicted the petitioner under above provision of the law and sentenced him thereunder to suffer rigorous imprisonment for 2(two) years which is not tenable in law.

Mr. Sujit Chatterjee, learned Deputy Attorney General submits that the informant a Habilder of the BGB has given evidence in Court as to the manner of arrest and recovery of opium and Indian liquor from his possession and the same has been corroborated by as many as six accompanying members of the raiding party and two seizure list witnesses. The learned Judge of the Special Tribunal has rightly convicted accused-petitioner Md. Saburuddin @ Sabu on the basis of above legal evidence on record and sentenced him thereunder as mentioned above which calls for no interference.

We have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

As mentioned above informant of this case is a Habilder of the BGB who lead the raiding party, arrested accused-petitioner Md. Saburuddin @ Sabu and allegedly recovered from his possession 10 bottle fensidles and 30 bottles Indian liquor on 25.12.2010. He has given consistent evidence in support of above prosecution case as PW1. But PW2 Sepahi Md. Din Islam did not support the prosecution case of recovery of physidle and liquor from the possession of above accused. PW3 Md. Enamul Hoq, PW4 Md. Aslam Uddin, PW5 Md. Nasir Uddin and PW6 Md. Sofakhairul who accompanied PW1 in the above expedition supported his evidence in their respective evidence in Court.

As far as seizure list witnesses are concerned PW8 Md. Shariful Islam and PW9 Md. Shahin who are boatmen have identified their signatures on the seizure list but they did not give evidence in support of recovery of phyensidyle and liquor from the possession of accused-petitioner Md. Saburuddin @ Sabu.

The Investigating Officer of this case Rajikuzzaman did not give evidence in this case any explanation has been given by the prosecution for his non examination.

We have carefully examined the FIR, seizure list and charge sheet. But there is no mentioned that any quantity of above mentioned seized materials was sent for chemical examination to ascertain the true nature of the seized materials nor there is any chemical examination report with the case record. No chemical examiner was made a prosecution witness or examined at trial.

As such we find substance in the submissions of the learned Advocate for the petitioner that no expert opinion was obtained by the prosecution that the allegedly seized alamats from the possession of the accused petitioner was phyensidyle and liquor. Above deficiency in the prosecution case is incurable and the learned Advocate for the petitioner has rightly pointed out that the prosecution could not succeed to prove that phyensidyle and liquor was recovered and seized from the possession of the petitioner by legal evidence.

In above view of the materials on record we hold that the prosecution has failed to prove by legal evidence that phensidle and liquor were recovered from the possession of the petitioner by legal evidence but the learned Judge of the Special Tribunal has failed to appreciate above aspect of the evidence on record and most illegally convicted accused Md. Saburuddin @ Sabu and sentenced him thereunder as mentioned above which is not tenable in law.

We find substance in this application under Section 561A of the Code of Criminal Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and order dated 08.07.2015 passed by the learned Joint Sessions Judge, 2<sup>nd</sup> Court and Special Tribunal No.04, Chapainawabgonj in Special Power Case No.325 of 2011 arising out of Nababgonj Police station Case No.39 dated 25.12.2010 corresponding to G.R. Case No.777 of 2010 under Section 25-B(2) of the Special Powers Act, 1974 is hereby quashed.

Send down the L.C.R. at once.

Communicate this judgment and order to the Court concerned at once.

**A.K.M. Rabiul Hassan, J:**

I agree.

MD. MASUDUR RAHMAN  
BENCH OFFICER