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AGARTALA

Crl. Rev. P No.102 of 2016

Shri Uttam Kumar Roy
son of late Girindra Roy
resident of Dharmanagar
P.S.: Teliamura
District :Khowai Tripura

……Petitioner(s).

Versus

The State of Tripura.

……..Respondent(s).

For the Petitioner(s) : Mr. K.Deb, Adv.
Mr. Samar Das, Adv.

For the Respondent(s) : Mr. S.Ghosh, Addl. PP

Date of hearing : 26.11.2020

Date of delivery of
Judgment & order : 04.12.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Judgment & Order

[**1**] This petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C. hereunder) is directed against the judgment and order dated 29.11.2016 delivered in Criminal Appeal No.

08 of 2016 by the learned Additional Sessions Judge, Khowai Judicial District, Khowai.

[**2**] The facts are as follows: on 29.08.2012 at about 6 O'clock in the evening, a team of officials of the Food, Civil Supplies and Consumer Affairs Department led by Sankar Narayan Das, Deputy Collector and Magistrate, carried out a raid at the Teliamura extension counter of M/S Ashirbad Gas Agency run by the petitioner and found stored therein 40 domestic empty LPG cylinders and 3 filled & 1 empty commercial LPG cylinders unauthorizedly. The petitioner having failed to produce valid document authorizing storage of the said commodities, Shri Ranjit Das, Inspector (Food)[**PW-3**] seized those gas cylinders in presence of witnesses. After seizure, the LPG cylinders were kept in the godown of M/S United Gas Agency at Karailong, Teliamura after procuring a zimmanama from Shri Sujit Deb, manager of the said gas agency and on the following day he lodged a written FIR with the Officer-in-charge of Teliamura Police Station alleging that the petitioner had committed breach of "The Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000" and thereby committed an offence punishable under Section 7(1)(a)(ii) of The

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Essential Commodities Act, 1955 (the EC Act, hereinafter).

[**3**] Based on his FIR, Teliamura P.S. Case No.108 of 2012 under Section 7(1)(a)(ii), EC Act was registered against the petitioner and investigation of the case was taken up.

[**4**] Shri Rabindra Das, Sub-Inspector of Police of Teliamura Police Station conducted the whole investigation of the case and having completed his investigation, filed charge sheet no. 89 dated 29.09.2012 under Section 7(1)(a)(ii), EC Act against the petitioner.

[**5**] Having received the charge sheet, the learned Jurisdictional Judicial Magistrate took cognizance of offence punishable under Section 7(1)(a)(ii), EC Act against the petitioner. After the petitioner appeared in court, charge was framed against him under Section 7(1)(a)(ii), EC Act for unauthorized storage of the said LPG cylinders.

[**6**] In order to substantiate the charge, 7 witnesses were examined and 5 documents (**Exbt.1- Exbt.4/2** and **Exbt. MO-1**) were adduced on behalf of the prosecution. Statement of the petitioner was then recorded under

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Section 313 Cr.P.C. who pleaded innocence and claimed that the charge was foisted on him. The petitioner examined two witnesses as **DW-1** & **DW-2** through whom he projected his defence story to the effect that the LPG cylinders which were seized from the godown of his gas agency were actually returned by the registered customers of his agency namely M/S Ashirbad Gas Agency. It was further projected by the petitioner that after the extension counter of the said gas agency at Teliamura was wrapped up, the empty cylinders were accumulated for transportation to the head office at Agartala. But before the cylinders were sent to Agartala, raid was conducted in the said gas agency and the cylinders were seized illegally.

[**7**] Having appreciated the evidence, the learned trial court by his judgment and order dated 20.06.2016 in case No.GR 330 of 2012 convicted the petitioner under Section 7(1)(a)(ii), EC Act and sentenced him to RI for 05 months and fine of Rs.5,000/- and in default of payment of fine to suffer further imprisonment for 01 month. In appeal, the learned Additional Sessions Judge by the impugned judgment affirmed the conviction and sentence

passed by the learned trial court. Hence, this Criminal Revision Petition.

