

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 426 of 1986

**Prahlad Roy
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Sekhar Kumar Basu, Sr. Adv. Mr. Ranadeb Sengupta
For the State	: Mr. Debasish Roy Ms. Sreyasree Biswas
Heard on	: 09.01.2024, 20.02.2024, 12.03.2024, 19.06.2024
Judgment on	: 19.08.2024

Ananya Bandyopadhyay, J.:-

1. The instant appeal is preferred against the judgment and order dated 10.09.1986 passed by the Learned Judge, Special Court at Nadia, Krishnagar in E.C. Case No.8 of 1986 in T.R. No.12 of 1986 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, as amended in 1981 for contravention of Clause 4 of the West Bengal Kerosene Control Order, 1968 and sentencing him to rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- in default to suffer further rigorous imprisonment for 1 year.

2. The prosecution case precisely stated on 17.05.1986 at about 10:45 a.m., the Complainant District Enforcement Officer, Nakashipara, accompanied by others visited M.R. Shop belonging to Md. Abdul Gaffar and Md. Nuruz Zaman, which revealed the same to have lifted 3 barrels of Kerosene Oil for their business at M.R. Shop from a Kerosene Oil Dealer, named Shantabrata Bhattacharjee (PW-3) of Debagram on the strength of Allotment Order issued from the office of Food & Supplies Department, Kaliganj. It also transpired that one barrel containing 200 litres of Kerosene Oil Dealer abovenamed was sold to Prahlad Roy, who stored the same in his shop for the purpose of sale. The said barrel containing 200 litres of Kerosene Oil was seized from the shop of Prahlad Roy, who had no licence for sale or storage of Kerosene Oil. Nuruz Zaman sold one barrel of Kerosene Oil from the quota of 3 barrels to Prahlad Roy and thereby indulged in malpractices.
3. Based on the complaint, Kaliganj P.S. Case 11/86 dated 22.05.86 was registered under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, as amended in 1981 for contravention of Clause 4 of the West Bengal Kerosene Control Order, 1968.
4. The prosecution examined 8 witnesses and exhibited certain documents.
5. The appellant was examined under Section 251 of the Code of Criminal Procedure, the substance of the accusation stated to the appellant was to the effect that on 17.05.1986 at 10:45 a.m., at the time of the inspection of the M.R. Shop, run by the other 2 accused persons, it was found that Md. Nuruz Zaman purchased 3 barrels of Kerosene Oil from Kerosene Oil Dealer Sri Shantabrata Bhattacharjee and out of that, one barrel was sold to the

appellant although the appellant had no licence for carrying business in Kerosene Oil.

6. The Learned Trial Judge recorded the findings to the effect that the appellant was found to be in possession of 200 litres of Kerosene Oil without having any licence for possession or storage thereof and thereby the appellant violated clause 4 of the West Bengal Kerosene Control Order, 1968.
7. Learned Advocate for the appellant submitted as follows –
 - i. In the event of the prosecution case being accepted in its entirety, there could be no conviction for violation of clause 4 of the West Bengal Kerosene Control Order, 1968, because mere possession of Kerosene Oil on a solitary occasion does not amount to carrying in trade in Kerosene Oil.
 - ii. The prosecution alleged commission of offence by the other two accused persons acting in connivance with the appellant or in other words, according to the prosecution the case against all the accused persons was same and inseparable. Acquittal of other two accused persons caused a complete failure of the prosecution case and it was not open to the Learned Trial Court, to convict the appellant alone.
 - iii. Formally the First Information Report was drawn up on 22.05.1986. The written complaint indicated two G.D. entries i.e., G.D. Entry No.395 dated 17.05.1986 and GD Entry No.711 dated 19.05.1986. The written complaint then referred to an incident that took place on 12.05.1986. If the incident had taken place on 12.05.1986, the prosecution failed to substantiate an inordinate delay of ten days in

lodging the First Information Report, probatalizing the chances of concoction and embellishment.

