

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 44 OF 1991
RANJIT KUMAR GHOSH
VS
THE STATE OF WEST BENGAL

For the Appellant : Mr. Soham Banerjee, Adv.

For the State : Ms. Manisha Sharma, Ld. Jr. Govt. Counsel.
Ms. Snigdha Saha, Adv.

Last heard on : 10.09.2025

Judgement on : 24.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This criminal revisional application was filed under Section 374 (2) of the Code of Criminal Procedure by the applicant against the judgement and order dated January 3, 1991 passed by the Learned Judge, Special Court (E.C), Hooghly in Special Court Case No. 22 of 1989 out of Chinsurah P.S case no. 61, dated 17.3.89 and convicting the accused/applicant under section 7(1)(a)(ii) of the Essential Commodities Act, 1955, for violation of para 4 of West Bengal kerosene control order, 1968 and sentencing him to suffer rigorous imprisonment for 3 months and to pay a fine of ₹500 in default to suffer imprisonment for another one month.

- 2.** The fact of the case is that on 17.3.1989 PW1, S.I, R.N Mondal accompanied by P.W.3 under the supervision of D.E.O (III) went on a raid to Bakultala Ferry Ghat, P.S Chinsurah and they found the accused person coming from the Ghat with one gunny bag and one foam bag. On suspicion, they held the accused and on search of said two bags recovered two Jerricans each containing 20 liters of kerosene oil. The accused failed to show any license or permit for possession of said Kerosene oil with him and those were seized under the seizure list, and the accused was arrested where the written complaint was lodged. After completion of the investigation the charge-sheet was submitted against the accused person by P.W.4 for violation of paragraph 4 of West Bengal kerosene control order, 1968.
- 3.** The case of the appellant is a complete denial of the allegation levelled against him. It is submitted by the Learned Amicus Curie that no iota of evidence was there to show that the appellant deals with kerosene oil in any manner. That apart, the kerosene oil was not sent for chemical exam examination. The Jerricans as alleged to have seized were not produced before the Court for identification by the witnesses and no question was put to him that he was carrying on trade in kerosene without any license. Therefore, the judgement and order of conviction passed by the Learned Court is liable to be set aside.
- 4.** It is further submitted that the seizure as alleged was not in consonance with the provision as enumerated in the Code of Criminal Procedure. In this case, in order to bring home the charges, the prosecution adduced four witnesses. P.W.1 is the de-facto complainant, and according to him, the accused was apprehended on March 17, 1989 when they went on a raid to Bakultala Ferry Ghat and found him with one gunny bag and one foam bag and on search

from the said bag, 40 liters of Kerosene oil in two jerricans were recovered and the same was seized in presence of witnesses under a seizure list. P.W. 2 Noni Gopal Das on perusal of the seizure list as handed over to him, denied his presence at the time of seizure and even disowned before the court on oath, his signature on the seizure list when his attention was drawn to it. He was accordingly declined hostile and was confronted with his earlier statement to I.O. He also retraced and thereby contradicted P.W. 4 in this regard.

5. P.W. 3 W/C 370, Bidhan Chandra Mullick deposed that on 17.3.89 while he was in the D.E.B, he accompanied S.I, R.N Mondal of D.E.B to Bakultala, Ferry Ghat and found one person carrying 40 liters of kerosene oil in two jerricans kept inside two gunny bags. On being asked, he failed to show any relevant paper and documents for possessing of the said kerosene oil with him. Accordingly, Daroga Babu seized the said kerosene oil in their presence under a seizure list where he signed. During his cross- examination, he said that prior to the date of raid he did not visit the P.O and he did not see the articles in Court on that day. The Seizure was made in between eight-05 hours to 8-30 hours. P.W.4, A.I Kamal Siddhar deposed that on 1.4.89, having received the charge of investigation of Chinsurah P.S case no. 61 dated 17.3.89 from D. S.P, D.E.B, Hooghly, and then visited P.O, examined witnesses, recorded their statements and produced the relevant records and on completion of the investigation submitted the charge-sheet against the present appellant. He further deposed that he examined witness Noni Gopal Das, who had stated to him that on 17.3.89 at about 8 A.M while he was returning from Ghutia Bazar, Enforcement Branch, police having found 2 jerricans filled with Kerosene oil from a person who subsequently disclosed his name as Ranjit Kumar Ghosh

and then those jerricans were seized in his presence under a seizure list. He denied that he did not examine the witness, Noni Gopal Das.

6. The appellant during his examination under Section 313 of the Code of Criminal Procedure denied about any recovery of Kerosene oil and further that he never had any business. He further stated that Mukherjee Babu called him, and accordingly he went to the police station and met with him.
7. The Learned Trial Court while assessing the evidence adduced by the prosecution witnesses and more particularly the only person other than police personnel who alleged to have been put his signature in the seizure list and deny the same, was of the view that the signature of the said witness in triplicate was taken on a blank paper and was filled with record to weigh and assess the veracity of the said witness. On comparing of the said signature with the signature of the said witness found in the seizure list taken, the Court was of the view that those are identical. The Learned Court also recorded the demeanour of the said witness and that he did not support the prosecution case. The Learned Court further considered that the witness was declared hostile and that does not ipso facto goes to show that evidence of P.W.1 and 3 regarding recovery of Kerosene oil in question from the possession of the accused on the relevant date is unworthy of consideration.
8. The Court also was of the view that non-production of the article in question no doubt can be treated as an irregularity on the part of the prosecution but cannot be construed as an illegality so as to do away with the factum of possession borne out by the testimony of P.W.1 and 3 coupled with the seizure list in the case.

9. On consideration of the above observation and on the factual matrix as above this court is of the view that the Learned Court failed to consider that out of four prosecution witnesses two persons were seizure list witnesses, and one of them is only an outsider who has denied the seizure list. The said witness disowned the signature as his signature on oath before the court as appearing in the seizure list. Hence he was declared as hostile. It can be seen from his evidence that he said before the court that though he knows Bakultala Ghat, neither he knows the accused nor on any day any incident relating to him occurred and the signature shown to him was not admitted. The Court on his own asked the witness to sign on a blank paper and on perusal of the same, came to such conclusion that it was his signature. No suggestion was found to have put to the P.W. 3 as to whether his signature in the seizure list was obtained in presence of P.W. 2 was not or who were present during the time of seizure. Section 100 (4) of the Code of Criminal Procedure, 1973 reads as follows;

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

In this case there was no compliance with this provision and only P.W. 2 was cited as seizure list witness who denied his signature.

10. In this case the learned trial court did the comparison without taking any assistance from a skilled or trained person. Fact remains there is no legal bar

to prevent the court from comparing the signatures by using his own eyes but time and against the Hon'ble Supreme Court has held that it is always better to rely upon an expert report which certainly would have to pass through the test of admissibility by the Court. In the instant case, when no other person, excepting police official was cited as witness excepting P.W. 2 who denied to recognise not only the accused person but denied his signature therein and declared hostile witness ,when no seal or label was found in the jerrican to identify those articles as seized materials and further non production of those articles before the Court during evidence certainly raised suspicion regarding the involvement of the appellant in the present case and merely on the basis of the complaint lodged against the appellant it cannot be said that the prosecution was able to prove the case beyond the shadow of all reasonable doubts.

- 11.** Therefore on the basis of the above facts and circumstances this Court differs with the observation made by the Learned Trial Court and the order of conviction passed by the Learned Court on that score is liable to be set aside.
- 12.** Hence this criminal appeal stands allowed.
- 13.** The judgement and order of conviction passed by the learned Court is hereby set aside.
- 14.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)