

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

**Present:**

**The Hon'ble Justice Partha Sarathi Sen**

**CRA 299 of 1989**

**Kanailal Maity  
Vs.  
The State of West Bengal**

|                   |                                                        |
|-------------------|--------------------------------------------------------|
| For the appellant | : Mr. Amit Ranjan Pati<br>Ms. Swastika Choudhury       |
| For the State     | : Ms. Faria Hossain, Ld. APP<br>Ms. Suparna Chatterjee |
| Heard on          | : 15.07.2024                                           |
| Judgement on      | : 15.07.2024                                           |

**PARTHA SARATHI SEN, J.:**

1. In this criminal appeal, the judgment and order of conviction dated July 26, 1989 as passed in DEBGR 17 of 1988 by the learned Judge, Special Court (Essential Commodities Act), Midnapore has been impugned.

2. By the impugned judgment and order of sentence, learned trial court found the present appellant guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the 'said Act') and thus, sentence the convict to suffer simple imprisonment for two years with fine of Rs. 1,000/- i/d to suffer simple imprisonment for another period of two months.
3. For effective disposal of the instant appeal, the facts leading to the initiation of the aforesaid case is required to be dealt with in a nutshell.
4. One Santosh Kumar Chakraborty, the then Inspector of Police, DEB, Midnapore lodged a written complaint dated April 20, 1988 with the Officer-in-Charge, Sabang Police Station, Midnapore stating, *inter alia*, that on the basis of a secret information as received by him on the said day, he along with some police personnel attached with the Sabang P.S. held raid in the business place of one Kanailal Maity (appellant herein) who at that material time was found delivering oil with the help of measuring flux to the public from his business place situated at western side of Dashgram-Dehati Pitch road adjacent to Daria mouza in front of the fertilizer shop of one Khudiram Manna.
5. In his written complaint, the informant stated further that he found 14 big drums containing High Speed Diesel oil (hereinafter

to as 'HSD' in short) and four empty drums. It is his further version that he held measurement of the said oil with the help of a measuring stick in presence of three independent witnesses and found ten full drums of HSD while in other four drums, he found 19, 36, 54 and 80 litres of HSD respectively in total 2460 litres of HSD.

6. It was his further version in his written complaint that on being asked, the accused failed to show any licence or authority for storing and holding such HSD, accordingly, the said oil drums (both containing HSD and empty drums), measuring flux etc. were seized including measuring stick and, thereafter, along with the seized articles and the arrested accused he proceeded to the Sabang P.S. On the basis of such written complaint, Sabang P.S. Case No. 5 dated 20.04.1988 under Section 7(1)(a)(ii) of the said Act was started. Investigation was taken up and on completion of the same, charge-sheet was submitted against the accused under the aforesaid section.
7. Trial court record reveals that on April 24, 1989, the accused was examined under Section 251 Cr.P.C. and during plea, the accused pleads "not guilty" and claimed to be tried and thus trial proceeded. From the trial court records it further reveals that in order to prove the accusation against the present appellant, the

prosecution had examined ten witnesses in all. On behalf of the defence though no evidence was adduced either oral or documentary but from the trend of cross-examination as well as from the answers as given by the accused in course of his examination under Section 313 Cr.P.C., it appears to this Court that the defence case is based on clear denial and false implication.

8. Mr. Pati, learned advocate for the appellant in course of his argument at the very outset draws attention of this Court to the evidence of the PWs. 1, 2, 3, 7, 8 and 9. It is submitted by Mr. Pati, learned advocate for the appellant that the aforementioned witnesses being independent witnesses have all turned hostile during their respective examination-in-chiefs and none of the aforesaid private witnesses supported the case of the prosecution. It is further submitted by Mr. Pati that on comparative study of the written complaint, the evidence as adduced by P.W. 6 (informant) and exhibit 8, i.e., the rough sketch map of the P.O., it would reveal that the alleged place of occurrence of the alleged crime is very much doubtful in view of the fact that the oral evidence of P.W. 6 (informant) does not match with his version in the written complaint and the same is also found to be contradictory from the aforementioned exhibit i.e., the sketch map

of the P.O. as well as from the evidence of the other prosecution witnesses, more specifically the evidence of P.W. 8.

9. It is thus submitted by Mr. Pati that in the impugned judgment learned trial court has overlooked such contradiction and the learned trial court while passing the impugned judgment had assigned no reason whatsoever as to what prompted him to disbelieve the testimonies of the independent witnesses and on the contrary as to why he placed so much reliance upon the evidence of the police officials who are found to be adduced contradictory evidence. It is thus submitted that the impugned judgment is based on surmises and conjectures in view of the fact that the learned trial court has miserably failed to appreciate the evidence of the prosecution witnesses in its proper perspective and further learned trial court has misinterpreted the answers given by the accused in his examination under Section 313 Cr.P.C.
10. Mr. Pati, learned Advocate for the appellant thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgment of conviction and order of sentence.
11. *Per contra*, Ms. Faria Hossain, learned Additional Public Prosecutor for the State submits before this Court that there is no general rule that the Court would believe the testimony of the

independent witnesses only and disregard the evidence of the police personnel especially when no case has been made out on behalf of the accused especially in course of cross-examination of the P.W.s that the accused and the said police personnel had animosity against each other. It is submitted further that in the case before the learned trial court the seizure has been proved beyond reasonable doubt and before the learned trial court it was never agitated that in the seizure list the signature of the accused was taken forcefully or by way of deceitful means.

