

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 5383 of 2018

Md. Mosarof Hosen @ Ronju

.....Convict-appellant.

-Versus-

The State

.....Respondent.

Mr. Elius Ahmad, Advocate

.....For the 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 21.04.2024, 25.04.2024 and
Judgment on 28.04.2024

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Md. Mosarof Hosen @ Ronju is directed against the judgment and order of conviction and sentence dated 23.04.2018 passed by the learned Judge, Special Tribunal No.1, Kushtia in Special Tribunal Case No. 189 of 2011 arising out of G.R No. 195 of 2011 corresponding to Kushtia Police Station Case No. 36

dated 26.05.2011 convicting the accused-appellant under section 25-B(2) of the Special Powers Act, 1974 and sentencing him thereunder to suffer rigorous imprisonment for a period of 7 (seven) years and to pay a fine of Taka 50,000/- (fifty thousand) in default to suffer rigorous imprisonment for 1(one) year and 6 (six) months more.

The prosecution case, in brief, is that one, Md. Abdul Mannan, Habilder, CPC-1, RAB-12, Kushtia as informant on 26.05.2011 at about 16:30 hours lodged an Ejahar with Kushtia Police Station against the accused appellant under section 25-B(2) of the Special Powers Act stating, inter-alia, that the informant during mobile duty on 26.05.2011 at 9:00 a.m. got a secret information that some phensidyl paddlers are waiting Chowrahas Abdur Rahim Sarak for carrying phensidyl syrups and thereafter, the informant along with a contingent of RAB forces rushed there and apprehended the accused-appellant along with 9 bags of phensidyl syrups which totalling 930 bottles of phensidyl syrup, which valued at Tk. 4,65,000/-. Thereafter, the informant party seized those phensidyl syrups by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Kushtia Police Station Case No. 36 dated 26.05.2011

under section 25-B(2) of the Special Powers Act, 1974 was started.

During investigation, police visited the place of occurrence, prepared sketch-map, recorded statement of the witnesses under section 161 Cr.P.C, obtained chemical examination report and after completion of investigation having found prima-facie case and submitted charge sheet being charge sheet No. 184 dated 18.07.2011 under section 25-B(2) of the Special Powers Act, 1974 against the accused-appellant.

Thereafter, the case record was sent to the Court of learned Sessions Judge and Special Tribunal No.1, Kushtia, wherein it was registered as Special Tribunal Case No. 189 of 2011.

Ultimately, the accused-appellant was put on trial before the Special Tribunal No.1, Kushtia to answer a charge under section 25-B(2) of the Special Powers Act, 1974 to which the accused-appellant pleaded not guilty and claimed to be tried stating that he has been falsely implicated in this case.

During trial the prosecution examined in all 10 (ten) witnesses to prove its case, while the defence examined none.

On conclusion of trial the learned Judge, Special Tribunal No.1, Kushtia by the impugned judgment and order dated 23.04.2018 found the accused-appellant guilty under section 25-B (2) of the Special Powers Act, 1974 and sentenced him thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 50,000/- (fifty thousand) in default to suffer rigorous imprisonment for 01(one) year and 6 (six) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 18.06.2015, the accused-appellants preferred this criminal appeal.

Mr. Ellius Ahmad, the learned Advocate appearing for the convict-appellant in the course of argument takes me through the F.I.R, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 23.04.2018 and then points out that the convict-appellant has been made scapegoat in this case, in-fact, no incriminating phensidyl syrups were recovered from the direct possession and control of the accused-appellant, which admittedly has been recovered from the side of road. He further submits that in this case the prosecution to prove its case has examined in all 10 witnesses out of which

PW-4 was tendered. PW-5 and PW-6 both are seizure list witnesses stated nothing against the accused-appellant as to recovery of phensidyl syrups from the possession of the accused appellant. PW-9 and PW-10 were declared hostile by the prosecution and rest police witnesses inconsistently deposed before the trial court as to recovery of phensidyl from the road and it is on record that no independent public witnesses did not support the prosecution case in any manner whatsoever and therefore, at any rate the accused-appellant is entitled to get benefit of doubt but the learned tribunal judge without considering all these aspects of the case mechanically passed the impugned judgment and order of conviction under section 25B (2) of the Special Powers Act, 1974 against the appellant and as such, the same is liable to be set-aside. The learned Advocate to fortify his submission has relied on the decisions reported in 21 BLC (AD) 155 and 55 DLR 7.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction and sentence 23.04.2018, which was according to her just, correct and proper. She further submits that in this case huge quantity of phensidyl syrups were recovered from the possession and control of the accused appellant and it

is on record that all the police witnesses namely, PW-1, PW-2, PW-3, PW-7 and PW-8 in their respective testimony stated in one voice that the convict-appellant was apprehended along with 930 bottles of phensidyl syrup and public witnesses namely, PW-5 and PW-6 in their respective evidence also disclosed the manner of occurrence and thus, the learned Judge, Special Tribunal No. 1, Kushtia justly found that the accused-appellant guilty under section 25-B(2) of the Special Powers Act, 1974 and sentenced him thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 50,000/- (fifty thousand) in default to suffer rigorous imprisonment for 01(one) year and 6 (six) months more.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the memo of appeal, the First Information Report, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction, the only the question calls for consideration in this appeal is whether the trial Court committed any error in finding the accused- appellant guilty of the offence under section 25-B(2) of the Special Powers Act, 1974.

