

**IN THE HIGH COURT AT CALCUTTA****Criminal Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. – 272 of 1986****IN THE MATTER OF****Ajit Kumar Pramanik.****Vs.****State of West Bengal.****For the Appellant : Mr. Sumanta Chakraborty Adv.,****For the State : Mr. Narayan Prasad Agarwala, Adv.,  
Mr. Pratick Bose, Adv.****Judgment on : 08.08.2023****Subhendu Samanta, J.**

The instant appeal is preferred against a judgment and order of conviction dated 27.06. 1986 passed by the Learned Special Judge Alipur convicting the appellant u/s 7(1) (a) (ii) of the Essential Commodities Act for contravention of West Bengal Kerosene Control Order 1968 and sentencing him to suffer rigorous imprisonment for 06 months, further convicting the appellant for contravention of West Bengal Pulses and Edible Oil Seeds and Edible Oils (Dealers Licensing Order) 1976 and sentenced him to suffer rigorous imprisonment for

06 months and further convicted the appellant for contravention of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977 and was sentenced him to suffer rigorous imprisonment for 03 months, in special case No. 5(7) of 1984 arising out of Kulpi Police Station case No. 7 of 1994 dated 13.07.1984.

The brief fact of the prosecution case is that-----

On the basis of secret information regarding clandestine sale of kerosene, Rapseed Oil and other Essential Commodities in black market from the shop-cum-godown of the appellant who is a kerosene dealer and a grocer, a raid was conducted on 13.07.1984 between 10:50 and 16:45 hours by the Sub-Inspector of Police, Enforcement Branch, West Bengal. During inspection the stock register of kerosene revealed entries showing 600 litres as the last closing stock of kerosene on 06.07.1984 but there were no entries regarding any sale of kerosene in the daily sale register since 05.07.1984. On physical verification no stock of kerosene were found. The appellant failed to account for the shortage of 600 litres of kerosene oil which was detected during raid. It was further alleged that during search of the shop 20 quintals and 80

kilograms of Rapeseed Oil and 1 quintal and 20 Kilograms of Mustard Oil were also recovered.

The appellant was sent up for trial and during the framing of charge he pleaded not guilty and claimed to be tried. It is the specific case of the appellant that he had been to Calcutta during the material point of time for his illness and for necessary treatment, due to scarcity of Kerosene in the locality, under the supervision of Local Gram Prodhan, DW 1 sold the 600 litres of Kerosene to the Ration Card Holders.

During the course of trial the prosecution examined 09 witnesses and the defence has examined one witness. After hearing the witnesses and after scanning the evidences on record Learned Special Judge has passed the impugned judgment and order of conviction against the present appellant.

Hence this appeal.

Learned Advocate submitted before this court that the order of conviction and sentence passed by the Learned Special Judge suffers illegality. The Learned Special Judge, has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. The Learned Special Judge has violated the norms of scanning the evidences preferably, the evidence of DW 1 was not at all considered. The impugned

judgment is based on conjectures and surmises thereby not sustainable in the eye of law. He again pointed out that the evidence of so called seizure witnesses does not support the prosecution case, only official police witnesses i.e. FIR maker (PW8) and Investigation Officer (PW9) has stated their conduct before the Learned Special Judge. The evidence of independent seizure witnesses does not support the prosecution case. The DW 1 has specifically disclosed the facts and circumstances to the effect that the 600 litres of kerosene oil was distributed by local Gram Pradhan through the DW 1, one employee of the appellant. Thus the FIR in respect of 600 litres of missing Kerosene Oil is not substantiated. He also argued that the Learned Tribunal has acted illegally only believing the statement of Police Witnesses. Thus, he prayed for the order of acquittal.

Learned Advocate appearing on behalf of the state submitted before this court that it is true the present appellant was a holder of a licence. It is also true that the evidences local witnesses including the seizure witnesses does not support the prosecution case; but it appears that the stock-cum-rate-board was not written or maintained properly. Subsequently, the appellant has proved to be violated the provisions of declaration of stocks and prices of Essential Commodities

Order 1977. The order of conviction passed by the Learned Special Judge is not at all maintainable.

Heard the Learned Advocate perused the materials on record and perused the paper book including the LCR. It appears to me that the seizure witness including the Local witnesses does not support the prosecution case. The PW 1 is a seizure witness who stated that he put his signature over the seizure list at the P.S. He denied that he saw the police to come to the shop of the appellant. The PW 1 also not cross examined or not declared hostile by the prosecution. The other local and seizure witnesses i.e. PW 2, PW 3, PW 4 & PW 6 also did not support the prosecution case; but it is surprising that the prosecution did not declare them hostile or never cross-examined them. PW 8 is the de- facato complainant who hold the search and raid at the shop of the appellant on 13.07.1984 at about 10:45 Hrs. It is the case of the prosecution that the huge quantity of seizure was effected and weightment was made by preparing a proper list. The seized articles were given to the jimma to PW 4 and thereafter the appellant was arrested. The statement of the PW 8 has supported by documentary evidences which were exhibited before the Learned Special Judge but the evidence of PW 1 was never corroborated by any one of the local or seizure witnesses.

During the cross-examination of the PW 8. It appears that he had no specific explanation regarding the person in presence of whom the weighment of the Essential Commodities were made.

The Learned Special Judge has appeared to believe the statement of PW 8 and PW 9, they appears to be police witness. It is not reasonable to disbelieve the police witnesses, subject to the fact that their evidence must be convincing, corroborative and trustworthy. P.W 8 had conducted raid at the MR Dealer Shop with a police Party; in this case except the PW 1, no other police personals deposed who accompanied the PW 1 in such raid. The seizure can not be proved by the evidence of the person who made the seizure. In this case there are no witness who saw the procedure of seizure. Considering the same it appears to me that the seizure in this case is doubtful.

It appears to me that the prosecution has not bring home the charge against the appellant beyond reasonable doubt. Learned Special Judge must have scanned the evidences of DW 1 to consider the defence case.

Hence, after perusing the materials on record and after perusing the attending facts and circumstances of this case. I am of a view that the impugned order of conviction and

sentence passed by the Learned Special Judge suffers illegality and it is liable to be set aside.

CRA is allowed.

The order of conviction and sentence passed by the Learned Special Judge, Alipur dated 27.06.1986 in Special Case No. 5(7) of 1984 is hereby set aside.

The appellant is acquitted from this case.

The appellant is on bail; he be set at liberty at once. Sureties standing in his favour are also released.

Any order of stay passed by this court during the continuation of the instant appeal is hereby vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

**(Subhendu Samanta, J.)**