

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

C.R.A. 6 of 1989

Aniruddha Prasad Singh @ Sinha

vs

The State of West Bengal

As Amicus Curiae : Ms. Puja Goswami

Last Heard on : 28.04.2022.

Delivered on : 13.05.2022.

Moushumi Bhattacharya, J.

1. The present appeal arises from a judgment dated 09.12.1988 of the Judge, Special Court (E.C. Act), Midnapore in D.E.B.G.R Case No. 8 of 1986. The impugned judgment was passed under section 7 (1) (a) (ii), of the Essential Commodities Act, 1955 and paragraph 12 of the West Bengal Kerosene Control Order, 1968. The appellant was convicted under the aforesaid provisions with fine and simple imprisonment.

2. The alleged offence occurred on 22.04.1986 and an FIR was lodged on the same day by the defacto complainant, Tapan Kumar Mukherjee (PW/1).

3. The case of the prosecution is that the defacto complainant (Tapan Kumar Mukherjee) conducted a raid at the shop cum godown of the appellant on 22.04.1986. The appellant produced the trade licence before the complainant on requisition and the trade licence reflected that the appellant is a dealer of kerosene oil. The stock -cum- purchase register revealed that on 22.04.1986 the opening balance of kerosene oil was 3570 litres but upon measurement 3025 litres of kerosene oil was found to be present in the appellant's shop cum godown. Hence there was a deficit on 545 litres of kerosene oil. P.S. Case No. 20 of 1986 was registered against the appellant on 22.04.1986 on the basis of the complaint of Tapan Kumar Mukherjee before the Kharagpur Town Police Station.

4. During the trial, six witnesses were examined by the prosecution while no witnesses were produced by the defendants. The witnesses of the prosecution were as follows:

PW/1 Tapan Kumar Mukherjee	Defacto Complainant.
PW/2 Subodh Kumar Biswas	Member of Raiding Team.
PW/3 Sunil Kumar Dutta	Constable, member of raiding team.
PW/4 Shib Sahay Kachi	Independent Seizure Witness, Hostile.
PW/5 Surajit Nath	Independent Seizure Witness, Hostile.
PW/6 Deboprasad Ghosh	Investigating Officer

5. From the evidence on record, it appears that there are several reasons for disbelieving the case made out by the prosecution. First, the two independent seizure witnesses examined by the prosecution, namely, Shib Sahay Kachi (PW/4) and Surajit Nath (PW/5), did not support the story of the prosecution and were ultimately declared hostile. Second, the deposition of the members of the Raiding Team reveals that the complainant, PW/1 measured 15 barrels while seizing the kerosene oil and mentioned the quantity of the oil in every barrel in the weighment chart. However, no question was put to P.W/1 with regard to the size of each barrel and also whether the 15 barrels were of the same size or not. Third, the learned Trial Judge believed a part of the evidence given by the witnesses, who turned hostile (PW/4 and PW/5) to the extent that the seizure witnesses signed the seizure list after going through the contents. The learned Judge however failed to consider that the appellant had a separate godown which is situated around 100 yards from the shop-room of the appellant and hence it was possible that the appellant stored kerosene oil in the godown (evidence of PW/5 Surajit Nath, one of the seizure witnesses, who turned hostile). More significantly, the learned Judge failed to consider the fact that the kerosene oil was not measured in front of the seizure witnesses.

6. It further appears that under paragraph 9 of the West Bengal Kerosene Control Order, 1968 if an agent or a dealer is found to have committed any malpractice or contravene any provision of the said Order or any condition of the licence or any direction given under paragraph 12 of the Order, then the

licence may be suspended for a temporary period. Surprisingly, no steps have been taken in the present case for cancellation or suspension of the licence of the appellant and hence a question arises whether the appellant had committed any contravention of the Order or any condition of the licence granted to him in any manner.

7. Other significant fact is that while examining the appellant under section 313 of the Code of Criminal Procedure, 1973 the appellant had answered in question no. 9 that there was no deficit of kerosene oil found in his shop cum godown. The prosecution has however not sought for any explanation with regard to this statement from the appellant. Section 313 of the Cr.P.C. mandates that the accused shall have the opportunity of personally explaining any circumstances appearing in the evidence against him. In *Maheshwar Tigga vs State of Jharkhand; (2021) 1 SCC (Cri) 50* the Supreme Court reaffirmed that the circumstances not put to an accused under section 313 of the Cr.P.C. cannot be used against him and must be excluded from considerations. The Supreme Court further went on to hold that in a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his evidence, but also to explain the incriminating circumstances against him and further that a probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt. The dictum in *Maheshwar Tigga* applies squarely to the facts of the present case and the

prosecution was under an obligation to seek for an explanation from the appellant with regard to there being no deficit of kerosene oil found in the appellant's shop.

8. The impugned judgment does not taken into account factual deficiencies in the case made out by the prosecution as stated above. The evidence of the independent seizure witnesses, who turned hostile was a significant fact which should have been considered by the Trial Court. The evidence of these witnesses with regard to the appellant having a separate godown was a vital fact which was not considered either by the prosecution or the Trial Court. The stock board also did not have any signature of the person who prepared the stock board; this fact was also not taken into account. The lacunae in the form of the examination of the appellant under section 313 of the Cr.P.C and the crucial fact of the appellant's licence not being suspended or cancelled under the West Bengal Kerosene Control Order persuade this Court to hold that there are enough grounds for interfering with the impugned judgment. The conviction of the accused under section 9 (ii) of The Essential Commodities Act, 1955 - punishment for making false statement in any book, account or record or a declaration with regard to any document which a person required to maintain - is hence not borne out from the reasons recorded in the impugned judgment.

9. For the above reasons, this court finds no justification to convict and sentence the appellant under section 9 of The Essential Commodities Act and

paragraph 12 of the West Bengal Kerosene Control Order. C.R.A 6 of 1989 is accordingly allowed. The impugned judgment dated 09.12.1988 is set aside and the order of conviction of the same date passed by the Judge, Special Court (E.C. Act), Midnapore is also set aside. The appellant is hereby acquitted of the charges framed against him and is discharged from any bond and / or condition if furnished by the appellant in connection with any bail application in respect of the present conviction at any point of time. All connected applications are disposed of.

10. The assistance given by the learned Amicus appointed by the court is appreciated.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)