

16.01.2025
SL. 52
Court No. 551
Sourav/GB

C.R.A. 404 of 1986

In the matter of: **Abdus Salam**

... appellant.

Ms. Jonaki Saha

... for the appellant.

Ms. Faria Hossain, Ld. APP
Ms. Suparna Chatterjee

... for the State.

1. In this appeal, the judgment and order dated 11.09.1986 as passed in G.R.E. No. 37/85, T.R. No. 23/86 by the learned Judge, Special Court, Essential Commodities Act, Murshidabad is impugned. By the said judgment, the 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 of 1955) for violation of the provisions contained in paragraph 4 of the West Bengal Kerosene Control Order, 1968 (hereinafter referred to as 'the said Control Order) and thus, convicted him under Section 255(2) Cr.P.C. and sentenced him to suffer simple imprisonment for three months and to pay fine of Rs. 3,000/- in default to suffer further simple imprisonment for two months.
2. The convict felt aggrieved and, thus, preferred the instant appeal.
3. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned case before the learned trial Court is required to be dealt with in a nutshell.

4. On 13.09.1985 one Nirmalendu Sarkar, S.I., DEO Head Quarter lodged a written complaint with the Officer-in-Charge, Hariharpara Police Station stating, *inter alia*, that on the said day in between 12.30 hours and 14.30 hours acting on a source information he along with three other police personnel, namely, Constable Chittaranjan Dey, Constable Tapan Chattaraj and HQD 62 Pravanjan Debnath entered into the house of Abdus Salam (the appellant herein) along with two private individuals, namely, Ahmed Ali and Asgar Ali. It has been stated in the said written complaint further that after observing all the procedure, he conducted search in the house of the accused and recovered 630 litres of kerosene oil stored in four barrels. It has been stated further that the said accused could not advance sufficient explanation with regard to the possession of the said kerosene oil and he also could not produce any licence for storing the said kerosene oil.
5. In the said complaint, it has been stated further by the informant that on being asked, the accused Abdus Salam stated to him that he has stored the kerosene oil for adulterating diesel in the kerosene oil. The informant thereafter seized the said kerosene oil after taking measurement along with measurement can and funnel in presence of the aforementioned two private individuals by executing a seizure list and thereafter he brought the seized alamats and the accused before the said O.C.
6. On the basis of the said written complaint, Hariharpara P.S.

Case No.3 dated 13.09.1985 was started and on conclusion of investigation, charge-sheet was submitted against the accused under Section 7(1)(a)(ii) of the said Act of 1955.

7. On 12.04.1986, the learned trial Court took up the said case for plea and at the time of examination of the accused under Section 251 Cr.P.C, the details of the accusation was read over to him to which the accused pleads his innocence and claimed to be tried and accordingly, before the trial Court trial proceeded.
8. In order to bring home the accusation, seven prosecution witnesses have been examined and some documents have also been exhibited on behalf of the prosecution. Trial Court record reveals further that though on behalf of the defence no oral evidence was adduced, but one document has been exhibited on behalf of the defence being the certified copy of Khatian No.338 of Mouza – Jiterpur under P.S. Hariharpara.
9. Learned trial Court after considering the evidence both oral and documentary found that the prosecution is successful in bring home the accusation against the accused and thus, convicted and sentenced him by passing the impugned judgment.
10. Ms. Saha, learned advocate appearing on behalf of the appellant, in course of her submission at the very outset draws attention of this Court to the evidence of P.W.1 and P.W.2, who according to the prosecution are two independent witnesses to the seizure. It is submitted by her that on perusal of the evidence of P.Ws.1 and 2, it would reveal that

they have stated nothing about the alleged seizure from the possession of the accused and thus, the alleged seizure has not been proved in accordance with law. It is further argued by her that even if, the evidence of P.W.3 who is the senior Quality Control Manager of Haldia Refinery is accepted at its face value but on conjoint perusal of the evidence of P.W.1, P.W.2 and P.W.4, it has not been proved beyond reasonable doubt that the said kerosene oil was at all seized from the possession of the accused.

