

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 394 of 1988

**Shaikh Samir
-Vs-
The State of West Bengal**

For the Appellant : Mr. Sabir Ahmed
Mr. Bhaskar Hutait
Mr. Tasnim Ahmed
Ms. Suman Biswas
Mr. Dhiman Banerjee

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 30.08.2023, 27.09.2023, 29.09.2023, 13.12.2023.

Judgment on : 18.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the conviction under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of Paragraph 3(3) & Paragraph 4(2) of the West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 and sentence of rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for two months for each count of charges as passed against the appellant by the Learned Judge, Special Court (under the Essential Commodities Act), Tamluk, Midnapore in T. R. No. 9/85

(E.G.R. No. 13/85) arising out of Panskura Police Station Case No. 6(4)85 dated 16.05.85 by his order dated 10.08.88.

2. The prosecution case originated on the basis of a complaint lodged by S.I. Gopal Chandra Paul, D.E.O, Tamluk, district Midnapore, inter alia stating to have been to the oil centre of the appellant based on a source information that the appellant was dealing with diesel oil in a clandestine manner using false and fictitious cash memos. On 3.4.85 at 8:30 hours, the complainant found Ananta Dalui and Chandan Karmakar proceeding towards Tamluk with rickshaw vans carrying barrel of diesel 200 litres of high-speed diesel oil. Ananta Dalui on being questioned produced one cash memo bearing number 434 dated 17.01.1992 issued by Barakhangī Oil Centre retailer, dealer Midnapore to one Botok Krishto depicting sale of 400 litre of HSD Oil. The complainant believed the printed cash memo devoid of a license number to be a fictitious one. The complainant further stated as per condition of license number 8 of West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980, the cash memo should mention the license number. The cash memo did not bear a proper signature of the customer. The complainant seized 400 litres of HSD oil in 2 barrels, 2 rickshaw vans, cash memo number 434 as aforesaid. In the presence of the witnesses, he further arrested rickshaw van puller, Anant Kumar Doloi And Chandan Karmakar.
3. On the same day which is 3.4.85 at about 13 hours, he had been to the shop of Barakhangī Oil Centre to verify the authenticity of the cash memo. However, the dealer Shaikh Samir was absent. After waiting for 2 hours, the

complainant left the shop. On 1.5.85 at 10:20 hours the complainant visited the aforesaid shop for the purpose of verifying the cash memo and found the shop to be closed and its proprietor Shaikh Samir to be absent. On 6.5.85 at 18:20 hours the aforesaid proprietor produced cash memo book, stock register, cell register, photostat copy of HSD License number 12/83 with the name of Shaikh Samir. One receipt issued by the competent authority in respect of HSD License Number 37/84 of Shaikh Samir of Rahulik for renewal. The complainant perused the duplicate carbon copy bearing Sl. No. 434 dated 17.1.92 issued by Barakhang Oil Centre. It was noticed by the complainant that the duplicate carbon copy was removed and another carbon copy having same Sl. No. 434 had been pasted in the cash memo book. It appeared to the complainant that the appellant maintained false cash memo book during business transactions. S.L No. 434 mentioned in duplicate carbon copy did not tally in writing characteristics and other peculiarities with the original number 434 with cash memo. The complainant seized all the documents, made over a copy of the same to the appellant in presence of the witnesses and lodged the complaint to initiate a case under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 against Samir and under Section 8 of the Essential Commodities Act, 1955 against Chandan Karmakar and Ananta Dalui as mentioned by S.P. Deb.

4. Shaikh Samir, son of Late Khandu has committed an offence u/s 7 (1)(ii) of Act X/55 for violation of condition of No. 8 of West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 for not issuing a true cash memo as mentioned in the condition

of License. He also violated Para 3(3) of West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 for keeping his business place closed in working hours and also committed offence under section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

5. The investigation of the case was taken up by PW-6 who finally submitted Charge-Sheet No. 46 dated 01.08.85 against the accused/appellant and the two Rickshaw Pullers (since discharged) for having committed an offence under Section 7(1)(a)(ii) of the Essential Commodities Act by violating the provisions of Para 3(3) & 4(2) of West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980.
6. During the proceeding the prosecution examined 6 witnesses of whom PW-3 and PW-4 were seizure list witnesses (Ext. 2) of the H.S.D. Oil, PW-1 was a witness to the seizure of licence (Ext. 1) of the accused/appellant, PW-5 was the purchaser of the 400 litres of H.S.D. Oil and PW-2 was declared hostile as he did not oblige the prosecution about the factum of closure of the shop. PW-6 was the complainant and also investigated the case.
7. Plea of the appellant under Section 251 of the Code of Criminal Procedure was taken for the above violations to which he pleaded not guilty whilst the other two accused were discharged.
8. The Learned Advocate for the appellant submitted that –
 - i. The conviction and sentence passed by the Learned Judge was based solely on the evidence of PW-6 who was the complainant as also the investigating Officer of this case and in the absence of any

corroboration to his evidence the Learned Judge should have been slow to find the accused/appellant guilty mainly on such evidence.

