

Present :

Mr. Justice Ashish Ranjan Das.

Criminal Appeal No. 8285 of 2018

In the matter of:

Md. Abdullah Gazi

.....Appellant

-Versus-

The State

.....Respondent.

Mr. Md. Earul Islam

.....For the appellant.

Mr. S.M. Asraful Hoque, D.A.G

... For the State

Heard on:14.12.2022

Judgment on: 08.01.2023

Ashish Ranjan Das, J:

Learned Additional Sessions Judge, Khulna in Metropolitan Sessions Case No. 933 of 2013 arising out of Sonadanga police station Case No. 4 dated 06.01.2010 by his judgment dated 09.09.2014 convicted the sole accused appellant Md. Abdullah Gazi under section 19(1) table 3(Kha)/ 19(4) of the Madok Drabnya Niantran Ain,1990 and sentenced

him to suffer rigorous imprisonment for 2 years followed by a fine of Tk.5,000/-, in default to suffer rigorous imprisonment for 3(three) months more.

Short fact relevant for the purpose is that the police force of Khulna Metropolitan police headed by Sub- Inspector Md. Motiur Rahman, the informant of Khulna Metropolitan police was on a regular patrol on 06.01.2010. In broad a day light at about 10.45 A.M a man was found coming along the footpath. He was suspected, searched and 10 bottles of contraband drug phensidyle, a derivative of codine phosfect were recovered from his body in presence of witnesses. A seizure list was prepared then and the man was taken in to custody. Thus, the case was set on motion. As sample bottle was forensically examined, it was found codine phosfect, charge was framed to which he pleaded not guilty and in order to bring the charge home, the

prosecution examined as many as 7 witnesses, those included the informant police officer and other forces and 2 local witnesses supposed to have witnessed the recovery and signed the recovery memo (P.Ws 4 and 6). The appellant stood the trial, however at the time of delivery of judgment he was found absent.

I have heard the learned advocate for the accused appellant and the opposition raised by the learned Deputy Attorney General, perused the record.

Obviously it was simple story of recovery of 10 bottles of phensydile syrup from body and possession of this appellant. Obviously the police personnel taking part in the operation corroborated the case and next remain the 2 local witnesses who have been portrayed as neutral witnesses of the recovery. Although P.W.4 Md. Asgor Sheikh stated that he was on the road and the police called him and collected

his signature on the seizure list Exhibit Nos. 2/2, significant is that this p.w. did not claim to have personally witnessed the recovery episode. He was not cross-examined, next remains P.W.6 Md. Aatur Rahman. According to his statement he had a paternal shop near the Gallamari bridge. On the day at about 11 a.m police called him and asked to sign a seizure list, accordingly he did (Ext. 2/3). The police also showed him a packet and claimed that the packet was containing physidyles, the police did an explain nor could he see the bottles.

I see neither of the recovery witnesses p.ws.4 and 6 admit to have seen recovery of the alamat from the person, although they have admitted to have signed the seizure list. Thus, I am constrained to conclude their the legal evidences produced in order to fasten the appellant with the alamat were rather short of the required standard. The concerned

witnesses P.Ws.4 and 6 in a voice denied to have seen recovery of alamats from the appellant although they had signed the seizure list. It requires no further illustration that is such a situation when being ordered by the police ordinary local people do not dare to disoblige the police.

It is being the situation I find that the charge was not proved beyond doubt. Besides it has been a punishment of 2 years rigorous imprisonment only out of which the man has served out near about 6 months.

Thus, the appeal is allowed and the judgment of conviction and sentence dated 09.09.2014 passed in Metropolitan Sessions Case No.933 of 2013 by the learned Additional Sessions Judge, Khulna is hereby set aside.

The man is set free if not otherwise wanted and the alamats to be destroyed as usual.

Communicate the judgment and order to the courts below.

Send down the Lower Court Record.

(Justice Ashish Ranjan Das)

Bashar B.O.