[**8**] Challenging the said judgment of the learned Additional Sessions Judge, it is submitted on behalf of the petitioner that the learned Additional Sessions Judge erroneously affirmed the conviction and sentence of the petitioner without appreciating the evidence. Appearing for the petitioner, Mr. K.Deb, learned counsel contends that Ashirbad Gas Agency where the petitioner was a manager closed down its extension counter at Teliamura. As a result, there were some unfilled LPG cylinders returned by the customers and few filled cylinders in the godown of their agency. The unfilled cylinders were returned by their customers and the filled cylinders could not be delivered to the customers as a result of wrapping up of the counter. All the cylinders were to be transported to Agartala because the extension counter of the gas agency at Teliamura was closed down by that time. It has been argued by learned counsel that when the raid was conducted in the agency of the petitioner, the officers conducting the raid was apprised about these facts. But they illegally seized the cylinders and maliciously lodged a case against the petitioner. Further contention of the

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learned counsel is that the case also fails for non compliance of Section 6A, EC Act because the seizure was not reported to the District Collector in compliance of the mandatory provision laid down under Section 6A, EC Act. Finally it is argued by learned counsel that the trial court as well as the appellate court did not appreciate these facts for arriving at the conclusion of guilt of the petitioner. Learned counsel therefore, urges for allowing the Revision Petition.

[**9**] Conversely, Mr. S.Ghosh, learned Addl. PP, vehemently argued that case against the petitioner was proved beyond reasonable shadow of doubt in the trial court. As a result, the learned trial judge rightly convicted the petitioner under Section 7(1)(a)(ii), EC Act which was affirmed in appeal. It was further argued by Mr. Ghosh, Addl. PP that the petitioner committed a serious offence by unauthorizedly storing the gas cylinders and thereby violated the "The Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000" and committed offence punishable under Section 7(1)(a)(ii), EC Act. According to him, learned Additional Sessions Judge after considering the entire facts and circumstances and re-assessment of evidence upheld the conviction and

sentence of the petitioner which does not call for any interference in appeal.

[**10**] The question, therefore, is whether the petitioner stored the said filled and empty LPG cylinders in violation of clause 7(1)(c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and thereby committed an offence punishable under Section 7(1)(a)(ii), EC Act.

[**11**] In so far as the seizure of 40 domestic empty LPG cylinders and 3 empty and 1 filled commercial LPG cylinders from the possession of the petitioner is concerned, the same cannot be doubted in view of the evidence of the prosecution witnesses as well as the evidence of the defence witnesses. **PW-1** Dhirendra Biswas witnessed the seizure of the LPG cylinders from the possession of the petitioner on 29.08.2012 and as a witness to the seizure, he became a signatory to the seizure list [Exbt.-1]. Similarly, **PW-2** Ajit Chandra Dey who was a manager of United Gas Agency at Teliamura also supported the seizure of the LPG cylinders from the possession of the petitioner and said that after seizure the cylinders were kept in his custody for which he executed a zimmanama [Exbt.2]. **PW-3** Ranjit Das,

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jurisdictional Food Inspector who officially seized the cylinders from the possession of the petitioner during the raid supported the seizure of 40 domestic empty LPG cylinders, 3 filled and 1 empty commercial cylinders from the possession of the petitioner. He asserted that after seizure, he kept the cylinders in the custody of PW-2 and procured a zimmanama from him. **PW-4** Shyamal Chandra Ghosh in his evidence also supported the seizure of the cylinders from the possession of the petitioner. Similarly, **PW-6** Pradip Saha also witnessed the seizure of the cylinders from the possession of the petitioner and **PW-7** Rabindra Das who investigated the case told at the trial that his investigation revealed that the petitioner illegally stored the said LPG cylinders in his custody and therefore, he submitted charge sheet against the petitioner under Section 7(1)(a)(ii), EC Act.

[**12**] As noted, the petitioner in order to establish his defence case, adduced the evidence of two witnesses. The petitioner examined himself as **DW-1** and an in-service Food Inspector as **DW-2**. The petitioner as **DW-1** never denied the fact that 40 domestic empty LPG cylinders and 4 commercial LPG cylinders containing 3 empty and1 filled cylinders were seized from his

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possession. The relevant portion of his statement as DW-1 is extracted hereunder:

> ***"At present I am doing the business of spare parts. Prior to the present business I run an extension counter of Ashirbad Gas Agency. My work in the said Gas Agency was to bring gas cylinder from Agartala Head Office and distributes amongst the consumer of Teliamura. The consumer used to submit their empty cylinder and in returned take the refill cylinder. In case when no consumer take the refill cylinder we keep the same in our gas agency maintaining a registered of the same. Later on when the consumer comes we distribute the refill cylinder to the consumer. The register maintain by us was seen by Food Inspector concern periodically. I have submitted the said stock register before the Ld.Court. This is said register on identification marked as Exbt.A The said register was maintain for refill cylinder. The empty cylinder are sent to the head office at Agartala after accumulating in large number. On 30.08.2012 the then Food Inspector Ranjit Das seized illegally 40 numbers of empty domestic LPG Cylinder and one number of commercial LPG Cylinder and 3 numbers of filled up LPG Cylinder. The filled up LPG cylinder were in the name of consumer namely Kartik Paul, Subrata Ghosh and Tuklu Acharjee. I have also submitted the memo of the same before Ld.Court. These are the said memo on identification marked as Exbt.B series 5(five) in number. The filled up LPG cylinders remain in agency as the said customer did not take in due time. The 40 numbers of empty domestic LPG cylinder remain in the said agency as we were waiting for a vehicle to send them in the head office for purpose of refilling. The present case is filed against me by fabricated fact."***

