

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 11888 of 2018**

Raju Saha

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. Ashutosh Kumar Sana, 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 20.05.2024 and**

**Judgment on 21.05.2024**

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Raju Saha is directed against the judgment and order of conviction and sentence dated 18.10.2018 passed by the learned Judge, Special Tribunal No.6, Khulna in Special Tribunal Case No. 76 of 2010 arising out of G.R No. 7 of 2010 corresponding to Batiaghata Police Station Case No. 7 dated 13.01.2010 convicting the accused-appellant under section 25B(2) of the

Special Powers Act, 1974 and sentencing him there under to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 2,000/- (two thousand) in default to suffer simple imprisonment for 02 (two) months more.

The prosecution case, in short, is that one, Md. Anwar Hossain, S.I. Detective Branch, Khulna as informant on 13.01.2010 at about 16:30 hours lodged an Ejahar with Batiaghata Police Station against the accused-appellant stating, inter-alia, that on 13.01.2010 while the informant along with other police forces were on special duty as per G.D. No. 88 dated 13.01.2010 the informant got a secret information about phensidyl deals in the shop of Badahan Mobile Mart of Laxmi Super Market at Kaiyabazar and thereafter, the informant party rushed to the place of occurrence and apprehended the accused-appellant and on search recovered 6 bottles of phensidyl from a plastic packet kept on the shelf of show-case of the shop and thereafter, the informant party seized those phensidyls by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Batiaghata Police Station Case No. 7 dated 13.01.2010, under section 25-B(2) of the Special Powers Act, 1974 was started against the accused-appellant.

Police after completion of usual investigation submitted charge sheet No. 18 dated 16.02.2010 under section 25B(2) of the Special Powers Act, 1974 against the accused appellant.

Thereafter, in usual course the case record was sent to the Senior Special Tribunal, Khulna wherein it was registered as Special Tribunal Case No. 76 of 2010. Ultimately, the case was transmitted to Special Tribunal No.6, Khulna for trial before whom the accused-appellant was put on trial to answer a charge under section 25B(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.

At the trial, the prosecution has examined as many as 11(eleven) witnesses to prove its case, while the defence examined none.

The defence case as it appears from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellant under section 342 of the Code of Criminal Procedure that the accused-appellant is innocent, who has been falsely implicated in the case, no incriminating phensidyls were recovered from the possession of the accused-appellant.

On conclusion of trial the learned Judge, Special Tribunal No.6, Khulna by the impugned judgment and order dated 18.10.2018 found the accused appellant guilty under section 25B(2) of the Special Powers Act, 1974 and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 2,000/- (two thousand) in default to suffer simple imprisonment for 02 (two) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 18.10.2018, the accused-appellant preferred this appeal.

Mr. Ashutosh Kumar Sana, the learned Advocate appearing for 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 order of conviction and sentence dated 18.10.2018 and then submits that the accused-appellant was out and out innocent, who has been made scapegoat in this case, in fact no incriminating phensidyl syrups were recovered from the exclusive possession and control of the convict-appellant. He adds in this case the prosecution examined in all 11 witnesses out of which public witness namely, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8 and PW-9 in their respective evidence stated nothing against the

convict-appellant although the learned tribunal judge without considering all these vital aspects of the case from a correct angle mechanically passed the impugned judgment and order of conviction under section 25B (2) of the Special Powers Act, 1974 and as such, the same is liable to be set-aside.

Ms. Shahida Khatoon, the learned Deputy Attorney-General for the State, on the other hand, supports the impugned judgment and order of conviction and sentence which was according to her just, correct and proper. She submits that in this case police witnesses as well as members of the raiding party namely PW-1 and PW-10 apprehended the accused-appellant with 6 bottles of Indian phensidyl from the shop of the accused-appellant.

Having heard the learned 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, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused- appellant guilty of the offence under section 25B(2) of the Special Powers Act, 1974.

