

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 319 Of 1988

Shyam Sunder Larha

-Versus-

The State of West Bengal

For the Appellant : **Mr. Ayan Bhattacharjee, Ld. Sr. Adv,
Mr. Pratim Priya Dasgupta,
Mr. Deepak Jain.**

For the State : **Mrs. Faria Hossain, Ld. A.P.P.,
Mr. Rajesh Jana.**

Hearing concluded on : **19.06.2025**

Delivered on : **23.07.2025**

Prasenjit Biswas, J:-

1. The appeal is directed against the impugned judgment and order of conviction dated 19.06.1988 passed by the learned Judge, Special Court (under E.C. Act), Malda, in connection with D.G.R. Case No. 8 of 1987.

2. By passing the impugned judgment and order this appellant was found guilty for commission of offence punishable under Section 7(1)(a)(ii) of the E.C.

Act for violating paras 3 and 5 of the Jute (Licensing and Control) order, 1961. This accused person was sentenced to suffer R.I. for 3 months along with a fine of Rs. 2,000/- and in default to undergo R.I. for further 6 months.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court the present appellant has preferred this instant appeal.

4. The case of the prosecution in nutshell is that:-

“Shri. Nisith Kumar Saha, Sub-divisional Agricultural Marketing Officer, Chanchal, District Malda lodged a written complaint on 23.01.1987 at about 01:30 pm by stating that on the date and time he accompanied with the District Enforcement Officer, Harischandrapur visited the jute godown of accused Shyam Sunder Larha at Tulishata within P.S. Harishchandrapur. At that time the accused was not found in the godown but the said godown was kept open and after visiting the godown they found 305 bales and 250 Qts of loose jute in the godown and on asking the staff of the said godown they failed to produce the purchase memo, license, movement register, sale memo, stock book and other documents. It is said by the de-facto complainant that there was no stock board displayed regarding 305 bales and 250 Qts of loose jute. The said jute was seized by preparing a seizure list in presence of the witnesses and the same was made over to the ‘Jimma’ of one Baidyanath Ram.”

5. Over the complaint lodged by this de-facto complainant case was started for violation of conditions of the license issued to the accused under the Jute (License and Control) Order, 1961.

6. In this case the accused pleaded not guilty when particulars of accusation under Section 7(1)(a)(ii) of the E.C. Act for violating paras 3 and 5 of the Jute Control Order were explained to him.

7. In this case 6 witnesses were examined by the side of the prosecution and documents were marked as Exhibits on his behalf. Two witnesses were adduced on behalf of the defense and the documents were also marked as exhibit on his behalf.

8. Learned Advocate appearing on behalf of the appellant said that on the date when the alleged raid was conducted by the Enforcement Officers, the said date i.e. 23.01.1987 was a public holiday on account of the birth day of Netaji Subhash Chandra Bose and as such the licensee cannot be expected to provide facility for inspection of accounts. It is said by the learned Advocate that PW3 has stated in his evidence that the workers of the godown of the accused said to the raiding party that the books of accounts and documents were all with the accused and as such the books of accounts could not be produced and it would be produced when the appellant come back.

9. Learned Advocate further said that the learned Trial Court did not at all consider the evidence of PW1 and PW2 to the effect that subsequently this appellant produced the books of accounts and register to the investigating officer (PW6) who duly verified and found the same in order but it was not

seized by the said witnesses. The attention of this Court is drawn by the learned Advocate that admittedly the FIR was made on 25.01.1987 but PW1 in his evidence alleged that the FIR was made on 23.01.1987. It is said by the learned Advocate that one Fekanlal was the night guard of the godown but he was not cited as a witness in this case. If he was cited as a witness to the prosecution then he might provide that on 23rd January, 1987 the office and godown of the appellant were closed on account of public holiday and none was present except the said Fekanlal. It is further said by the learned Advocate that the learned Trial Judge did not at all consider the statements of the appellants made before the Court under Section 313 of the Cr.P.C. wherein it is specifically stated that the office and godown of the appellant being situated outside the village in an open area and whenever he used to go out, the office was locked for security and safety purpose. It is said by the learned Advocate that the accused was convicted for violation of paras 3 and 5 of the Jute (licensing and Control) Order, 1961 but the relevant date when the alleged inspection was made by PW1 along with his team the office room was closed and this appellant was not present in the godown. It is said by the learned Advocate that after coming back, this appellant handed over the documents and although the Darogababu found it to be correct did not seize the same. So, it is said by the learned Advocate that there is illegality and material irregularity in the impugned judgment and order of conviction passed by the learned Trial Court and as such it may be set aside.

10. Learned Advocate for the State said that all the witnesses cited to the prosecution proved the case of the prosecution and there is nothing in the record or the evidences of the witnesses cited on behalf of the prosecution for which the impugned judgment and order of conviction may be interfered with.