[**13**] The fact that the petitioner carried on the business of storage and distribution of LPG cylinders in the extension counter of Ashirbad Gas Agency at Teliamura prior to the seizure of the cylinders from his possession is

also supported by **PW-5** Madhusudhan Roy, an elected councilor of the Nagar Panchayat who told in his cross examination that as a domestic consumer he used to buy LPG cylinders from Ashirbad Gas Agency run by the petitioner prior to the establishment of M/S United Gas Agency at Teliamura. According to him, after the establishment of M/S United Gas Agency at Teliamura, his consumer book was transferred from Ashirbad Gas Agency to M/S United Gas Agency and it took 6 months for the transfer of his consumer book and during the transitional period LPG cylinders were supplied to him from Ashirbad Gas Agency of the petitioner. **DW-2** was an Inspector of Food at Teliamura in 2012 who used to inspect Ashirbad Gas Agency run by the petitioner at Teliamura before his transfer to Bishalgarh. According to him, he verified the stock register maintained by the petitioner in his agency till 05.04.2012. The petitioner exhibited the said stock register through **DW-1** which was admitted into evidence and marked as **Exbt.-A**.

[**14**] Therefore, there is no doubt about the fact that the petitioner once used to run the extension counter of Ashirbad Gas Agency at Teliamura and during the course of his business he used to store and distribute LPG

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cylinders from the said counter. The petitioner has come out with a case that after the extension counter of Ashirbad Gas Agency at Teliamura was closed down and a new gas agency namely M/S United Gas Agency was set up at there, he gathered together the empty LPG cylinders for transportation to Agartala for their delivery at the head office of the said gas agency. About the filled commercial cylinders the petitioner explained through **DW-1** that those cylinders were in the names of registered consumers namely Kartik Paul, Subrata Ghosh and Tuklu Acharjee of Teliamura. The prosecution did not deny such evidence in cross examination of the DW. Moreover, **DW-2**, who was the jurisdictional Food Inspector before **PW-3** took over the charge from him, also inspected the gas agency of the petitioner till April, 2012 and verified the stock register [**Exbt.-A**] which contains his signature. The signatures of **DW-2** in the stock register have also been proved as **Exbt.-A/1** series. There is no denial of the signatures in cross examination of the DW. The stock register [**Exbt.-A**] does not also contain any adverse comments.

[**15**] As noted, **PW-3** Ranjit Das is the first informant. He stated in the FIR that along with the LPG cylinders he also

recovered and seized 10 (ten) domestic consumer card(Blue Book) and 06(six) Indane Customer History Card from the extension counter of the gas agency run by the petitioner. In cross examination said Ranjit Das [**PW-3**] categorically asserted that the said documents seized by him from the possession of the petitioner were not fake. It was also stated by him in his cross examination that all cylinders seized from the possession of the petitioner carried cylinder number. Though he was the jurisdictional Food Inspector, he could not say as to whether the consumer books of Ashirbad Gas Agency were transferred to M/S United Gas Agency on line after the counter of United Gas Agency was set up at Teliamura. Apart from it, the investigating officer did not also investigate into the claim of the petitioner that the empty cylinders were gathered together by him for transportation to Agartala for their delivery at the head office after the extension counter was closed down. About the filled commercial LPG cylinders, the petitioner told the names of the consumers for whom the cylinders were brought. The investigating officer did not also investigate into the veracity of the statement. No investigation was done to ascertain as to why and when the extension counter of Ashirbad Gas Agency at Teliamura was actually

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closed down and when the counter of the United Gas Agency was set up there. Apparently, a very shallow investigation is done in this case. The essential facts were not brought before the court.

[**16**] In these circumstances, the prosecution case against the petitioner appears to be doubtful and with doubts in mind the impugned judgment of the learned Additional Sessions Judge cannot be upheld.

[**17**] Consequently, the impugned judgment and order dated 20.06.2016 passed by the learned Additional Sessions Judge, West Tripura Judicial District, Khowai is set aside.

[**18**] Resultantly, the criminal revision petition is allowed. The accused petitioner is already on bail. His bail bonds stand discharged.

Send back the LC Records.

JUDGE

Saikat Sarma, P.A