

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 5866 of 2015**

Md. Azizur Rahman Babu

.....Convict-Appellant.

-Versus-

The State.

.....Respondent.

Mr. Md. Anjarul Hasan, Advocates

.....For the Convict 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 10.06.2024, 30.06.2024, 07.07.2024**  
**and Judgment on 08.07.2024**

**Sheikh Abdul Awal, J:**

This Criminal Appeal at the instance of convict appellant, Md. Azizur Rahman Babu is directed against the judgment and order of conviction dated 11.05.2015 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No. 8203 of 2012 arising out of G.R No. 324 of 2012 corresponding to Darus Salam Police Station Case No. 51 dated 29.07.2012 convicting the accused-appellant under table 3(ka) of section 19(1) of the Madok Drabya

Niyantaran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 2(two) months more.

The prosecution case, in brief, is that one, Md. Anisur Rahman, A.S.I. Darus Salam Police Station, DMP, Dhaka as informant on 29.07.2012 at about 23.45 hours lodged an Ejahar with Darus Salam Police Station against the accused appellant stating, inter-alia, that according to GD entry No. 1462 dated 29.07.2012 while the informant along with other police forces were on special duty under Darus Salam police station got a secret information as to crime and thereafter, they took position near Aminbazar Bridge and gave signal to a truck to stop and thereafter, police took control over the truck and on interrogation the truck driver, Md. Azizur Rahman Babu shown 100 bottles of phensisy1 kept in a cloth bag, left side of the driving seat, which valued at Taka 60,000/- (sixty thousand) and thereafter, the informant party seized those phensidyl syrups by preparing seizure list in presence of the witnesses.

Upon the aforesaid First Information Report, Darus Salam Police Station Case No. 51 dated 29.07.2012 under table 3(kha) of section 19(1) of the Madok Drabya

Niyantaran Ain, 1990 was started against the convict-appellant.

Police after completion of usual investigation submitted charge sheet against accused appellant, vide charge sheet No. 324 dated 06.09.2012 under table 3(kha) to section 19(1) of the Madok Drabya Niyantaran Ain, 1990.

Ultimately, the case was transmitted to the Court of the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Dhaka for disposal, wherein the accused appellant was put on trial to answer a charge under table 3(kha) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990 to which the accused appellant pleaded not guilty and prayed to be tried stating that he has been falsely implicated in this case.

At the trial, the prosecution side examined as many as 05(five) witnesses to prove its case, while the defence examined none. The defence case, 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 appeared to be that the accused-appellant was innocent and he has been falsely implicated in the case. The defence declined to adduce any evidence.

On conclusion of trial, the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Dhaka by the impugned judgment and order dated 11.05.2015 found the accused-appellant guilty under table 3(ka) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for a period of 02(two) months more.

Aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 11.05.2015, the convict-appellant preferred this criminal appeal.

Mr. Md. Anjarul Hasan, the learned Advocate appearing on behalf of 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 then submits that the convict-appellant is innocent, who has been made scapegoat in this case, in fact no incriminating phensidyl was recovered from the possession and control of the accused-appellant. He further submits that in this case the provisions of section 103 of the Code of Criminal Procedure was not at all complied in spite of fact that the police gave signal to

the truck in question on the basis of a secret information in-front of Brothers' Counter, near Noor Petrol Pump of Dhaka-Aricha Highway and apprehended the accused-appellant but no one of the alleged place of occurrence motioned in the seizure list as witness and thus, it can safely be said that no search and seizure was made in accordance with law. The learned Advocate further submits that in this case total 5 witnesses were examined out of which public seizure list witnesses namely, PW-2 and PW-3 stated nothing as to recovery of phensidyl from the direct possession and control of the accused-appellant and other witnesses being member of the raiding party inconsistently deposed before the trial Court as to recovery of the phensidyls from the possession and control of the accused-appellant. He adds that some of the members of the raiding party stated that the phensidyls in question were recovered from a cow loaded truck and PW-1,4 & 5 testified that there was no existence of cow on the truck in question although the learned Judge of the trial Court below most illegally held that the accused-appellant found guilty under table 3(ka) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to

