

**IN THE COURT OF THE JUDICIAL MAGISTRATE, 3rd COURT, DIAMOND HARBOUR,
SOUTH 24 PARGANAS**

PRESENT: SULTAN MAMUD,
JUDICIAL MAGISTRATE, 3rd COURT,
DIAMOND HARBOUR, SOUTH 24 PARGANAS

G.R.CASE NO.882/08
T. R. CASE NO. 33/09

STATE COMPLAINANT
Vs
Joharlal Das & another ACCD. PERSONS

DATED:31/05/18

U/S 406 IPC

JUDGMENT

The prosecution case in brief is that on the day of incident some ration goods were bringing to the shop of ration dealor namely Sri Joharlal Das of the village of complainant Sri Ramkrishna Mondal. At that time four sacks of ration wheat were unloaded before the shop of Kamal Krishna Das illegally for the purpose of illegal selling out of the said ration goods to Kamal Krishna Das at the instance of ration dealor Sri Joharlal Das.

Hence, this case was lodged.

The accused persons were enlarged on bail.

That the investigating agency after completion of the investigation submitted charge sheet being C.S no. 67 dt. 14/07/08 u/s 406/34 of I.P.C. against the accused person and on 24/07/08 the cognizance was taken thereafter the case was transferred on 22/12/08 to this Court for trial.

That on 21/02/09 the charge was framed u/s 406 I.P.C. The charge was read over and explained to the accd persons to which they pleaded not guilty and claimed to be tried.

That the examination of the accd. persons u/s 313 Cr.P.C were held dispensed and the same led to therein innocence.

POINT FOR CONSIDERATION

1. Whether the prosecution has been able to prove the charge beyond

reasonable shadow of doubt by adducing valid and cogent evidence?

DECISION WITH REASONS

In this case the prosecution caused to examine five witnesses to establish the prosecution case on the way of its story. This court has duty to see as to what extent the prosecution has proved its case on the light of its charge against the accused persons u/s. 406 IPC. Let us to do the same.

It appears that the complainant of this case namely Ramkrishna Mondal is examined in chief and cross examined in the capacity of PW 1. On a careful scrutinizing of the oral evidence of PW 1 with a view to finding out the truthness of prosecution case it appears that the PW 1 clearly stated in his examination in chief that "About five years ago alleged incident occurred about 11.00 am. On the day and time, I along with other were standing in front of a saloon. There we noticed that a vehicle came and unloaded four bags of wheat in the shop of accused Kamal Das. Thereafter, which went for ration shop. We watched the incident. We were present to look for further incident at about 4.00 pm. Kamal Das took the bags inside his shop." PW 1 stated in his cross examination that "I cannot say the vehicle No. Which carried the wheat bags." It is the question that when the Pw 1 was waiting to see the alleged incident from 11.00 am to 4.00 pm, why he became unable to say the vehicle No, which carried the said wheat bags? Again PW 1 stated in his cross examination that "It is fact that I did not mention in the FIR that we noticed a vehicle unloading bags of wheat in the shop of Kamal Das." As per common presumption, such kind of fact of unloading the bags of wheat before the shop of Kamal Das instead of ration shop of Joharlal Das, ought to have been mention in the written complaint / FIR of the PW 1. There is no satisfactory explanation on the part of the prosecution case such non-incorporating of such fact in the FIR. It is the lacuna of the prosecution case to feed the story of the prosecution case.

PW 2 claimed that he watched the alleged incident. He stated in his examination in chief that after happening of the alleged incident "we the villagers at the intervention of the Pradhan tried to settle the dispute. The fact of such intervention of Pradhan was not stated by the PW 1. The PW 1 has not stated in his deposition nowhere that there was a compromise held between the accused persons and them. Such vital point of fact of intervention ought to have been mentioned by the PW 1 / complainant of this case. Such kind of contradiction of the PW 1 and PW 2, who both claimed that they watched the alleged fact, is a fatal of the prosecution case. This court has not found any corroboration piece of the oral evidences of the Pw 1 and Pw 2 after perusing all other parts of them.

The PW 3 Mina Laha stated in her examination in chief that "the van puller carried four sacks and threw them before the shop of accused Kamal Das. I do not know anything more about the incident." This kind of statement of PW 3 differs the story stated by PW 2 as because PW 2 stated in his examination in chief that "rest

goods were unloaded at the shop of the dealor Ramkrshna Mondal". Agin as per oral deposition of the PW 2 the concerned wheat career was vehicle but as per deposition of the PW 3 the said wheat career was a van rickshaw. PW 3 also stated in her examination in chief that accused Jahor Das had sold four sacks of wheat to accused Kamal Das. There is nothing in the other part of examination in chief of PW 3 on which source she stated such kind of allegation that Jahor Das sold the said good to Kamal Das. Rather, she stated in her chief that four sacks of wheat were thrown before the shop of accused Kamal Das. This is the another slackness of the prosecution case. PW 5 Manas Laha examined in the capacity of PW 5 as a witness of the seizure list. On careful perusal of his oral evidence, it appears that his evidence is nothing to support the prosecution case. He stated in his examination in chief that "I was standing near the saloon located at village Shibpur at 5.00 pm." He was present at the PO after happening the alleged incident. So, he was not acquainted with alleged incident of the case. In respect of a witness of a seizure list his evidence is also irrelivent because he stated in his cross examination that " I did not see any signature / markes on the sacks". However, such sacks were seized but in absence of his seeing of markes and signature on the sacks, his oral evidence is irrelivent in respect of seized articles.

From the above discussions, it appears that there are several lacunae and slackness at the every corner of the evidence of prosecution case as appeared. The prosecution has accordingly failed to establish its case to the extent of require degree of proof.

Ld. A.P.P failed to say anything in his argument in support of the prosecution case in accordaance with the consequential result of the trial.

So, I am of the convinced opinion that the prosecution has totally failed to prove the charge against the accd. persons beyond reasonable shadow of doubt by adducing valid and cogent evidence upon which the accd. persons can be held guilty.

Hence, it is,

ORDERED

that the accd. persons viz. Joharlal Das and Kamal Krishna Das are found not guilty of the charge u/s 406 I.P.C and thus they are acquitted from this case u/s 248(1) Cr.P.C and also discharged from their respective bail bonds.

Dictated and corrected by me

(Sultan Mamud)
Judicial Magistrate,3rd Court.
Diamond Harbour at South
24 Parganas.