

Present :

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Misc. No. 11607 of 2019

In the matter of:

Md. Imranur Rahman and another

.....Convict-petitioners.

-Versus-

The State.

..... The opposite party.

Mr. Md. Wahiduzzaman Sohel, Adv.

....For the Convict-petitioners.

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

Ms. Fatema Rashid , A.A.G. with

Mr. Md. Shafiquzzaman (Rana), A.A.G. with

Mr. Md. Akbar Hossain, A.A.G.

..... For the State.

Heard on: 13.11.2023 and

Judgment on: 15.11.2023.

Ashish Ranjan Das, J:

Rule under Section 561A of the Code of Criminal Procedure (for short the Code) was issued in the following terms :

“A Rule be issued calling upon the opposite-party to show cause as to why the judgment and order dated 11.11.2018 passed by the learned Sessions Judge, Bagerhat in Criminal Revision No.71 of 2018, dismissing the revision and affirming the judgment and order dated 02.07.2018 passed by the learned Chief Judicial Magistrate, Bagerhet in Criminal Appeal No.

46 of 2017 partly modifying the sentences imposed upon both the accused by the Trial Court and awarding rigorous imprisonment for a period of six months only instead of the sentence in respect of petitioner No.(1) Md. Imranur Rahman to the extent of one year and six months' rigorous imprisonment and to pay a fine of Tk. 1,000/- in default to suffer simple imprisonment for fifteen days in respect of petitioner No. (2) Md. Mizanur Rahman Khan to the extent of one year and one month's rigorous imprisonment and to pay a fine of Tk.1000/- in default to suffer simple imprisonment for fifteen days passed by the judgment and order dated 24.05.2017 by the Judicial Magistrate, Court No. 2 Bagerhat in G.R. No. 100 of 2014 (Sharankhola) arising out of Sarankhola Police Station Case No. 10 dated 09.05.2014 under Section 19(1) Table 9(ka) of Madak Drabba Niontran Ain, 1990, should not be quashed and/or such other or further order or orders passed a to this court may seem fit and proper."

Shot facts relevant for the purpose that could be gathered from the file are that these two petitioners accused have been resident of P.S-Sharonkhola, District- Bagerhat wherein petitioner Md. Emranur Rahman has been a petty employee of the telecommunication department. Sub-inspector Gazi Iqbal Hossain attached to Sharonkhola Police Station, District-Bagerhat upon recording a dairy went to regular patrol in the Thana Town with is forces. In the process he received

secret source information and the forces rushed to a school field of Anower Hossan High School and it was 9.25 P.M. at night as the police reached there few persons were seen running away to and fro. The informant and his forces however could catch. These two petitioners in presence of witnesses were searched six contra band Yeaba Tablets were recovered from the pocket of petitioner Emranur Rahman and another 4 Yeaba tablets could be seized from his companion. Both the alamat and the detained accused were taken into custody. They sat at adjacent shop of one Ripon. Sitting on the bench the seizure list was prepared signatures of the witnesses were collected and on coming back to the police station Sub-Inspector Gazi Iqbal Hossain recorded an F.I.R. The case was set on motion. Investigation was held and illegal possession of drags a or 10 yeaba Tablets was primarily proved and charge sheet attracting sections 19(1) Table 9(Ka) of Madak Drabbya Niyontron Ain, 1990. Cognizance was accordingly pressed and charge was framed. However the petitioner's pleaded not guilty. He was examined under Section 342 of the Code of Criminal Procedure and upon conclusion of trial the learned judicial Magistrate by his order dated 29.5.2017 found both

the petitioner's guilty and sentenced each of them to suffer rigorous imprisonment for 1 year and 06 months followed by a fine.

Being aggrieved the petitioner preferred appeal and the learned chief judicial Magistrate by his judgment dated 02.07.2018 upheld the findings and conviction but reduced the sentence to 06 months each. Next the petitioners preferred criminal revision challenging the judgment of the appellate court and the learned Sessions Judge, Bagerhat by his order dated 11.11.2018 upheld the conviction however modified sentence of both the petitioners to the extent of one year and 06 months each. Hence is this application under Section 561A of the Code of Criminal Procedure .

We have gone through all the materials and heard the learned Advocate for the petitioners as well as the regulation protest raised by the learned Deputy Attorney General.

The gist of submission of the learned Advocate for the petitioners is that it is true that the police the members of the raiding party P.W.2 and 3 made statements in support of the F.I.R. But they were not corroborated by any of the local

witnesses. Particularly Ripon sitting on whose shop the recovery memo was prepared was not produced as witnesses. Hence evidence of the police forces P.W.2 and 3 can not be branded as reliable neutral evidences while if we discuss the statements of P.W. 2 and 3 there remains nothing to corroborate a charge. The learned Advocate further submitted that it was in all 10 Yeaba Tablets and admittedly its weight was not measured in order to justify a conviction.

The learned Deputy Attorney General found it hard to controvert the technical questions raised by the learned Advocate for the petitioners. Now the amount is only ten tiny Yeaba Tablets persons roped with the charge were two in number. It is a matter of common understanding that this has not been a commercial effort. The petitioner Emran has been a petty public servant and they have been fighting for their acquittal starting from the court of Magistrate. Now as regards the evidences allegation of the informant Police Officer was not corroborated by the non interested witnesses cited, particularly the persons sitting in his shop where the seizure list was prepared, Repon was not examined. Thus we are of the view that this has been a case of no evidence.

As a result, the Rule is made absolute.

The petitioner stands acquitted and in its turn the judgment of conviction and sentence dated 11.11.2018 passed by the learned Sessions Judge, Bagerhat in criminal Revision No. 71 of 2018 dated 02.07.2018 is set aside.

Communicate the judgment and order to the court below.

Send down the Lower Court Records.

Md. Riaz Uddin Khan,J

Md. Atikur Rahman, A.B.O.