suffer rigorous imprisonment for a period of 02(two) months more, the same is liable to be set-aside. Finally, the learned Advocate submits that in the facts and circumstances of the case the accused-appellant is entitled to get benefit of doubts. The learned Advocate in support of his submission has relied on the decision reported in 15 BLD 129, 15 BLD 570 and 23 BLT 382.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing 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 all 5 witnesses categorically testified in one voice that 100 bottles contraband phensidyls were recovered from the knowledge and possession of the convict-appellant. She adds that the seized phensidyls were examined by the chemical examiner, who found ingredients of codeine in the seized phensidyls and thus, question of interference does not arise at all, the appeal is liable to be dismissed. Finally, the learned Deputy Attorney General submits that in this case section 103 of the Code of Criminal Procedure was properly complied in accordance with law and that seizure list witnesses namely, PW-2 and PW-3 were examined and they proved the seizure list

and their signatures thereon as “Ext.-2/2 &2/3 respectively”

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 and sentence dated 11.05.2015, the only question that calls for consideration in this appeal is whether the trial Court committed any error in finding that the accused-appellant guilty of the offence under table 3(Ka) of section 19(1) of the Madak Drobbya Niyontron Ain, 1990.

On scrutiny of the record, it appears that one, Md. Anisur Rahman, A.S.I. Darus Salam Police Station, DMP, Dhaka as informant on 29.07.2012 at about 23.45 hours lodged an Ejahar with Darus Salam Police Station against the accused appellant stating, inter-alia, that on the basis of a secret information on 29.07.2012 the informant party gave signal to truck driver to stop truck in question in-front of Brothers Counter near about Noor Petrol Pump, Dhaka-Aricha Highway and thereafter, informant party at the pointing out of the accused-appellant (driver of the truck) recovered 100 bottles of phensidyl from the left side seat of driver,

which valued at taka 60,000/- and accordingly arrested the accused-appellant, seized those phensidyls and lodged the case. Police after completion of investigation submitted charge sheet against the convict-appellant vide charge sheet No. 324 dated 06.09.2012 under table 3(kha) of section 19(1) of the Madok Drabya Niyantaran Ain, 1990. It further appears that at the trial the prosecution side examined in all 5 witnesses out of which PW-1, A.S.I./26737 Md. Anisur Rahman, informant of the case stated in his deposition that on the basis of a secret information he gave signal to truck driver to stop truck in-front of Noor Diesel Pump and thereafter, on search recovered 100 bottles of phensidyl at the pointing out of the driver covering with black cloths kept left side seat of the driver and thereafter, police seized those phensidyl by preparing seizure list in presence of the witnesses. He proved the seizure list as “Ext.-1” and his signature thereon as “Ext.-1/1”. This witness identified the accused on dock. This witness in his cross-examination stated- “আমার জব্দকৃত ট্রাকটি গরু ভর্তি ছিল।”. PW-2, Shamol Shaha as seizure list witness stated in his deposition that on 29.07.2012 at 9:55 hours police detained a truck in front of Brother Counter and on search, recovered phensidyls kept left side of driver’s seat and thereafter, police prepared seizure list in