- ii. Regard being had to the fact that the allegation against the accused/appellant was more of a technical in nature the Learned Judge could have extended to him the beneficial provisions of Section 360 of the Code of Criminal Procedure or deal with him under the purview of the Probation of Offenders Act, 1958.
- iii. The Learned Judge completely misinterpreted the provisions of Section 100 of the Essential Commodities Act, 1955 and erroneously decided about the point of mens rea and presumed the existence of culpable mental state of the accused/appellant which was not in conformity with the facts and circumstances of the case. In fact the Learned Judge failed to take stock of the examination of the accused/appellant under Section 313 of the Code of Criminal Procedure whereby he denied the allegations appearing against him. Further, the Learned Judge was oblivious of the degree of discharging the onus of the defence to dispel the presumption of mens rea against it.
- iv. The impugned conviction and sentence is otherwise bad in law and as such is liable to be set aside.

9. The Learned Advocate for the State submitted that the prosecution had been able to prove its case on the basis of corroborative evidence of the prosecution witnesses and the appeal should accordingly be dismissed.

10. At the outset the relevant provisions are to be considered as follows:

- i. Paragraph Nos. 3(3), 4(1), 4(2) of the West Bengal Motor Spirit And High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 are mentioned hereinbelow:

“3. Regulation of sale and supply of, and business in, oil – (3) *Notwithstanding anything to the contrary contained in any law for the time being in force, no dealer shall keep his business premises closed during working hours on any day without the prior permission in writing of the licensing authority.”*

- ii. **“4. Application for, and grant of, licence - (1)** *An application for a licence under sub-paragraph (7) of paragraph 3 for high speed diesel oil shall be made to the licensing authority in Form A and the licensing authority shall grant the licence in Form B on payment of a fee of rupees one hundred only in non-judicial stamp.*
(2) *Every licence granted under sub-paragraph (1) shall be subject to such conditions as may be specified therein and to such other conditions as the licensing authority may impose from time to time for the sake of fair distribution of high speed diesel oil.”*

11. Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 states as follows:

“7. Penalties.— [(1) If any person contravenes any order made under Section 3, – (a) he shall be punishable,— (ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.”

12. In the case of **Dwarika Prasad Sahu versus State of Bihar and Ors.**¹, the Hon'ble Supreme Court held as following:

“5. The gravamen of the charge against the petitioner in Ground 5 was that he supplied 762 litres of high speed diesel oil under several cash memos described in Schedule I to the grounds of detention without giving the names and addresses of the purchasers and this was not only in contravention of clause 7 of the licence, but it also indicated that the supplies under these cash memos were made to fictitious persons. Now, it is true that clause 7 of the licence issued to the petitioner provided that the licensee shall issue to every customer a correct receipt or invoice, as the case may be, giving inter alia the name and address of the customer and, therefore, if this requirement prescribed by clause 7 were operative at the material time, there can be no doubt that the action of the petitioner in issuing cash memos to the purchasers without giving their names and addresses would have been in contravention of clause 7 and it might have been a legitimate inference for the District Magistrate to draw that the sales were to fictitious persons, because otherwise their names and addresses would have been mentioned in the cash memos as required by clause 7. But the order bearing No. 12706/S.C., dated July 11, 1966 was issued by the State Government providing that “as regards high speed diesel oil, the enforcement of the following condition of the licence shall be waived until further orders” and one of such conditions was: “In the cash memo to be issued to the customers the names and addresses of the customers need not be mentioned and it will be sufficient if only the registration number of motor vehicles is noted in the cash memo”. The requirement of clause 7 of the licence to mention the names and addresses of the customers in the cash memos was, therefore, dispensed with by the State Government with effect from July 11,

