

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 282 of 1986

Indra Narayan Pramanick

-Vs-

The State

For the Appellant : Mr. Angshuman Chakraborty
Mr. Monojit Chatterjee

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 01.08.2023, 15.09.2023

Judgment on : 13.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 4.6.86 passed by the Learned Judge, Special Court, E.C. Act, Howrah, convicting the accused Indra Narayan Pramanick under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 and sentencing him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 300/- only in default to suffer rigorous imprisonment for one month more in Special Court Case No. 146 of 1984.
2. The appellant Indra Narayan Pramanick had been a resident of village Goaldah, Police station Shyampur, District Howrah and was the owner of a

Kerosene Shop there. He had a valid licence for dealing in Kerosene Oil. Every night he used to carry the Stock Register, the Sale Register and the Cash Memos to his house and his house and his employee Arup Jane used to write the accounts of the Shop there and in the morning before starting of the actual business, Arup Jana and/or the petitioner used to bring the said documents to the shop. The Stock Register and the Sale Register were duly verified by the Sub-Divisional Controller of Food & Supplies, Uluberia. The Rate Board was placed on one side of the Shop-room.

3. The prosecution case precise stated is that on 14.11.84 at about 10.30 a.m. Sri Santosh Kumar Chakraborty, Inspector District Enforcement Branch, Howrah along with S.I. T.D. Bala of D.E.B., Howrah and R.C. Sarkar, Officer-in-Charge of Shyampur Police Station visited the Kerosene Oil Shop of the accused Indra Narayan Pramanick. The accused could not produce any register for dealing in Kerosene oil and there was also no Stock-cum-Rate Board. The police officials seized the Allotment Register, Licence Token and 272 litres of Kerosene oil, prepared a seizure list and arrested the accused. The police officials took the accused to Shyampur Police Station where Santosh Kumar Chakraborty lodged a written complaint on the basis of which Shyampur Police Station Case No.4 dated 14.11.84 was started. The police investigated the case and on completion of the investigation submitted Charge-Sheet before the Learned Special Court, Howrah against the accused person under Section 7(1) of Act X/55 for violation of Para 12 of West Bengal Kerosene Control Order, 1968 i.e. for violation of the condition

of the licence and also para 3(2) of West Bengal Declaration of Stock and Price of Essential Commodities Order, 1977.

4. On 11.9.85 the accused was examined by the Learned Speical Judge under Section 251 of the Code of Criminal Procedure and the accused was told by the Learned Judge that on 14.11.84 he was found carrying a business as a retailer of Kerosene Oil without maintaining Stock and sale account and without displaying Stock-cum-Rate Board.
5. The prosecution examined Six witnesses and exhibited certain documents to prove its case.
6. Heard the submissions of the Learned Advocate for the appellant as well as the Learned Advocate for the State.
7. A circumspection of the prosecution witnesses revealed as follows:
 - i. P.W-1 Jaladhar Maity, a resident of Goaldah and an independent witness and a seizure witness says that the police went to the Shop of the accused about one year back and he saw Rate Board on one side of the Shop-Room. The prosecution declared him hostile and cross examined him.
 - ii. P.W.-2 Jatan Kumar Jana, a resident of Goaldah and an independent witness and a seizure witness says that on 14.11.84 Police visited the Kerosene Shop of the accused who is a licensed dealer. He was present at that time. Police wanted papers from the accused. The accused told that he would bring the papers from his house but the police did not allow him to go. The accused handed over to the Police one Allotment Register

and a Toke licence. The police got 270 litres of Kerosene Oil in 3 Barrels. Police seized the Allotment Register, Token and Kerosene Oil and he signed on the seizure list. In cross examination he says that at the time of arrival of the police there was not sale of Kerosene oil in the shop. He known Arup Jana who wrote the accounts of the shop of the accused. He proved the Stock Register (Exhibit-A), Sale Register (Exhibit-B) and the Cash Memos from 4.11.84 upto 13.11.84 (Exhibit-C). He further says that on the night after sale Cash Memos are taken to the house and there in the next morning Arup Jana after seeing the Cash Memos entered the sale in the Register and took those Registers in the Shop of the petitioner.