- iv. Six out of eight witnesses did not support the prosecution case and were declared hostile. The prosecution case was absolutely frivolous as it did not get any support from its own formal witness PW-7 a Sub-Inspector of Food and Supplies Department.
- v. The prosecution failed to cite the appellant Prahlad Roy to carry on illegal trade in kerosene oil. Mere possession of kerosene oil did not warrant conviction for violation of clause 4 of the Kerosene Control Order.
- vi. The Ld. Advocate for the appellant relied on the decision the Hon'ble Supreme Court in the case of ***Manipur Administration versus M.Neelachandra Singh (reported in AIR 1964 SC 1533)*** which held before a person could said to be a dealer it must be shown that he carried on business of purchase or sale or storage for sale of any commodities specified in the schedule.
- vii. The overall assessment of the judgment of the Hon'ble Supreme Court prescribed there must be concrete evidence of continuous illegal trade being carried on by the accused person. A solitary incident of possession of kerosene oil would not be sufficient to establish the charge under Section 7 of the Act against the appellant.
- viii. The charge against the appellant herein was for violation of paragraph 4 of the Order and the charge against two other co-accused persons who were also placed on trial were under Paragraph 9 of the Order.

The former put a restriction on carrying on trade of kerosene oil without valid license while the latter dealt with cancellation or suspension of license of valid license holders in the event of indulging in malpractice. In the instant case the allegation as set out against Md. Nuruz Zaman and Md. Abdul Gaffar was illegally selling of kerosene oil from their quota to the appellant and that against the appellant was of carrying on illegal trade of kerosene oil without the license. On the same set of evidence the two other persons were acquitted of the charges so framed against them and the same was legally untenable.

- ix. One Ganesh Mondal was examined as PW-5 during the course of trial. He was the rickshaw puller whose rickshaw was hired. He stated that the employee of Nuru miya hired his rickshaw van. The said employee took three barrels of Kerosene oil from the shop of SB Bhattacharjee. Two barrels were taken on his rickshaw van and another was sent on a cart. That witness (PW-5) did not utter a single word to the effect that the said single barrel was delivered to the shop of the appellant. PW-5, though did not support the prosecution case so far as it implicates the appellant herein, was not declared hostile by the prosecution. Resultantly, the prosecution was bound by the evidence so adduced by that prosecution witness and the defence can take advantage of the same. In that context, the judgments delivered by the Hon'ble Supreme Court in **Mukhtiar Ahmed Ansari -vs- State (NCT of Delhi) reported in 2005(1) SCC (Criminal) Pg 1037** and

Rajaram -vs- State of Rajasthan reported in 2005(1) SCC (Criminal) 1050 were relied upon where it had been held that if a

prosecution witness who did not support the prosecution case and was not declared hostile by the prosecution, then the prosecution was bound by the evidence so adduced by the said prosecution witness and that the accused could take advantage of the same.

- x. There was no evidence of seizure of one barrel of kerosene oil from the possession of the appellant on 17.05.86. The seizure list (Exbt.-2) indicated that the date of seizure was 19.05.86 and the prosecution did not adduce any evidence to reconcile the incongruity created by the date mentioned in the seizure list and the date alleged to be the date of commission of offence by the prosecution.
- xi. The cross-examination of PW-3 revealed on the date of incident, one Ambar Sk. being authorized by Abdul Gaffar went to the shop of PW-3 to take delivery of kerosene oil. Amber Sk. had also signed the cash memos. Neither Ambar Sk. was examined during the trial nor were those cash memos produced in Court.
- xii. PW-7 namely Aurobindhu Chatterjee happened to be a formal witness, a sub-inspector of food and supplies department who was declared hostile by the prosecution. He stated that he did not see anything at the shop of Prahlad Roy. He only saw one barrel in the shop of accused. On being cross-examined he stated that about 50 to 60 persons were present there and one Gautam Baneree, Anchal Pradhan who was present there created pressure upon him to treat

the barrel in the oil as kerosene oil. A formal witness being declared hostile by the prosecution portrayed the prosecution case to be false and fabricated.