¹ (1975) 3 SCC 722

1966, until further orders and this dispensation was in force at the time when sales were made by the petitioner under the cash memos described in Schedule I to the grounds of detention. The absence of mention of the names and addresses of the purchasers in these cash memos did not, therefore, constitute contravention of clause 7 of the licence and no inference could rationally be drawn by the District Magistrate, from mere absence of names and addresses of the customers in the cash memos, without anything more, that the sales under the cash memos were to fictitious persons. Ground 5 was, therefore, wholly unfounded. It was based on a complete misapprehension of what was required to be set out in the cash memos. It is rather surprising that the District Magistrate should not have known that the requirement of clause 7 of the licence in regard to mention of names and addresses of the customers in the cash memos had been dispensed with by the State Government as far back as July 11, 1966. If only the District Magistrate had properly applied his mind and made the necessary inquiries for the purpose of satisfying himself in regard to the charge in ground No. 5, he would have immediately realised that not mentioning the names and addresses of the customers in the cash memos was no longer a breach of clause 7 of the licence and it could not support an inference that the sales covered by the cash memos were to fictitious persons. But it appears that the District Magistrate mechanically subscribed to the grounds of detention without even caring to examine whether Ground 5 was correct or not and proceeded to make the order of detention. We have tried to see whether we could, even by taking a liberal or indulgent view, sustain Ground 5, but we find it impossible to do so. In fact the learned Counsel appearing on behalf of the State frankly conceded that it was not possible for him to support this ground.

6. *If there is one principle more firmly established than any other in this field of jurisprudence, it is that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and it would not avail the detaining authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity, because it can never be predicted to what extent the bad grounds or reasons operated on the mind of the detaining authority or whether the detention order would have been made at all if the bad ground or reason were excluded and the good grounds or reasons alone were before the detaining authority. See the decisions of this Court in Shibban Lal Saxena v. State of U.P. [AIR 1954 SC 179 : 1954 SCR 418 : 1954 Cri LJ 456] , Dr Ram Manohar Lohia v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709 : 1965 Cri LJ 608] and Pushkar Mukherjee v. State of W.B. [(1969) 1 SCC 10 : (1969) 2 SCR 635] Even as recently as this year a Division Bench of this Court pointed out in Biram Chand v. State of U.P. [(1974) 4 SCC 573 : 1974 SCC (Cri) 609] that:*

“It is well settled that in an order under the present Act the decision of the authority is a subjective one and if one of the grounds is non-existent or irrelevant or is not available under the law, the entire detention order will fall since it is not possible to predicate as to whether the detaining authority would have made an order for detention even in the absence of non-existent or irrelevant ground.” The conclusion is, therefore, inescapable that since Ground 5 was wholly misconceived, non-existent and “not available under the law”, the order of detention must be held to be invalid.

7. *Though, on this view we are taking as regards the invalidity of Ground 5, it is not necessary for us to say anything in regard to the other grounds, we think we ought to draw the attention of the*

detaining authority to one other infirmity, so that the detaining authority can, while exercising the power of detention in future, avoid such infirmity. That infirmity is to be found in ground 1 and it discloses yet another instance of non-application of mind on the part of the District Magistrate. The allegation in Ground 1 was that cash memo No. 70996, dated February 14, 1974 showed a sale of 1200 litres of high speed diesel oil to one Mr Griffiths, but this allegation was patently incorrect as the cash memo in fact, as frankly admitted on behalf of the respondents, related only to the sale of 200 litres of high speed diesel oil to Mr Griffiths and for the sale of further 1000 litres of high speed diesel oil to Mr Griffiths, there was another cash memo No. 71120, dated February 16, 1974, which did not find mention in Ground 1. This circumstance also is indicative of the rather casual manner in which the District Magistrate proceeded to make the order of detention without proper application of mind and it could have an invalidating consequence on the order of detention. We hope and trust that the District Magistrate will be more careful in the future when he has occasion to exercise the enormous powers of preventive detention entrusted to him by Parliament.”

13. Certain exhibited documents stated as follows:

- i. PW-6 Gopal Chandra Seal the Complainant-cum-Investigating Officer of this case, upon secret information apprehended two Rickshaws with 400 litres of High Speed Diesel Oil on Panskura Road on 30.04.85 at about 8:30 A.M. in the morning. He effected seizure of the High Speed Diesel Oil (Ext. 2) in presence of PWs 3 & 4 who signed on the said seizure list.
- ii. It was further alleged in the Cash Memo (Ext. 8) issued, by the accused/appellant, in favour of PW-5 Batakrishna Pramanick, for sale

of 400 litres of High Speed Diesel Oil, there was neither any signature of PW-5 nor was there any Licence No. quoted in the Cash Memo (Ext. 8).