- iii. PW-3 Abdur Rahman, an Assistant Sub-Inspector of Police attached to Shyampur Police Station says that on 14.11.84 he received a written complaint from Santosh Kumar Chakraborty, D.E.B. Inspector of Police and filed up the formal F.I.R. In cross examination he says that he cannot say when the written complaint was written.
- iv. PW-4 R.C. Sarkar, the Officer-in-Charge of Shyampur Police Statio says that on 14.11.84 at 10:30 a.m. he along with D.E.B. Inspection, S. Chakraborty, S.I. T.D. Bala of D.E.B. and force went to Khaibayer in the village of Goaldah visited the shop of the accused INdra Narayan Pramanick. On being asked, the

accused produced the Allotment Register, Licence Token and 270 litres of Kerosene Oil which were seized by the police.

In cross-examination he says that they remained in the shop of the accused for nearly 45 minutes. They left the shop at about 11:15 to 11:20 a.m. Besides the said seizure list in which he signed, another seizure list was prepared and he also signed in that seizure list. He did not take the accused with him when he left the shop.

- v. PW-5 Santosh Kumar Chakraborty, the Inspector of D.E.B. Howrah says that he visited the shop of the accused on 14.11.84 and checked the Books of accounts for storage and selling of Kerosene; he did not find the Stock-cum-Rate Board in the shop. He issued a notice on the accused to produce the Books of Accounts within one hour but the accused failed to produce any Registers except the Allotment Register and a Token Licence. The police seized the said Register, Token and 270 litres of Kerosene Oil. They arrested the accused, took him to Shyampur Police Station and lodged a written complaint.

In cross-examination he says that he prepared only one seizure list. He went direct to the police station. He reached Shyampur Police Station at about 11:30 a.m.

- vi. PW-6 S.I. T.D. Bala of D.E.B. says that the written complaint was lodged at about 2 p.m. They came to the police station at 12 p.m. It takes one hour time to reach Shyampur Police Station

from the village Banewarpur. On that day on the way they also raided some shops but he could not say the number. He can not say the names of the dealers and village whose shops they raided. They left the shop of the accused at 12 noon. They prepared two seizure lists at the shop of the accused. It took half an hour time to prepare the seizure list.

8. The defence case is that the accused is innocent and has committed no offence. He produced before the police the Allotment Register, Licence Token and 270 litres of Kerosene Oil which were seized by the police. He requested the police to allow him to bring the Stock Register, Sale Registers and Cash Memos from his house. The said Registers were taken to his house to be written by his employee, Arup Jana in his house. The police did not issue any Notice upon him giving him one hour's time for producing the Registers. The Stock-cum-Rate Board was in his shop and the police seized the same and a second seizure list was prepared by the police. The accused produced the Stock Register and Sale Register duly verified by the Sub-Divisional Controller of Food and Supplies, Uluberia and Cash Memos in the Court of the Learned Special Judge and those were marked as Exhibit A, B and C.
9. It is submitted that the Learned Special Judge misread and misunderstood the evidence on record and made a wrong approach to the whole case and the appellant has been seriously prejudiced thereby.
10. The Learned Advocate for appellant submitted that :-
 - i. There was no evidence that PW-4 R.C. Sarkar, O/C of Shyampur Police Station or PW-5 Santosh Chakraborty the Inspector of

D.E.B. or PW-6, T.D. Bala, S.I. of D.E.B. had any reason to believe before inspection that contravention of any order had been or was committed by the accused.

- ii. In the matter of taking of cognizance, provisions of Section 11 of the Essential Commodities Act, should have been strictly complied with and in the instant case cognizance was not taken on any complaint by a Public Servant.
- iii. The evidence of PW-2 fully supported the defence case that the Stock-cum-Rate Board was in the shop on 14.11.84 and that the police raided the shop of the accused in the early hours of the day when actual business did not start and that the accused was not given adequate time and opportunity for bringing the Stock-Register, Sale-Register and Cash Memos from his house within one hour.
- iv. The prosecution had not declared PW-2 hostile and did not cross-examine him and admitted his evidence, therefore the evidence of PW-2 is reliable.
- v. In view of the admitted evidence of PW-2 there was cogent explanation with regard to the Stock-Register, Exhibit-A, the Sale Register Exhibit B and Cash Memo Books Exhibit-C, which were not produced before the police; although those are produced in Court, after due verification by the Sub-Divisional Controller of Food and Supplies, Uluberia.