presence of witnesses. This witness proved his signature in the seizure list as “Ext.-2/2”. This witness identified the accused on dock. This witness in his cross-examination stated that- “উক্ত ট্রাকে অন্য কোন লোক ছিল কিনা তা বলতে পারব না। সেদিনের জব্দকৃত আলামত আজ আদালতে নাই। জব্দ তালিকায় কী লিখা ছিল বলতে পারব না। আমি পড়া লেখা জানি না।”, This witness denied the suggestion stating that- “সত্য নয়, এই আসামীর নিকট হতে কোন আলামত উদ্ধার হয় নাই।” PW-3, Jahangir Hossain, as seizure list witness stated in his deposition that police gave signal to truck in question to stop it and police on search recovered 100 bottles of phensidyl kept in a black bag from the left side of the seat of the track driver. This witness also stated that police arrested the driver and took his signature by preparing seizure list. This witness proved the seizure list and his signature thereon as “Ext.-2/3”. This witness in his cross-examination stated that- “ট্রাকের উপর গরু দেখি নাই।” PW-4, constable Shafiqul Islam, member of the raiding party, who gave evidence in support of the prosecution case as like as PW-1. This witness in his cross-examination stated that- “ট্রাকে গরু ছিল।” PW-5, Prodip Kumar Shaha investigated the case. This witness stated in his deposition that during investigation he visited the place of occurrence, prepared sketch-map, examined the witnesses under section 161 of the Cr.p.c. and obtained

chemical examination report and after completion of investigation submitted charge sheet against the accused. This witness proved the chemical examination report as “Ext.-5”. This witness in his cross-examination stated that- “সত্য নয় আটককৃত ট্রাকে ইন্ডিয়ান গরু ছিল বা আমরা সে জন্য আসামীর নিকট চাঁদা দাবী করি।”

On a close perusal of the above quoted evidence, it appears that all the witnesses categorically stated in one voice that the accused-appellant was apprehended along with 100 bottles of Indian phensidyl. Seizure list witness namely, PW-2 and PW-3 also stated that phensidyls were recovered from the left side of the driver’s seat and police prepared seizure list . Besides, it further appears that chemical examiner gave report (Ext-5) sating that - “১টি প্লাস্টিক বোতলে প্রাপ্ত ১০০ এম.এল. বাদামী তরল পদার্থে অপিয়াম উদ্ভূত ‘কোডিন’ পাওয়া গিয়াছে। সীলমোহর অক্ষত ছিল।” It is found that PW- 1 A.S.I./26737 Md. Anisur Rahman, informant of the case, PW-2, Shamol Shaha, seizure list witness PW-3, Jahangir Hossain also seizure list witness and PW-4, constable Shafiqul Islam, member of the raiding party, who were the eye witnesses of the occurrence, by their testimony proved the prosecution case and corroborated each other in support of the prosecution case. The prosecution witnesses proved that the accused appellant kept in his possession 100 bottles phensidyl

and failed to show any legal document in ‘ respect of those articles and all the prosecution witnesses namely PWs. 1-5 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 doubt. Therefore, I am unable to see eye to eye to such submission of the learned Advocate for the appellant that in the facts and circumstances of the case the convict-appellant is entitled to get benefit of doubt as the provision of section 103 Cr.P.C. was not complied inasmuch as I have already indicated that in this case police personals conducting the search and seizure in presence of local witnesses being PW2 and PW-3, who proved the seizure list as per requirement of law. Further, the argument advanced by the learned Advocate for the appellant that no occurrence took place as alleged in the F.I.R. inasmuch as some witnesses testified that the truck in question was cow loaded truck while the investigating officer stated that there was no cow in the truck in question. This is a mere omission which cannot be fatal for the prosecution case, on that ground the impugned judgment and order of conviction cannot be knockdown. Therefore, I find no substance in either of the contentions as raised by the learned Advocate for the appellant.

It is found that the trial Court below on due consideration of the entire evidence and materials on record rightly found the accused-appellant guilty under table 3(Ka) of section 19(1) of the Drobbya Niyontron Ain, 1990 and sentenced him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 02 (two) months more. I find no flaw in the reasonings of the trial Court.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant appeal must fail.

In the result, the appeal is dismissed. The impugned the judgment and order dated 11.05.2015 passed by the learned Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Dhaka in Metropolitan Sessions Case No. 8203 of 2012 arising out of G.R No. 324 of 2012 corresponding to Darus Salam Police Station Case No. 51 dated 29.07.2012 convicting the accused-appellant under table 3(ka) of section 19(1) of the Madok Drabya Niyantran Ain, 1990 and sentencing him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for 02(two) months more is hereby affirmed.

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

Send down the lower Courts' records at once.