

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL APPLICATION)

Criminal Revision No. 5059 of 2021

Md. Mujahidul Islam alias Anowar Hossain
and another.

...Convict-petitioners

-VERSUS-

The State.

... Opposite party

Present

Mr. Justice Mamnoon Rahman

Ms. Rafat Zahan, Adv.

... For the petitioners.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

....For the State.

Heard & Judgment on: 16.10.2023

This appeal is directed against the judgment and order of conviction and sentence dated 10.01.2021 passed by the learned Judge, Special Tribunal No.3, Munshigonj, in Special Tribunal Case No.83 of 2008 arising out of Gazaria Police Station Case No.21 dated 20.07.2008 corresponding to G.R. No.414 of 2008, convicting the convict-appellants under section 25B(2) of the Special Powers Act, 1974 and sentencing them to suffer rigorous imprisonment for 01 (one) year and to pay a fine of Tk. 2,000/- (Two thousand) in default to suffer simple imprisonment for a period of 07 (seven) days more.

The prosecution case, in short, is that, P.W. 1 informant of the case on secret information apprehended the microbus in the Dhaka Chittagong Highway and arrested two accused persons who are the

appellants before this court and from their possession recovered 10 bottles of phensydiles. Hence, the case.

The police after filing of the case started investigation and submitted charge sheet against the accused persons under section 25B(2) of the Special Powers Act, 1974. As the case was ready for trial the same was transmitted to the trial court wherein the trial court framed charges and proceeded with the case. During trial the prosecution adduced as many as four witnesses and the defence adduced none. The trial court examined the accused persons under section 342 of the Code of Criminal Procedure and thereafter vide the impugned judgment and order of conviction and sentence convicted the accused persons. Being aggrieved by and dissatisfied with the said judgment and order, the accused appellants moved before this court by way of appeal.

Ms. Rafat Zahan, the learned counsel appearing on behalf of the appellants submits that the court below without applying its judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner passed the impugned judgment and order of conviction and sentence which requires interference by this court. She submits that this is a case of no evidence as because except P.W. 1 who is the informant none of the P.Ws said anything as much as the prosecution also failed to examine the Investigating Officer. She also submits that the seizure list witnesses did not mention anything in their cross-examination or deposition as such she prays for setting aside

the impugned judgment and order of conviction and sentence for ends of justice.

Mr. Taifoor Kabir, the learned Deputy Attorney General for the state/opposite party vehemently opposes the rule. He submits that the courts below on proper appreciation of the facts and circumstances, materials on record, evidence both oral and documentary passed the impugned judgment and order passed by the courts below which requires no interference by this court.

I have heard the learned Advocate for the appellant as well as the learned Deputy Attorney General for the state. I have perused the impugned judgment and order of conviction and sentence passed by the court below, Memorandum of appeal as well as LC Records.

On perusal of the same, it transpires that the appellants stood charge under section 25B(2) of the Special Powers Act, 1974 for possessing 10(ten) bottles of phensydiles. It further transpires that the informant lodged the First Information Report (FIR) resulting which the Gazaria Police Station Case No. 21 dated 20.07.2008 was started under section 25B of the Special Powers Act, 1974. It also transpires that the police after investigation submitted charge sheet. P.W. 1 who is the informant in his deposition stated that he apprehended the appellants and recovered the incriminating articles. P.W. 2 who is the seizure list witness in his deposition stated that he knew nothing about the said occurrence. P.W. 3 another seizure list witness also stated that he was in his shop and the Inspector came to his business place and

obtained signature forcefully. P.W. 4 also mentioned nothing about the manner place and time of the occurrence.

So, it transpires that apart from these witnesses there are nothing to show or implicate the accused appellants in the instant offence. As such, I am of the view that the prosecution failed to prove the charge beyond all reasonable doubt as such the appellants are entitled to get the benefit of the same.

Accordingly, the instant appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial court is hereby set aside. The appellants are discharged from his bail bond and the appellants be acquitted from the charge leveled against them.

Send down the L.C. Records to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman, J:)

Emdad.B.O.