- iii. The accused/appellant on 06.05.85 caused production of the licence which was seized by PW-6 in presence of PW-1 by a seizure list (Ext. 1).
- iv. Thereafter a written Ejahar (Ext. 3) was filed by PW-6 before the Panskura Police Station against the accused/appellant and the two Rickshaws Van Pullers (since discharged from this case under Section 258 of Code of Criminal Procedure) which was treated as a formal F.I.R (Ext. 4) and Panskura Police Station Case No. 6 dated 16.05.85 was started.

14. The appellant was tried for contravention of paragraph 3(3) and 4(2) of the West Bengal Motor Spirit And High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980. The appellant possessed a diesel shop at Ratulia bajar dealing with high speed diesel oil. Admittedly, the appellant was a valid licence holder to operate his shop as aforesaid. The appellant hand proper licence on 29.04.1985 and on 30.04.1985. The provisions of the aforesaid paragraph alleged to have been violated by the appellant who did not categorically mention the preparation of cash memo bearing the distinctive features with regard to the stipulation of the license number etc as pointed out by the de-facto complainant, PW-6. Apart from PW-6 claiming to have found the shop of the appellant to be closed there is dearth of independent witnesses to corroborate his version. PW-1 denied of any document being seized in his presence. He identifies his signature on the document, marked as exhibit 1/1, stating to have signed the same at the

request of the 'Daroga Babu'. PW-2 was declared hostile, denied to have stated to the investigating officer that on 1.5.85 at about 10:30 a.m. he accompanied the police officer to the diesel shop of the appellant and found the same to be closed. PW-3 deposed to have signed the seizure list marked exhibit 2/1 and exhibit 2 for identification with regard to seizure of 2 barrels of oil carried by the rickshaw-wala while he was sitting by the side of the road. PW-4 reiterated the role played by PW-3 with regard to the identification of his signature marked as exhibit 2/2 and to respectively concerning seizure of 2 barrels of oil as aforesaid. PW-5 stated to have been to the shop of the appellant and paid him the price for 400 litres of high speed diesel oil requesting the appellant to transmit the same to his shop by a rickshaw van puller along with the cash memo. The appellant did not grant him the cash memo at that particular time on 29.4.85 and PW-5 had requested him to hand over the cash memo to the rickshaw van puller who would be carrying the high speed diesel oil. During his cross-examination PW-5 stated to have paid the entire price of 400 litres of the high speed diesel oil to the appellant at his shop on 29.4.85. However, the appellant demanded an extra sum of money and PW-5 deposed to have told the appellant to send 400 litres of H.S.D. oil in 2 barrels through a rickshaw van puller to whom he would pay the balance amount and the appellant complied with the same. The evidence of PW-5 corroborated with the narrative of PW-6 to have seized the cash memo from the rickshaw van puller along with 2 barrels of 400 litres of HSD oil. Apart from the claim of PW-6 that the shop was closed at the time of his visit, he could not produce

any independent witness to justify his presence at the shop when the same was closed and the appellant was absent. The West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 did not mention the formalities to be complied during issuance of cash memo with specific mention of the license number, date time etc. The violation of Para 3(3) and 4(2) do not harp upon the strict compliance of the allegation raised by the complainant in terms of preparation of the cash memo. The prosecution failed to establish the mens rea inculpatory to deliberately abdicate the responsibility of the appellant in discharging his duties in contravention of the West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980. The expert to have assessed the cash memo was not examined. The prosecution failed to establish the motive as well as the violation on part of the appellant as alleged.

15. 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.

16. Under such facts and circumstances, the conviction under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of Paragraph 3(3) & Paragraph 4(2) of the West Bengal Motor Spirit and High Speed Diesel Oil (Licensing, Control and Maintenance of Supplies) Order, 1980 and sentence of rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for two months for each count of charges as passed against the appellant by the Learned Judge, Special Court

(under the Essential Commodities Act), Tamluk, Midnapore in T. R. No. 9/85 (E.G.R. No. 13/85) arising out of Panskura Police Station Case No. 6(4)85 dated 16.05.85 is set aside.

17. The instant criminal appeal being CRA 394 of 1988 stands disposed of.

18. There is no order as to cost.

19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

20. 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.)