11. I have considered the rival submission advanced by both the parties. Perused all the materials on record.

12. In this case prosecution was sought to prove that the accused failed to maintain true and correct account, that he failed to display the license conspicuously in the place of business and also failed to give any facility to the licensing authority to inspect the accounts. PW1 Nisith Kumar Saha and the de-facto complainant in his evidence has stated that on the relevant date and time he inspected the godown of the accused and found 305 bales of Jute and 250 Qs of loose jute in the godown. At the time of raid the accused person was not present there and the persons who were present failed to provide any document or books of accounts in respect of the stored jute excepting the stock register containing entries from 01.01.87 to 11.1.87. Neither of the prosecution witnesses stated that the accused maintained untrue and incorrect accounts on the date of raid i.e. 23.01.1987. One stock register containing entries from 1.1.87 to 11.1.87 was produced on behalf of the prosecution which was marked as MAT Exhibit 1 but the said stock register was disowned by the accused. So, it could not be proved by the prosecution in respect of entries in MAT Exhibit 1. The learned Trial Court held correctly that the prosecution failed to prove that the accused maintained untrue and incorrect accounts.

13. The next point which was sought to be proved by the prosecution that the license had not been displayed conspicuously placed in the business premises.

14. PW1 Nisith Kumar Saha, PW2 Subhas Chandra Das and PW3 Lakshman Singh categorically stated that there was no license in the godown but no inspection was made in the office of the accused as to whether the claim of the defence that the license was duly displayed in the said office room. So, the learned Trial Court held that the accused could not be said to be guilty for nondisplaying the license as required under Clause 14 of the license granted to this appellant. Moreover, at the time of examination of this accused under Section 313 Cr.P.C. by the learned Trial Court it has been stated that the license has been displayed in the office room of the accused.

15. It is held by the learned Trial Court that reasonable facilities to the licensing authority were not given by the licensee. It is admitted position that the date of raid i.e. 23.01.1987 was a public holiday on account of the birth day of Netaji Subhash Chandra Bose. It is the case of the defence that on that date the office of the accused was closed and moreover at the time of visit to the godown the accused was not there. It is said by the witnesses to the prosecution that they would inform by the persons who were present there about the absence of the accused. PW4 and PW5 stated that the night guard of the godown told that the appellant had went to Kolkata on that date and the appellants would return on the following date and all the documents and books of the accounts were with the appellant and those could be produced

after his return. PW1 and PW2 stated in their evidences that the accused showed the documents to the Darogababu and he saw the documents but it was not seized by the investigating officer. PW6 duly verified the documents so produced by the appellant and found the same in order.

16. PW1 in his evidence has stated that at the time of inspection he found employees were working in the godown and were doing the bailing operation but no such allegation was made in the first information report by the de-facto complainant. The night guard namely Fekanlal was not cited as a witness in this case. PW4 Sawarmal Bhakat, one of the seizure witnesses in his evidence has stated that he put signature at the godown of the accused on being asked by the Darogababu. PW5 Baidya Nath Ram stated that the night guard told him that the owner was away and admitted that he did not know anything else about the incident. It is said by the witnesses to the prosecution that the office of the accused was closed and the accused was not present at the place of occurrence. Only because of the godown was open and the labours were bailing the jute it could not be presumed that on the relevant date i.e. 23.01.1987 the office of the accused was open. It is stated by the witnesses of the prosecution that the shop room was closed on 23.01.1987 and when the shop room was closed there can be no relevance or justification to give reasonable facilities to the authority concerned and in such circumstances it cannot be held against the accused person.

17. Moreover, the appellant at the time of examination under Section 313 of Cr.P.C. stated that the office and godown being situated outside the village in

open area and whenever he used to go out, the office room was locked for safety and security. I have already stated that PW1 and PW2 in their statement have said that the appellant produced books of accounts and register to PW6 (investigating officer) who verified the same and found the same in order but he did not seize the same. Moreover, in the written complaint there is no statement that the workers who were present at the godown of the accused were doing the bailing operation when the investigating team inspected the godown of the appellant but at the time of giving deposition the PWs introduced a complete new story that at the time of alleged inspection it was found that some workmen were carrying of some bailing operation. The mere fact the accused did not provide facilities on the date of public holidays when it was admitted position that the office of the accused was remained closed then the possible conclusion that he did not provide facilities to the licensor/authority concerned cannot hold any water. I have already stated that it was said by the accused that license was displayed inside the office room which was closed on that date being a public holiday and no staff or workers were present nor anyone was working on that date and only the night guard was there. But the said night guard namely Fakenlal was not cited as a witness to the prosecution who might throw light as to whether the office and godown were closed or not on account of public holiday. Save and except the official witnesses other witnesses cited in this case did not say anything which may support the case of the prosecution.

18. Under such circumstances and discussion made above I am of the opinion that the learned Trial Court erred in law in finding this accused person as guilty for commission of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and accordingly, the same is liable to be set aside.

19. Accordingly, the criminal appeal being no. CRA 319 of 1988 is hereby **allowed.**

20. The impugned judgment and order of conviction dated 19.06.1988 passed by the learned Judge, Special Court (under E.C. Act), Malda, in connection with D.G.R. Case No. 8 of 1987 is hereby set aside.

21. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

22. Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)