

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction

Present :
The Hon'ble Justice Prasenjit Biswas

C.R.A. 48 of 1998

Kamal Kumar Das
Vs.
The State of West Bengal

For the Appellant : Mr. Sachit Talukdar
Mr. Tirtharaj Ghoshal

For the State : Ms. Ritupurna De Ghose
Mr. Kanchan Roy

Heard on : 18.09.2025

Judgment on : 18.09.2025

(Dictated in Court)

Prasenjit Biswas, J.

1. The impugned judgment and order of conviction dated 19.01.1998 passed by the learned Judge, Special Court (under E.C. Act), Malda in connection with D.G.R. Case No. 66 of 1995 is assailed in this appeal.

2. By passing the impugned judgment, this appellant was found guilty for commission of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and he was sentenced to suffer rigorous imprisonment for six months along with a fine of Rs. 2,000/-, in default of payment of fine to undergo further rigorous imprisonment for one month.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the behest of the appellant.
4. For the sake of brevity, the prosecution version is summarized hereunder:-

“The case was started on the basis of a complaint lodged by the defacto complainant stating, inter alia, that on 03.11.1995 in between 12 hours and 13:45 hours, a raid was conducted in the shop-cum-godown of the accused, Kamal Kumar Das. The raiding team had seized 62 bags of boiled rice, 9 bags of boiled rice and 20 bags of atta from the godown-cum-shop of the accused and 24 bags of boiled rice and 5 bags of atta were seized from the house. On asking, the accused failed to show any document of retaining those goods. Moreover, no stock of price board was found in the shop-cum-godown of the accused. As the accused violated the provision of para 3(2) of the W.B. Declaration of Stocks and Price of Essential Commodities Control Order, 1977, the case was started over the said complaint by the defacto complainant.”

5. In this manner, the criminal proceedings commenced and, on conclusion of investigation, a charge sheet came to be submitted against the accused person under Section 7(1)(a)(ii) of the E.C. Act.

6. The record reveals that nine witnesses were examined on behalf of the prosecution and documents were exhibited accordingly, while one witness was adduced from the side of the accused.

7. Mr. Sachit Talukdar, learned advocate for the appellant said that there are apparent contradictions and omissions in the statements of the witnesses and for which the impugned judgment and order of conviction passed by the learned Trial Court is not sustainable under the law. It is said that the independent witnesses, who are cited to the witnesses to the seizure, did not state anything for which the factum of seizure can be believed. Moreover, the accused produced his license at the time of conducting raid to the authority concerned and the same finds mention in the evidence of official witnesses, but no scrutiny of the same was done in course of investigation

8. It is further assailed by the learned Advocate that there are apparent contradictions as to the quantity of the seized article and the place of seizure, which also affects the very root of the prosecution case. Moreover, a raiding team member (PW9) was also the investigation officer in this case and as such a fair and free investigation could not be done and for the reason no investigation was carried out regarding retailer license of the accused.

9. It is further contended by the learned advocate that the prosecution case suffers from a fundamental defect inasmuch as no weighment of the seized articles was ever carried out at the time of search and seizure. This fact has been admitted by prosecution witnesses themselves, including the independent witnesses to the seizure. If there was no actual weighment of the alleged bags of rice and atta, then the prosecution has failed to establish the precise quantity of the articles allegedly stored by the accused. It is said that the entire foundation of the charge rests on the allegation that the accused had stored essential commodities beyond the permissible limit. However, in order to prove such an allegation, it was incumbent upon the prosecution to establish by credible and unimpeachable evidence that the exact quantity of the seized articles exceeded the statutory or licensed limit. Without weighment, the prosecution could not have determined the total stock with any degree of certainty.

10. Mr. Talukdar further said that the police personnel during search and seizure deliberately did not seize the stock of price board that was hanging in the shop of the appellant and thereby committed error. So, it is said that the impugned judgment and order passed by the learned Trial Court is not sustainable under the provision of law and as such, it may be set aside upright.

11. Ms. Ritupurna De Ghose, learned advocate for the State has said that there are no materials in the record for which the impugned judgment and order of conviction passed by the learned Trial Court may be interfered

with. It is said that the witnesses cited by the prosecution candidly supported the story of the prosecution. Search and seizure in connection with this case has been done in accordance with law.