- vi. The prosecution witnesses (vide PW-4) the police went to the shop of the accused at 10.30 a.m. and the Raiding Party left the shop at 11.15 a.m. i.e. the police were in the shop for 45 minutes and in the meantime the police seized certain articles and it took half an hour for completing seizure (vide PW-6); all the said facts go to show that the police did not give the accused one hour's time for producing the Stock-Register, Sale Register and the Cash Memos.
- vii. The prosecution has led two sets of evidence one set comprising of PW-1 and PW-2 independent witnesses and the other set comprising of PWs 3,4,5 and 6 all police witnesses and the evidence of independent witnesses and police witnesses are contradictory to each other.

PW-1 and PW-2 said that on 14.11.84 the Stock-cum-Rate Board was in the shop. Whereas the police witnesses said that the said Board was not in the shop.

The admitted evidence of all the prosecution witnesses is that the police raided the shop in the morning when there was no sale of Kerosene.

The admitted evidence of PW-2 is that although requested by the accused, the police did not allow the accused to bring the Registers from his house whereas the evidence of PW-4,5 and 6 is that the police gave the accused one hour's time for producing the Registers from his house.

- viii. The evidence of the police witnesses are unreliable and contradictory to each other. PW-3 A.S.I. Adur Rahman says that on 14.11.84 he received the Written Complaint from Santosh Kumar Chakraborty D.E.B. Inspector and filled the formal F.I.R. (Exhibit-2) but he cannot say when the written complaint was written. PW-5 Santosh Kumar Chakraborty, D.E.B. Inspector says that he reached Shyampur P.S. at about 11.30 a.m. and wrote out the written complaint there and it took 40 to 45 minutes to write the complaint. PW-6 S.I. T.D. Bale of D.E.B. says that they reached Shyampur Police station at 2. p.m.
- ix. The evidence of PW-5 revealed that he went direct to the police station and wrote out the complaint. Whereas PW-6 stated that on their way to police station they also raided other shops and PW-4 stated that he did not take the accused with him when he left the shop.
- x. The second seizure-list in respect of Stock-cum-Rate Board which was in the Shop on 14.11.84.
- xi. Para 12(1) of the West Bengal Kerosene Control Order 1968 does not say that Stock-Register, Sale Register and Cash Memo can not be taken to the house of the Shop-Keeper for the purpose of accounting etc. and the Licence granted to the accused also does not say so.

11. Section 7(i) of the West Bengal Kerosene Control Order, 1968 states as follows:

“7. Renewal of licenses of Agents.- (i) Every license issued under Para 5 of this Order by the DCG may be renewed for a period of one year from the date of the expiry of the license on receipt of an application for renewal in Form C, subject to satisfactory performance of the S.K. Oil Agent and on receiving a renewal fee as mentioned in Schedule A from the licensee.”

12. Section 3 of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 states as follows:

“3. Display of stock and price lists: (1) Every producer and importer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form A indicating the opening stock of each essential commodity held by him on each day.

(2) Every wholesaler and every retailer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form B indicating the opening stock and the wholesaler or retail price, as the case may be of each essential commodity held by him on each day.

(3) The wholesale price and the retail price to be displayed under sub-paragraph (2) shall respectively be exclusive and inclusive of all local taxes.”

13. The defence witnesses had produced the stock registers, the provisions under Section 7 of the West Bengal Kerosene Control Order, 1968 and Section 3 of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 are explicit and did not debar the stock registers to be taken home. The Learned Advocate for the State submitted that there was subsequent renewal of licence in favour of the appellant.

14. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

15. In view of the above discussions, the judgment and order dated 4.6.86 passed by the Learned Judge, Special Court, E.C. Act, Howrah, convicting the accused Indra Narayan Pramanik under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 and sentencing him to suffer rigorous imprisonment for four months and to pay a fine of Rs. 300/- only in default to suffer rigorous imprisonment for one month more in Special Court Case No. 146 of 1984 is set aside.
16. Accordingly, the instant criminal appeal being CRA 282 of 1986 stands disposed of.
17. There is no order as to cost.
18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)