On scrutiny of the record, it appears that the prosecution to prove the charge under section 25-B(2) of

the Special Powers Act, 1974 examined in all 10(ten) witnesses out of which PW-1, informant of the case stated in his deposition that during mobile duty on 26.05.2011 at 9:00 a.m. he got a secret information that some phensidyl paddlers are waiting Chowrahas Abdur Rahim Sarak for carrying phensidyl syrups and thereafter, the informant along with a contingent of RAB forces rushed there and apprehended the accused-appellant along with 9 bags of phensidyl syrups totalling 930 bottles of phensidyl syrup, which valued at Tk. 4,65,000 and thereafter, the informant party seized those phensidyl syrups by preparing seizure list in presence of the witnesses. PW-2, member of the raiding party stated similar type of statement as like as PW-1. PW-3 and PW-4 were tendered. PW-5 and PW-6, both are seizure list witnesses, who stated nothing against the accused-appellant connecting with the crime. PW-7, Inspector Md. Obaidur Rahman, investigated the case, who stated in his deposition that during investigation, he visited the place of occurrence, prepared sketch-map, recorded statement of the witnesses under section 161 Cr.P.C, and also sent some phensidyls as sample for chemical examination and thereafter, obtained chemical examination report. This witness also stated that after completion of investigation having found prima-facie

case and accordingly submitted charge sheet against the accused-appellant. This witness exhibited all the vital documents “as Ext. Nos. 2, 2/1,3, 3/1” and chemical examination report as “Ext.4”. PW-8, S.I. Md. Mojibor Rahman stated in his deposition that- “পাৰ্টি ইনচাৰ্জ গোপন সংবাদ পান যে, চৌড়হাস আঃ রহমান সড়কে চোৱাকারবাবীরা ফেনসিডিল ক্ৰয় বিক্ৰয়ৰ জন্য অবস্থান কৰছে। পাৰ্টি ইনচাৰ্জ সঙ্গীয় ফোৰ্সসহ আঃ রহমান সড়কে অভিযান পরিচালনা কৰে ডাক্তাৰ আমিরুল ইসলামের সামনে পাকা ৰাস্তাৰ উপৰ আসামী মোশাৱৰফ হোসেন ৰঞ্জুর নিকট থাকা ৯ টি প্লাস্টিকের বস্তায় ৰক্ষিত সৰ্বমোট ৯৩০ বোতল ফেনসিডিল পাওয়া যায়। সকাল ৯.৩০ টায় সাক্ষীদের উপস্থিতিতে জব্দ তালিকা প্রস্তুত কৰে। পাৰ্টি ইনচাৰ্জের নির্দেশে আমি জব্দ তালিকা কৰি। এই সেই জব্দ তালিকা ও আমার স্বাক্ষর (প্রদর্শনী-৫, ৫/১)। আসামী আছে। জব্দকৃত আলামত আছে (আলামত সনাক্ত)।” PW-9 and PW-10 were declared hostile. Both of them in their respective statements stated that police obtained their signature on blank papers. Both the witnesses proved their signature as “Ext-5/2, and 5/3” respectively.

On scrutiny of the above quoted evidence it appears that police witnesses namely PW-1, PW-2, PW-7, and PW-8 in their respective evidence categorically deposed that the accused appellant was apprehended along with 930 bottles of phensidyl contained in 9 bags. PW-1, stated in his deposition that on a query the accused could not show any valid document in support of phensidyls and he brought those phensidyls for the

purpose of sale. PW-5 and PW-6 stated nothing against the accused-appellant, they simply stated that they put their signature on blank papers on the date of occurrence. It further appears that police sent some samples of phensidyl as per order of the Court to chemical examiner for chemical examination report. The chemical examiner gave report stating that- “একটি কাঁচের বোতলে প্রায় ১০০ মি.লি, বাদামী তরল পদার্থে অপিয়াম উদ্ভূত কোডিন পাওয়া গিয়াছে। সীলমোহর অক্ষত ছিল।”

In the facts and circumstances of the case as revealed from the materials on record, I do not find any reason to disbelieve the evidence of police witnesses.

From a reading of section 25-B(2) of the Special Powers Act, it appears to me that the ingredients of section are very much present in facts and circumstances of the case inasmuch as police witnesses as eye witnesses of the case have categorically stated that phensidyl syrups in question were recovered from the possession and control of the accused-appellant.

The convict-appellant was caught red handed. The trial court considered the materials and evidence on record and arrived at its decision convicting the appellant. PW-1, PW-2, PW-3, PW-7 and PW-8 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. Defence cross examined those witnesses but failed to find out any contradiction in the evidence of police witnesses.

In this case seizure list witnesses did not depose anything against the accused-appellant connecting with the crime. Police witnesses could not be imposed on that count. Moreover, the learned Advocate for the appellant could not show any material from the record that police witnesses were inimically with the accused-appellant who allegedly caught red-handed by the police. PW-1, PW-2, PW-7 and PW-8 in their respective evidence supported the prosecution case and they proved time and manner of occurrence.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that the appellant has already been faced the agony of the protracted prosecution and also suffered the mental harassment for a long period of more than one decade, I think that, the ends of justice, will be met in the facts and circumstances of the case if the sentence reduced to the period of 2 (two) years.

Learned Deputy Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as to reduction of sentence.

The appeal is consequently dismissed with modification of sentence awarded by the trial Court.

The sentence awarded by the trial Court is reduced to the period of 2 (two) years in place of 7 (seven) years and to pay a fine of Taka 50,000/- (fifty thousand) in default to suffer rigorous imprisonment for 1(one) year and 6 (six) months more.

Since the appeal is dismissed the convict-appellant is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the trial Court shall take necessary steps against the convict-appellant, Md. Mosarof Hosen @ Ronju to secure his arrest.

Send down the lower Courts' records at once.