

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 5072 of 2016**

Md. Mukul Hossain

.....Convict-appellant.

-Versus-

The State

.....Respondent.

No one appears

.....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.

**Judgment on 18.03.2024.**

**Sheikh Abdul Awal, J:**

This criminal appeal at the instance of convict appellant, Md. Mukul Hossain is directed against the impugned judgment and order of conviction and sentence dated 09.05.2016 passed by the learned Judge, Special Tribunal No. 5, Satkhira in Special Tribunal Case No. 3 of 2012 arising out of G.R. No. 47 of 2011 (Deb:) corresponding to Debhata Police Station Case No. 02 dated 01.05.2011 convicting the accused-appellant under Section 25B(2) of the Special Powers Act, 1974 and sentencing him thereunder to suffer

rigorous imprisonment for a period of 01(one) year and to pay a fine of Tk. 1,000/- (one thousand).

The prosecution case, in brief, is that one, Md. Ziarul Islam, S.I. as informant on 01.05.2011 at about 11:45 hours lodged an Ejahar with Debhata Police Station, Shatkhira against the accused appellant stating, inter-alia, that while the informant along with a contingent of police force were on Special duty as per G.D. No. 994 dated 30.04.2011 got a secret information as to selling phensedyl syrups at Nur Islam Shahaji's house area and accordingly, police team rushed there at 21:05 hours and apprehended the accused, Md. Mukul Hossain on chase and on search recovered 2 bottles wine (White Mischief Ultra Pure Vodka), made in India, which valued at Tk. 1,200/-(one thousand and two hundred). Thereafter, police seized that wine by preparing seizure list in presence of local witnesses.

Upon the aforesaid First Information Report, Debhata Police Station Case No. 02 dated 01.05.2011 under Section 25B (2) of the Special Powers Act, 1974 was started against the accused appellant. Police after completion of investigation submitted charge sheet against the accused appellant, vide charge sheet No. 39 dated 10.06.2011 under Section 25B(2) of the Special Powers Act, 1974.

Ultimately, the accused appellant was put on trial before the learned Judge, Special Tribunal No. 5, Satkhira 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 the case.

At the trial, the prosecution has examined in all 4(four) witnesses to prove its case and exhibited some documents, while the defence examined none.

On conclusion of trial, the learned Judge, Special Tribunal No. 5, Satkhira by the impugned judgment and order dated 09.05.2016 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 01(one) year and to pay a fine of Tk. 1,000/- (one thousand).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 09.05.2016, the accused-appellant, Md. Mukul Hossain preferred this criminal appeal.

No one found present to press the appeal on repeated calls despite of fact that this petty old criminal appeal has been appearing in the list for hearing with

the name of the learned Advocate for the appellant for a number of days.

In view of the fact that this old criminal appeal of 2016 arising out of 1 year sentence, I am inclined to dispose of the same on merit.

On scrutiny of the record, it appears that one, Md. Ziarul Islam S.I. as informant on 01.05.2011 at about 11:45 hours lodged an Ejahar with Debhata Police Station, Shatkhira against the accused appellant on the allegation that the accused appellant was apprehended along with 2 bottles of Indian made wine (white mischief ultra pure vodka), which valued at Tk. 1,200/-(one thousand and two hundred) and police after completion of investigation submitted charge sheet against the accused appellant under Section 25B(2) of the Special Powers Act, 1974. It further appears that the prosecution to prove its case examined in all 4 witnesses out of which PW-1, S.I. Md. Ziarul Islam, stated in his deposition that on 30.04.2011 at 9:50 hours at night the informant party got a secret information as to selling phensedyl at Nur Islam Shahaji's house area under village Bohera and thereafter, police team rushed there and apprehended the accused appellant on chase and on search recovered 2 bottles Indian made wine (white mischief ultra pure vodka). This witness also stated that

police seized those Indian made wine by papering seizure list in presence of witnesses. This witness proved the seizure list as exhibit-1 and his signature thereon as exhibit-1/1 and also proved those 2 bottles Indian made wine as material exhibit No. 2 and his signature thereon as exhibit 2/1. The defence cross-examined PW- 1 but failed to find out any contradiction in the evidence of PW- 1. PW-2, A.S.I. Md. Shamsuddin, member of the raiding party, who gave evidence in support of the prosecution and made similar statements like PW 2. PW-3, Anarul Haq, seizure list witness, this witness proved the seizure list as exhibit- 2/2. This witness in his cross-examination stated that “যে কাগজে সহি করেছি উহাতে কি লেখা ছিল তাহা পড়ে শোনায় নাই পুলিশেরা কোথা থেকে কার নিকট থেকে ও কি মাল ধরে ছিল উহা আমি দেখি নাই। আমি এই মামলার ঘটনা সম্পর্কে কিছু জানিনা।” PW-4, S.I. Hayat Mahmud, Investigating Officer, who stated in his deposition that during investigation he examined the witnesses under section 161 of the Code of Criminal Procedure and after completion of investigation having found prima-pacie case against the accused appellant and submitted charge sheet against him. This witness proved the charge sheet as exhibits-3-3/1,4-4/1.

On an analysis of the above quoted evidence, it appears that PW-3, Anarul Haq, local seizure list witness

stated nothing against the accused appellant connecting with the crime. This witness in his cross-examination stated that “আমি এই মামলার ঘটনা সম্পর্কে কিছু জানিনা।” It further appears that in this case the prosecution side could not show any document that the seized Indian made wine (White Mischief Ultra Pure Vodka) was examined by the chemical examiner thus it is thus difficult to believe that the alleged seized goods were actually contraband in nature. 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 evaluate the evidence on record as adduced before the trial court thereby coming to a wrong decision. In the facts and circumstances of the case and the evidence on record, it must be held that the prosecution failed to prove charge of carrying and possessing contraband drags against accused, Md. Mukul Hossain beyond reasonable doubts. Consequently the appeal succeeds.

In the result, the appeal is allowed and the impugned judgment and order of conviction and sentence dated 09.05.2016 passed by the learned Judge, Special Tribunal No. 5, Satkhira in Special Tribunal

Case No. 3 of 2012 arising out of G.R. No. 47 of 2011 (Deb:) corresponding to Debhata Police Station Case No. 02 dated 01.05.2011 convicting the accused-appellant under Section 25B(2) of the Special Powers Act, 1974 is set aside and he is acquitted of the charge levelled against him.

Appellant, Md. Mukul Hossain is discharged from his bail bonds.

Send down the lower Court records at once.