

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : CR 3113 of 2009

State of Assam  
-Vrs-  
Shri Sukdeb Paul  
.....Accused person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution--- Shri U. K. Sarkar, Addl. PP

For the defence----- Shri S. K. Sur & Shri A. Paul

Evidence recorded on : 08.12.11

Argument heard on : 16.7.13

Judgment delivered on : 30.7.13

Penal law involved : u/s 7 of the Essential Commodities Act, 1955

J U D G M E N T

1. The prosecution-case in brief, as I gather from the complaint (Offence Report) lodged by Shri Debajit Bujar Baruah, the then Inspector of Food & Civil Supplies and Consumer Affairs, Gauripur, Dhubri, is that on 18.12.08 at about 5-00 PM he alongwith Md. Abdul Masud Sarkar, Checker, Food & Civil Supplies and Consumer Affairs, Dhubri, visited the Fair Price Shop of the accused person located in Gauripur (Ward No.2) and found him absent. One Shri Arunanshu Paul was present there who introduced himself as the cousin of the accused person and stated that he had been looking after the business and maintaining the records of the shop in absence of the accused person. The complainant came to know that the accused person in fact resided in Agamoni at that time and worked there as a clerk in Pragati College without any permission from the concerned authority. On inspection of the shop, the complainant found no signboard or price-display board there. He accordingly collected the books of accounts (specified in the complaint) from said Shri Arunanshu Paul issuing proper receipts and, on verification, found that the books were not maintained properly for the concerned period (October & November, 2008) which amounted to violation of the Clause 14/18 of the Assam Public Distribution of Articles Order, 1982, as well as the Terms & Conditions No.3(a)(b)/4/6/8(1) of the License issued to the accused person. The complainant also examined the Distribution Register of M/s Primary Consumers Co-operative Ltd., Gauripur, which belonged to the accused person at that time after suspension of the earlier license ; he found that only 49 FIC-holders procured their allotted PDS/TPDS from M/s Primary Consumers Co-operative Ltd. out of the allotted 65. The remaining 16 FICs were untraceable giving rise to an impression that the accused person misused the PDS/TPDS items allotted for those 16 FIC-holders.

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2. On appearance of the accused person before the Court in response to the summons issued, the prosecution examined three witnesses u/s 244 CrPC ; they were cross-examined extensively at that stage itself. A charge u/s 7 of the E. C. Act was thereafter framed against and read over & explained to the accused person by my learned predecessor, after hearing both sides, to which the accused person pleaded not guilty & claimed to be tried, as the order dated 07.3.12 shows. The defence declined to cross-examine the PWs further and the prosecution also did not seek for adducing further evidence. The accused person was thereafter examined u/s 313 CrPC ; he denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length.

3. The sole **point for determination** in this case, as I gather from the charge framed by my learned predecessor, is whether on 18.12.08 at about 5-00 PM the accused person being the licensee of the Fair Price Shop located in the Ward No.2 of Gauripur Town failed to display the required Signboard and/or Price Display Board in that shop, failed to maintain the records of the shop properly and worked in the Pragati College, Agamani, without any authority and thus violated the clauses/provisions/conditions of the Assam Public Distribution of Articles Order, 1982, the Essential Commodities Act as well as of his license and thereby committed an offence punishable u/s 7 of the E. C. Act and, if so, what punishment the accused person deserves.

Decision & reasons therefor :

4. PW-1 Shri Debajit Buzarbaruah is the complainant in this case. He deposed to the effect that on 18.12.08 who was the Inspector, Food & Civil Supplies, Gauripur. On that day at about 5-00 he alongwith the Checker namely Abdul Masud Sarkar (PW-2) inspected the Fair Price Shop located in the Ward No.2 of Gauripur. The accused person was not present there. His nephew Shri Arunanshu Paul produced the books of account which were only partly maintained. PW-3 collected the books and reported (Ext.2) the matter to the concerned Authority whereupon the Addl. Deputy Commissioner suspended the license of the accused person. PW-3 then submitted this complaint which he proved as Ext.1. PW-1 also proved his report to the DDS as Ext.3.

5. During cross-examination PW-1 admitted that he has not submitted the permission of the D.C. in this case. He stated that he submitted the report (presumably the Offence Report) for no reason except the Books of Account (improper maintenance thereof) but he admittedly did not mention in Ext.3 about non-maintenance of the same. He also admitted that he annexed a document with Ext.3 which has been endorsed by the Card-holders expressing no grievance and that said Shri Arunanshu Paul gave a Power-of-Attorney to him which he failed to mention in the Offence Report.

6. PW-2 Md. Abdul Masud Sarkar testified that on 18.12.08 he accompanied PW-1 to the Fair Price Shop of the accused person but did not find the Price Board. The registers & documents of the shop were then seized. He disclosed during cross-examination that PW-1 did not enter the shop at all. He, however, confirmed the seizure of the Power-of-Attorney & other documents. PW-2 failed to remember as to whether the accused person was present or not in the shop at that time.

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7. PW-3 Shri Arunanshu Paul deposed to the effect that on 18.12.08 at about 5-00 PM he was sitting in the Fair Price Shop of the accused person, his maternal uncle, who was not present there. At that time PW-1&2 entered the shop (later said, PW-1 did not enter the shop) and, after about ten minutes, took away the registers, documents & power-of-attorney by executing a seizure-list.

8. The original allegation of against the accused person is four-fold. Firstly, he did not display any signboard or price-display board in his Fair Price Shop. Secondly, he did not maintain the books of account of the shop properly & completely. Thirdly, he worked as a clerk in the Pragati College, Agamani, without any authority keeping his nephew Arunanshu to look after the shop located in Gauripur. Fourthly, M/s Primary Consumers Co-operative Ltd., Gauripur, which belonged to the accused person, supplied PDS/TPDS to only 49 FIC-holders out of the allotted 65 ; the remaining 16 FICs were untraceable giving rise to the suspicion that the accused person misused the PDS/TPDS allotted for those 16 FIC-holders.

9. There is absolutely no evidence on records about the fourth allegation. So far as the first allegation is concerned, PW-2 deposed that he did not see any price-board in the concerned shop but other two PWs including the complainant himself are totally silent about it. As regards the second allegation, PW-2&3 has not uttered a word about any irregularity in keeping the books of account. Though PW-1 claimed that the books were not maintained completely and in proper manner, he has not specified in what manner it was incomplete or irregular. The prosecution has not also produced those books of account for inspection by the Court and the PW-1 himself admitted that he did not make any such allegation in Ext.3. Lastly, on the third allegation too, PW-2&3 are completely silent. PW-1, though claimed that the accused person used to work in a college at the relevant time, has not stated any fact to show that his evidence in this regard is direct & admissible. No person/document from the concerned college has been examined/proved to support the allegation and merely because PW-1&2 found the accused person absent in the shop at a point of time, it cannot be said that the accused person was not running the shop himself.

10. Situated thus, I am of the considered opinion that the prosecution has failed to prove the alleged offence beyond reasonable doubts and, hence, I acquit the accused person of the charge u/s 7 of the E. C. Act and direct that he be set at liberty forthwith. His bail-bond shall stand discharged on expiry of six months from today vide. the spirit of the provisions u/s 437-A IPC. The seized books & documents shall be returned immediately to the accused person unless lawfully required for any administrative purpose.

Dictated & corrected by me and given under my hand and seal of the Court on this 30th Day of the Month of July in the Year 2013.

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Addl. Chief Judicial Magistrate,  
Dhubri : Assam