On scrutiny of the record, it appears that the prosecution to prove its case examined in all 11 witnesses out of which PW-1, informant of the case stated in his respective evidence that on the basis of secret information he along with other police forces rushed to the mobile shop of the accused-appellant and found 6 bottles of phensidyl kept in a bag. This witness in his cross-examination denied the suggestion in the following language: “সত্য নয় যে শত্রুপক্ষের লোকজন ফেন্সিডিল দিয়া এই মামলা করেছে।” PW-2, Uttam Sarder, seizure list witness stated in his deposition that- “জব্দ তালিকা (প্রদ:২) দেখিলাম। জব্দ তালিকায় ৫(ক) কলামের স্বাক্ষর আমার (প্রদ:২/২)। ১৩/০১/১০ তাং ১.৩০ ঘটিকায় আমি স্বাক্ষর করি। আমি লক্ষ্মী সুপার মার্কেট কইয়া বাজার এর সেক্রেটারি ছিলাম। সেখানে যাইতেছিলাম। তখন উনি বলেন যে ৬ (ছয়) বোতল ফেন্সিডিল রাজু সাহার দোকান হইতে উদ্ধার হইয়াছে। তারপর সেখানের জব্দ তালিকা হয় এবং আমি এই সই করি। আসামী রাজু সাহা ডকে আছে।” This witness in his cross-examination stated that- “রাজু সাহার দোকান নিয়া দীর্ঘদিন বিরোধ ছিল। ফেন্সিডিল উদ্ধারের সময় আমি দেখি নাই। আমাকে মোবাইল ফোনের ডাকিয়া নিয়া দেখায়।” PW-3, Md. Ferdous, seizure list witness stated in his deposition that- “পুলিশ আমাকে মার্কেটের সভাপতি হিসাবে সই চায়। আমি তখন সই করি। আমাকে কিছু দেখায় নাই।” This witness was declared hostile by the prosecution. PW-4 proved the seizure list as “Ext.-2” and his signature thereon as “Ext.-2/4”, PW-5, Bikash Kumar

stated in his deposition that phensidyl was recovered from the shop of the accused Raju, PW-6 stated in his cross-examination that he did not see the occurrence. PW-7, PW-8 and PW-9 were tendered. PW-10, Abdul Latif, constable, member of the raiding party stated in his evidence that on the basis of secret information police rushed to the mobile/fax shop of accused appellant and recovered 6 bottles of phensidyl of his shop kept in a biscuit packet, PW-11 investigated the case, who stated in his deposition that during investigation he prepared sketch-map, index and examined the witnesses under section 161 of the Code of Criminal Procedure and having found prima-facie case against the accused and submitted charge sheet against the accused-appellant under section 25B(2) of the Special Powers Act, 1974. This witness proved the sketch-map as “Ext.-3” and his signature thereon as “Ext.-3/1”, index as “Ext.-4” and his signature thereon as “Ext.-4/1”.

On an analysis of the above quoted evidence of PWs, it appears that admittedly there was enmity as to ownership of the shop of accused-appellant and local witnesses namely, PW-2, PW-3 and PW-4 did not see the recovery of phensidyl from the possession of the accused-appellant. It further appears that phensidyls

were not recovered from the exclusive possession and control of the accused-appellant which allegedly recovered from mobile/fax shop of the accused-appellant kept in a biscuit packet of show case.

Taking into consideration of overall facts, circumstances and materials on record, it is very difficult to believe that the accused appellant kept those phensidyls under his possession for the purpose of sale or the same was recovered from the exclusive possession and control of the accused-appellant. Independent public witness namely, PW-3 was declared hostile and a number of public witnesses stated nothing against the accused-appellant as to recovery of phensidyls from the possession and control of the accused-appellant. In view of the attending facts and circumstances of the case and the evidence on record, I am constrained to hold that the prosecution has failed to prove the charge against accused appellant beyond any reasonable doubts. The learned Special Tribunal failed to properly weigh and shift the evidence on record as required by law and failed to evaluate the evidence on record as adduced before the trial court thereby coming to a wrong decision.

As discussed above, there are so many limps and gaps as well as doubts about the existence of the facts as well as circumstances. In that light, it creates a doubt in



the case of the prosecution about the accused being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused by giving the benefit of doubt. In that view of the matter, the judgment of the trial Court is to be interfered with. Consequently the appeal succeeds.

In the result, the appeal is allowed and the impugned order of conviction and sentence passed by the learned Judge, Special Tribunal No.6, Khulna in Special Tribunal Case No. 76 of 2010 arising out of G.R No. 7 of 2010 corresponding to Batiaghata Police Station Case No. 7 dated 13.01.2010 against accused appellant, Raju Saha is set aside and he is acquitted of the charge levelled against him.

Convict appellant, Raju Saha is discharged from his bail bond.

Send down the lower Court records at once.