

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 187 of 1986

Kesto Das & Anr.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Tapas Ghosh,
Mr. Tanmay Chowdhury**

For the State : **Mrs. Faria Hossain
Ms. Suparna Chatterjee**

Hearing concluded on : **03.04.2025**

Judgment On : **08.04.2025**

Prasenjit Biswas, J:-

1. The instant appeal has been preferred against the impugned order of conviction dated 11th April, 1986 passed by the Judge, Special Court, Hooghly, in connection with Special Court Case No. 69/1985 finding the present appellants guilty of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and sentenced each of them to suffer rigorous imprisonment for three months and to pay fine of Rs. 1000/- each in default to suffer rigorous imprisonment for a further period of 15 days each.
2. The story of the prosecution in brief is that-

The District Enforcement Branch received a secret information and S.I. of D.E.B. with force visited the hotel of the appellant situated at Assam Road at Mouza- Korala under P.S. Balagarh, Dist. Hooghly. The appellant who happens to the owner of the hotel was absent but his salesman, another appellant Kesto Das was present. It is said in the complaint that the said Kesto Das was dealing in high-speed diesel oil in the said hotel. It is further stated that as much as 381 lts. of high-speed diesel oil was kept exposed for sale. On demand of production of necessary documents for carrying this kind of business the appellant Kesto Das failed to produce any licence or any authority or any daily stock register, sale register, cash memo book etc. Moreover, there was no stock and price board displayed at the conspicuous place of the business of sale of H.S.D. Oil. The quantity of oil was physically verified and was seized and the appellant Kesto Das was

arrested. The seized diesel oil, measuring pots of diesel oil were kept in the zimma of a local person named, Netai Chandra Pal.

3. After investigation charge-sheet was submitted against these appellants under Section 7(1)(a)(ii) of Act X of 1955 for violation of Para 3(7) of the West Bengal Motor Spirit and H.S.D. Oil (Licensing Control and Maintenance of Supplies) Order, 1980 and Para 3(2) of the West Bengal Declaration of Stock and Price of Essential Commodities Order, 1977.
4. In this case, five witnesses were cited by the side of the prosecution. Neither any oral nor documentary evidence was adduced on behalf of the accused.
5. Mr. Tapas Ghosh, learned Advocate appearing on behalf of the appellants submitted that there are contradictions in the statements of the witnesses and the learned Trial Judge overlooked the same. It is said that except PW4 all other witnesses cited in this case are police personnel. PW4 who is cited as a witness to the seizure did not state anything and he signed in the seizure list on the request of the police personnel. Moreover, in cross-examination he clearly said that he did not see oil and oil pot at the spot on the relevant date and time. PW4 could not say that if at all Daraga Babu found any oil or not. It is said by the learned Advocate that the learned Trial Court erred in law in relying upon the evidence of PW4 who was merely a chance witness. The attention of this Court is drawn to the examination of the accused persons under Section 313 of Cr.P.C. It is said by the learned Advocate that in answer to the questions put to the accused persons they said that oil was not found in the shop. These appellants

were not dealing with high-speed motor spirit and diesel oil and as such, they were not liable to display any stock board. The appellants cannot be said to have violated the relevant provision of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977. As per submission of the learned Advocate the findings of the learned Trial Court is perverse and based on no material.

6. Mrs. Faria Hossain, learned Advocate for the State submits that there is no illegality or material irregularity in the impugned order of conviction. She stated that all the witnesses narrated the entire incident as stated in the written complaint. PW4, who is cited as a witness to the seizure list also corroborated the statement of other witnesses. There is no reason to disbelieve the depositions of the witnesses. It is further said that these accused appellants were dealing in H.S.D. oil and they failed to produce any licence, register or any other documents for selling H.S.D. Oil. Moreover, there was no stock and price board at the spot. So, the appellants have contravened the relevant provision of the Act and the Trial Court rightly convicted them.
7. I have considered the rival submissions advanced by both the parties and have gone through all the materials gathered in the record.
8. PW1, PW2, PW3 and PW5 are the police personnel. PW4 is only the private witness who cited as a witness to the incident. It is the case of the prosecution that the appellant, Sanatan Koley is the owner of the hotel and another appellant Kesto Das is a salesman. The entire checking was done in the presence of Kesto Das as the owner was found absent on that

date and time. The allegation against the accused persons is that they were dealing in H.S.D. Oil. At the time of checking Kesto Das was asked to produce licence, register or any other document for selling H.S.D. Oil but he failed to produce the same. It is said that PW1 seized the stock of H.S.D. oil and measuring pots in presence of local witnesses i.e. Arun Kumar Mukherjee, Mukunda Das and two watcher constables. The seizure list was prepared and it was attested by the witnesses and one of the appellants convicts Kesto Das. Arun Kumar Mukherjee was cited by the witnesses as PW4 whereas Mukunda Das was not cited as a witness by the side of the prosecution.

