

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

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

C.R.A. 208 of 1993

Ghanashyam Mondal & Anr.

Vs

The State of West Bengal

As *Amicus Curiae* : Ms. Debadrita Mondal

For the State : Ms. Mamata Jana

Last Heard on : 13.05.2022.

Delivered on : 08.06.2022.

Moushumi Bhattacharya, J.

1. This appeal is against a judgment dated 28.6.1993 of the Special Court (under E.C. Act) under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 11 of The West Bengal Kerosene Control Order, 1968.

2. The relevant particulars of the case are as follows. The alleged incident took place on 13.12.1990 at 11.45 hours. As per the First Information Report of the Sub-Inspector, the appellants, namely Ghanashyam Mondal and Biswanath Mondal were selling kerosene oil at a high price to the local people from two drums kept in the

open veranda of their house. One drum had about 175 litres and other of 75 litres of kerosene oil. The accused persons were produced before the learned Court on 14.12.1990. The appellant no. 1 was enlarged on bail on 14.12.1990 and the appellant no. 2 was enlarged on bail on 27.12.1990. The prosecution examined five witnesses to prove its case; none of the prosecution witnesses could *prima facie* lead evidence in relation to the fact that the appellants were selling kerosene oil to the local people. Purchasers who allegedly purchased kerosene oil from the accused were not examined by the prosecution.

3. Upon perusal of the impugned judgment, there are several other infirmities which are noticed. The appellants were in possession of two drums of kerosene oil but there is no evidence as to wherefrom the appellants came in possession of this quantity of kerosene oil. Further, PW1 being a resident of the village within the concerned police station in his cross-examination deposed that one Kshitish Mondal and Satish Mondal live in the house of the appellant with their children but were however not examined by the prosecution under Section 311 of the Code of Criminal Procedure, 1973 to verify the factual truth of the allegations. Second, the impugned judgment fails to take into account the contradictory deposition given by PW1, PW2 and PW4, being the fellow villagers and the seizure witness respectively. The cross-examination of PW5, who proved the endorsement of the S.P, and was authorised to

investigate the case, failed to remember the crucial details including the name of the person who was given possession of the seized drums. PW5 could also not remember the colour of the drums and failed to depose on the distance of the house of the Jimmadar and the house of the appellants though he went to the house of the appellants for investigation. It is also significant that the complainant failed to state the name of the witness or the person from whom he received the information on the commission of the alleged offence by the appellants. Further, from the evidence of DW1 (Niranjan Das), it is revealed that on 12.12.1990, that is the day before the alleged incident, an incident occurred between Achinta Kumar Das being the brother of Pranab Kumar Das (PW4) and the daughter of one Jiten Pramanik. On the following day, Achinta Kumar Das came with police to the house of Jiten Pramanik where the appellant no. 1 was present. Police arrested the appellant no. 1 from the house of Jiten Pramanik. The evidence further discloses that there was political tension between PW4 (Jimmadar of the two drums of kerosene oil) and an eyewitness of the incident and the appellants.

4. Most significant is the fact that there was no chemical examination of the seized articles for determining whether the seized article is inflammable hydrocarbon of average specifications as defined in paragraph 3(g) of The West Bengal Kerosene Control

Order, 1968. Paragraph 3(g) defines “kerosene” to mean any inflammable hydrocarbons including any mixture of hydrocarbons but excluding motor spirit which is made from petroleum and is of average specifications as given in Schedule I to this Order. Since there was no chemical examination of the seized articles, the appellants could not be found guilty of an offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Further, the cross-examination of PW5, who endorsed the police case filed under the Essential Commodities Act, reveals that PW5 did not take any sample from the seized kerosene oil and hence did not send the sample of kerosene oil to experts for ascertaining whether the seized article was in fact kerosene oil or not. In the absence of any such evidence, the learned Court could not have come to any definite conclusion that the seized article was kerosene oil or that the prosecution case was proved on that count. It is also significant that the seized drums of kerosene oil were not produced in Court and hence the doubt on the seized article remained and should have accordingly been resolved in favour of the accused persons/appellants. There was hence no material evidence before the learned Court to hold that the prosecution case was proved beyond reasonable doubt or that the accused persons/appellants acted with either intention or knowledge.

5. The conclusion arrived at by the learned Court that PW3 (the seizure witness) seized 250 litres of kerosene oil in two drums from the possession of the appellants on 13.12.1990 could not have been based on any evidence before the Court. The question of the appellants not having any permit or license to possess 250 litres of kerosene oil would only arise if the seized article was ascertained to be “kerosene” as defined under The West Bengal Kerosene Control Order, 1968. Hence, the entire finding of the appellants being in possession of kerosene oil exceeding 10 litres without a licence and being liable for conviction under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 11(2) of The Kerosene Control Order, does not arise.

6. The contentions made on behalf of the State of the FIR and the evidence of PW3 (seizure witness) or the evidence of PW5 (the Investigating Officer) for filling up the factual lacunae in the case is not acceptable since the evidence of these persons did not prove that the appellants were actually in possession of “kerosene”. None of the depositions relied on by the State point to the fact that any expert assessment/examination was made to confirm that the seized article was indeed kerosene as defined under the Control Order, 1968.

7. Considering the factual lacunae in the case and the infirmities in the conclusions arrived at, this Court sees no reason to sustain the impugned judgment. The impugned judgment and order dated

28.6.1993 is therefore set aside. The conviction of the appellants of the same date is also set aside.

8. This court records its appreciation to the learned amicus for her assistance in the matter.

9. CRA 208 of 1993 is accordingly allowed and disposed of in terms of the above.

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

(Moushumi Bhattacharya, J.)