11. Drawing attention to the evidence of P.W.1 once again, it is argued by Ms. Saha that said P.W.1 found three barrels of oil at the P.O. which is contrary to the version of the FIR as well as the seizure list and the evidence as adduced by P.W.7 who discloses the number of barrels seized from the P.O is four. It is, thus, submitted by Ms. Saha that the evidence of P.W. 7 who is the informant and the I.O. gets no corroboration at all from the evidence of P.W.s. 1 and 2. It is further argued by Ms. Saha that the prosecution has miserably failed to prove that the P.O, i.e., the alleged house belonged to the accused or the accused was a resident of the said house. Ms. Saha thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgment.
12. Per contra, Ms. Faria Hossain, learned Additional Public Prosecutor, submits that there cannot be any justification to disbelieve the testimony of P.W.s. 1 and 2 who in their respective examinations-in-chief stated it categorically that on the relevant day and hour, they were in the house of the

accused persons and they put their signatures in the seizure list. It is submitted that P.W. 7 being the informant and the I.O. duly proved that on the relevant day, he went to the P.O. and found incriminating materials i.e., four barrels of kerosene oil in the house of the accused which is seized by executing a seizure list and from the evidence of P.W. 3, it would reveal that on chemical analysis the said seized liquid articles is found to be kerosene oil.

13. It is further submitted by Ms. Hossain that in his examination under Section 313 Cr.P.C., the accused could not give proper explanation to justify his possession of the said kerosene oil and he had not stated specifically that the said house does not belong to him. Ms. Hossain thus submits that it is a fit case for dismissed the instant appeal.
14. On careful perusal of the entire materials as placed before this Court and after giving due consideration over the submissions of the learned advocates for the contending parties, it appears to this Court that in their respective examinations-in-chief, P.W. 1 and P.W. 2 did not specifically stated anything about the alleged seizure from the house of the accused. From their examinations-in-chief, it reveals further that they could not say on which paper they put their signatures at the P.O. On the contrary, they stated that they have put their signatures on a sheet of paper produced by the police before them which was drew up in their presences. In his cross-examination, P.W. 2, however, stated that he is not aware as to whether the paper on which he put his

signature, is written one or blank sheet.

15. At this juncture, if I look to the seizure list being Exhibit 7, I find that though in the said seizure list the names of both P.W. 1 and P.W. 2 have been written but in the said seizure list, the LTI of the P.W. 2 is available and the prosecution could not explain as to why the signature of P.W.1 is not there on such seizure list specifically, when it is the case of the prosecution that P.W. 1 is also a seizure witness.
16. In view of such, this Court has no hesitation to hold that the very presence of P.W.s. 1 and 2 in the P.O. on the alleged day and hour has become very doubtful.
17. Admittedly, P.W. 4 is not a seizure list witness. However, it is the case of the prosecution that in his presence the seized kerosene oil was measured and after taking sample, the remaining portion of the kerosene oil was kept in his jimma. P.W. 4 in his examination-in-chief though supports the case of the prosecution but from his examination-in-chief, it reveals that he stated that at the relevant day and hour the accused Abdus Salam was with the P.W. 7 and except this, he has stated nothing against the accused to connect the accused with the alleged crime. Peculiarly enough P.W. 4 is also silent as to where the measurement of kerosene oil was taken and in his cross-examination, he stated that he did not know the house of the accused.
18. P.W. 7 being the informant and the I.O. though supports the case of the prosecution as made out in the FIR but in considered view of this case, the alleged seizure of four

barrels of kerosene oil has become doubtful because of the evasive evidence as adduced by P.W.s. 1 and 2 and despite such fact, the prosecution made no venture to declare the said two witnesses as hostile.

19. It is equally pertinent to mention here that none of the police personnel who were members of the raiding team, also adduced evidence as rightly pointed out by Ms. Saha, learned advocate for the appellant.
20. Considering the entire pros and cons of the matter as discussed hereinabove, this Court thus finds that the prosecution has miserably failed to prove that the four barrels of kerosene oil were seized from the possession of the present appellant at the P.O. on the relevant day and hour.
21. This Court, thus, finds sufficient merit in the instant appeal.
22. Accordingly, the instant appeal being **CRA 404 of 1986** is allowed.
23. Consequently, the impugned judgment and order dated 11.09.1986 as passed in G.R.E. No. 37/85, T.R. No. 23/86 by the learned Judge, Special Court, Essential Commodities Act, Murshidabad is hereby set aside.
24. Consequently, the present appellant, namely; Abdus Salam is acquitted from the case being G.R.E. 37/85, T.R. No. 23/86. He is discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
25. Department is directed to forward a copy of this judgment along with Trial Court Record to the trial Court forthwith.
26. Department is further directed to forward a copy of this

judgment to the Member Secretary, Calcutta High Court Legal Services Committee forthwith.

27. The Member Secretary, Calcutta High Court Legal Services Committee is hereby directed to disburse the admissible amount of honorarium to Ms. Jonaki Saha, learned advocate for the appellant preferably within a month from the date of communication of this judgment.
28. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities

(Partha Sarathi Sen, J.)