9. PW4 stated in his deposition that police officer declared that some oil has been seized and he was requested to sign seizure list and as such, he signed on it. On cross-examination this PW4 stated that he did not see oil or oil pot and he could not say if at all Daraga found any oil or not in the hotel. So, this witness did not say anything about seizure of H.S.D. Oil in his presence.
10. It is said by PW1 that he left the seized alamaat in the zimma of one Netai Chandra Pal. PW3 also stated in the same line that seized oil was given in zimma of one local man of that locality whose name was Netai Chandra Pal. But the said Netai Chandra Pal was not cited as witness to this case. There are discrepancies in the statements of PW1, PW2 and PW3 in respect of the roof of the hotel. PW1 said that the roof of the hotel was tilled on which there were straws. PW2 said that the roof was tilled roof whereas PW3 stated that the roof of the hotel was made of straw. So, there

are discrepancies in the depositions of those witnesses in respect of roof of the hotel. PW5 (I.O.) stated that he has not written as to the materials with which the hotel building has been made. So, it would appear from the statements of those witnesses that they were not sure about the roof of the hotel. PW5 further said that he examined witness Kanai Ghosh but the said Kanai Ghosh was also not cited as witness to the prosecution.

11. Save and except PW4 all the witnesses are the police personnel. PW4 is only the private witness who specifically stated that the police officer declared that they seized oil and requested him to sign on the seizure list and that is the reason he put his signature on the list. On cross-examination this witness stated that he did not see oil and oil pot at the relevant point of time at the hotel. This witness was not sure whether Daraga Babu found any oil or not. So, the seizure of oil from the spot on the relevant date is doubtful. PW 1 said that two local men arrived at the spot on seeing arrival of police but he did not take any of them with him. It is said by PW1 that the seizure was made in presence of PW4 and Mukunda Das and seized alamats were kept in the zimma of one Netai Chandra Pal. But Mukunda Das and Netai Pal were not cited as witnesses to the prosecution and the best reason known to the prosecution as to why they were not cited as witnesses. Moreover, the seizure witness PW4 did not say anything which may support the prosecution to prove its story. This witness said that the seizure was not made in his presence and he did not see oil or oil pot in the hotel on the relevant date and time. PW1 did not seize any document regarding ownership of the hotel. At the time

of examination of the accused persons under Section 313 of Cr.P.C. wherein specific questions were put to both the accused persons/appellants then in answer to those questions they said that oil was not sold and no diesel oil was found thereon.

- 12.** So, there are material contradictions in the depositions of the prosecution witnesses. The seizure of High-Speed Diesel Oil from the spot is doubtful. The learned Trial Judge committed error in relying upon the evidence of PW4 but in fact, this witness stated nothing about the seizure made by the police personnel on the relevant date and time. It is the case of the defence that they were not dealing with the high-speed motor spirit and diesel oil. Prosecution has failed to prove that the appellants were dealing in H.S.D. oil and as such, there was no question to display any stock board and therefore, it cannot be said that they violated paragraph 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977.
- 13.** After scanning of the entire evidences brought on record, I am opinion that the learned Trial Court misread and misappreciated the material evidences on record. The impugned order of conviction suffers from illegality and with material irregularity. Accordingly, the impugned order of conviction is liable to be set aside.
- 14.** The instant appeal is hereby allowed. The impugned order of conviction and sentence passed by the learned Judge, Special Court, Hooghly under Section 7(1)(a)(ii) in connection with Special Court Case No.69/85 is hereby set aside.

- 15.** The accused persons are on bail, their bail bonds are cancelled and sureties stand discharged.
- 16.** Trial Court Records along with a copy of this judgement is to be sent down to the Trial Court immediately
- 17.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)