- xiii. Nowhere in the entire evidence on record there was anything to show that out of those three barrels of kerosene oil purchased from the shop of S.B. Bhattacharjee one reached the shop of the appellant and that he was carrying on illegal trade with the said kerosene oil.
- xiv. From the facts and circumstances narrated as hereinabove, it was crystal clear that in the instant case, the prosecution has miserably failed to prove its case beyond all reasonable doubts. Majority of the prosecution witnesses did not support the prosecution. Things went to such a pass that a formal witness also did not support the prosecution case. Regard being had to the circumstances as aforesaid, it was humbly prayed that the instant appeal be allowed and the judgement and order of conviction and sentence as recorded by the Learned Trial Court be set aside.

- 8. Considered the submission of the Ld. Advocate for the State who refuted the contentions of the Ld. Advocate representing the Appellant.
- 9. S.I., B. Debnath D.E.O., Nakashipara lodged a complaint against (i) Md. Abdul Gaffar (ii) Md. Nuruz Zaman and (iii) Prahlad Roy all of Debagram P.S. Kaligan District - Nadia to the effect that under order of SP, DEB Nadia he enquired into Kaliganj P.S. G.D. Entry No.711 dated 19.05.86 and G.D. Entry No.395 dated 17.05.86 at Debagram R.O.P. In course of enquiry it was ascertained that on 12.05.86 at about 10:45 hrs one Md. Nuruz Zaman of

Boro Itna who reported to have run the MR shop numbers 35 and 37 belonging to Abdul Gaffar (his elder brother) on the strength of a Power of Attorney, lifted Chree barrels of kerosene oil from S.B.Bhattacharjee at Debagram on the strength of allotment credit dated 16.05.85 issued by Inspector of Food and Supplies Kaliganj for MR Shop No. 35 and 37. It was further alleged that said Nuruz Zaman sold one barrel of kerosene oil out of three, to one Prahlad Roy a diesel dealer of Debagram which was subsequently seized from his possession. It was further alleged that Prahlad Roy had stored the same for selling without any license and thereby violated para 4 of Kerosene Control Order 1968 and Nuruz Zaman by selling the Kerosene oil from the quota of his M.R. Shop had indulged in malpractices and contravened the provisions of Kerosene Control and thereby violated para 4 and 9 of the aforesaid order.

10. The Clause 4 of the West Bengal Kerosene Control Order, 1968, for the violation whereof the appellant has been convicted, runs as follows:-

“Clause4. After such date as the State Government may specify by notification in the official gazette, not less than 60 days from the date on which this order comes into force, no persons other than an Oil Distributing Company shall carry on trade in Kerosene Oil unless he is in possession of a valid licence issued under this order.”

11. Evidence of PW-3 testified out of 3 barrels of Kerosene Oil sold by him to the authorised representative of Abdul Gaffar, two were placed on a rickshaw van and one barrel was carried in a cart, however it wasn't deposed that one barrel of Kerosene Oil was delivered to the appellant.

12. PW-5 Ganesh Mondal, the Rickshaw-Puller, who deposed to have carried two barrels of Kerosene Oil on his rickshaw on the day of incident and was detained by the local boys, was not declared hostile by the prosecution, PW-5 asserted specifically that one barrel of Kerosene Oil was sent by a Cart.
13. Moreover, PW-6 admitted that he had no personal knowledge about the incident and did not know what was inside the barrel.
14. There was no evidence of seizure of one barrel of Kerosene Oil from the possession of the appellant on 17.05.86. The seizure list (Exhibit-2) indicated the date of seizure to be 19.05.86 and the prosecution failed to adduce any evidence to prove the correct date of seizure.
15. The investigating officer was not examined to the detriment of the prosecution.
16. The possession of 200 L of kerosene oil from the shop of the appellant without proof of the same being possessed for the purpose of trade cannot indict the appellants. The prosecution failed to cite any complaint that the appellant practiced illegal trade of kerosene oil, through independent witnesses confirming the same.
17. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
18. Accordingly, the instant criminal appeal being CRA 426 of 1986 is disposed of.
19. There is no order as to costs.

20. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. 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.)