12. It is further submitted on behalf of the State that since the illegal possession of the aforementioned H.S.D. has been proved beyond reasonable doubt, learned trial court is very much justified in convicting the appellant herein under Section 7(1)(a)(ii) of the said Act.
13. For effective disposal of the instant appeal, I propose to categorise the prosecution witnesses under the following heading:

| Sl No. | Private witnesses                         | Police officials | Government officials |
|--------|-------------------------------------------|------------------|----------------------|
| 1.     | P.W. 1 – A villager and a seizure witness |                  |                      |
| 2.     | P.W. 2 – A villager and a seizure witness |                  |                      |

|     |                                                 |                                                             |                                                     |
|-----|-------------------------------------------------|-------------------------------------------------------------|-----------------------------------------------------|
| 3.  | P.W. 3 – A villager and a fertilizer shop owner |                                                             |                                                     |
| 4.  | P.W. 7 – A villager                             |                                                             |                                                     |
| 5.  | P.W. 8 – A villager and a seizure witness       |                                                             |                                                     |
| 6.  | P.W. 9 – A villager                             |                                                             |                                                     |
| 7.  |                                                 | P.W. 5 – the then O.C. of Sabang P.S. and Recording Officer |                                                     |
| 8.  |                                                 | P.W. 6 – S.I. of police and the informant                   |                                                     |
| 9.  |                                                 | P.W. 10 – Investigating Officer                             |                                                     |
| 10. |                                                 |                                                             | P.W. 4 – Quality Control Manager of Haldia Refinery |

14. Since in the impugned judgment learned trial court has discussed the evidence of the prosecution witnesses in detail, this Court considers that discussion of the evidence adduced by the said witnesses all over again is unnecessary except to the extent the same is required for effective disposal of the instant appeal.
15. On perusal of the Exhibit 1 being the seizure list dated April 20, 1988 it reveals that the incriminating articles were seized in the

presence of P.W. 1 and P.W. 8, i.e., Ramapada Pandit and Tanshaq Agarwala as well as in presence of P.W. 2, i.e., Prafulla Kumar Maity.

16. As rightly pointed out by Mr. Pati, learned Advocate for the appellant that the P.W.s 1, 2 and 8 being the seizure witnesses did not support the case of the prosecution and on the contrary they became hostile. So far as other two independent witnesses are concerned that is P.W.s 3 and 7 it reveals from the trial court record that the said two witnesses have also become hostile. At this juncture a question arises as to whether the learned trial court is at all justified in placing the reliance upon the evidence as adduced by the police officials.
17. At this stage if I once again look to the written complain, that is Exhibit 4 and *vis-à-vis* Exhibit 1 that is the seizure list it reveals that the alleged seizure was made on the relevant day from the P.O. which is situated on the western side of Dasagram-Dehati pitch road just adjacent to Daria Mouza in front of the place of business of one Kanilal Maity. Exhibit 8 that is the rough sketch map of P.O. also points out that P.O. is on a open place by the site of a pitch road.
18. On perusal of the examination-in-chief of P.W. 5 that is the then O.C. of Sabang P.S. this Court finds that though P.W. 5 claimed

that he was a party to the raiding team but he remained absolute mum with regard to the actual place of occurrence of the alleged crime.

19. P.W. 6 being the informant, however, in his examination-in-chief categorically stated that on the relevant day he went to the shop cum godown of the said Kanilal Maity at Dasagram on western side of the said pitch road.
20. As rightly pointed out by Mr. Pati, learned Advocate for the appellant that neither in the written complaint nor in the said seizure list nor in the sketch map there is any whisper of any shop cum-godown of the present appellant which raises a genuine doubt with regard to the actual place of occurrence as well as with regard to the genuineness of the case as lodged against the present appellant.
21. Though it has been argued by Ms. Hossain, learned Additional Public Prosecutor for the State that there cannot be any occasion to disbelieve the evidence of the police officials in absence of proof of any animosity between the appellant and police officials this Court finds that in the seizure list independent witnesses of the locality have been made witnesses and none of such witnesses came forward in course of their examination-in-chiefs to support

the alleged seizure of the H.S.D. from the possession of the present appellant on the relevant day and hour.

22. In view of such, this Court thus finds that the alleged seizure of H.S.D. from the possession of the appellant is not all proved and, therefore, the learned trial court is not justified in holding that the prosecution has been able to bring whom the accusations against the present appellant.
23. As a result, the instant appeal succeeds and is hereby allowed.
24. The impugned judgment and order of conviction dated July 26, 1989 as passed in case No. DEBGR 17 of 1988 by the learned Judge, Special Court, E.C. Act, Midnapur (now Paschim Medinipur) is hereby set aside.
25. The appellant, Kanailal Maity is, thus, found not guilty of the offence under Section 7(1)(a)(ii) of the E.C. Act and is, thus, acquitted from the case No. DEBGR 17 of 1988 as disposed of by the learned Judge, Special Court, E.C. Act, Midnapur. The appellant is discharged from his bail bond and he be set at liberty at once, if not wanted in connection with any other case.
26. With the aforementioned observations, the instant appeal being **CRA 299 of 1989** along with all connected applications, if there by any, stands disposed of.

27. Department is directed to forward a copy of this judgment along with the L.C.R. to the learned trial court forthwith.
28. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(PARTHA SARATHI SEN, J.)**

Sourav/Suvayan  
A.R. (Court)s