12. It is further urged by the learned Advocate appearing for the State that the evidence on record, coupled with the materials collected during investigation, unmistakably establishes that the accused person has acted in contravention of the provisions contained in para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 as well as para 5 of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967. It is submitted that the testimonies of the prosecution witnesses, when read together with the documents exhibited, clearly demonstrate that the accused had failed to comply with the statutory obligations regarding declaration and maintenance of stock of essential commodities. The learned Advocate for the State contends that such violations squarely attract the penal provision under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, and therefore the learned Trial Court was justified in recording conviction against the accused. According to her, the Trial Court has appreciated the evidence in its proper perspective and has rightly come to the conclusion that the prosecution has been able to bring home the charge against the accused beyond all reasonable doubt.

13. On this premise, it has been argued that the impugned judgment and order of conviction and sentence passed by the learned Trial Court suffers from no illegality or infirmity warranting interference in appeal. Hence, it is prayed that the conviction of the accused be upheld and the

appeal preferred against the judgment and order of the learned Trial Court be dismissed as devoid of merit.

14. I have carefully examined the rival submissions put forward on behalf of both parties and have also scrutinized the materials available on the record.

15. In this case PW 1, PW 2 and PW 3 are the independent witnesses to the seizure. PW 1 (Shambhu Charan Das) signed on the seizure list as per direction of the Police. In cross-examination, this witness said the place, wherefrom rice and atta were seized from the godown of the accused and it was separated from the house.

16. In the instant case, PW2 was examined as one of the independent seizure witnesses, and his testimony has brought forth a vital contradiction in the prosecution story. In his cross-examination, PW2 has categorically stated that the police officer informed him that they had seized 24 bags of boiled rice and 5 bags of atta rice from the shop of the accused, and as per instruction of the police officer, he merely put his signature on the seizure list. This testimony of PW2 clearly indicates that he did not have personal knowledge of the actual seizure process and that his role was confined to signing the seizure list at the behest of the police officer. The significance of this statement becomes more glaring when compared with the averments made in the written complaint. In the written complaint, it has been specifically alleged that 24 bags of boiled rice and 5 bags of atta were seized from the house of the accused person. Thus, there is a direct and apparent

contradiction between the testimony of PW2 and the assertions made in the written complaint.

17. PW3 (Khokan Das), who was also examined as an independent seizure witness, has further weakened the prosecution case by supporting the line of testimony given by PW1 and PW2. In his deposition, PW3 stated that the Police Officer informed him that they had seized some rice from the shop of the accused person and, as per the instruction of the police officer; he put his signature on the seizure list. This categorical statement of PW3 demonstrates that he was not an eyewitness to the actual process of seizure; rather, he only signed the seizure list at the direction of the police officer without verifying or witnessing what was in fact seized and from where it was seized.

18. PW5, Shyamal Kumar Das, who was the Sub-Inspector of Police and the Investigating Officer of this case, has also introduced contradictions in his evidence which further weaken the prosecution story. In his deposition, PW5 categorically stated that after conducting a search, he seized 24 bags of boiled rice and 5 bags of atta from the godown of the accused. However, the written complaint does not mention that recoveries of those articles were made from the godown. On the contrary, it clearly asserts that the said articles were seized from the house of the accused. Thus, there is a direct inconsistency between the narration in the written complaint and the statement of PW5, who himself is the officer responsible for the seizure.

19. This contradiction assumes great significance because the exact place of seizure is a material fact that goes to the root of the prosecution

case. The complaint alleges seizure from the house and godown, PW2 and PW3 have stated that the Police told them about seizure from the shop, and now PW5 deposes that the seizure of 24 bags of boliled reice and 5 bags of atta was made from the godown which is contrary to the statement made in the written complaint. Such conflicting versions create doubt as to whether the seizure was effected at all, and if so, from where it was made. In absence of clarity, the prosecution's version cannot be accepted as truthful or reliable. Furthermore, PW5 has also deposed that he seized the retailer license from the house of the accused. This again creates confusion and inconsistency because while the license is said to have been seized from the house, the rice and atta are said to have been seized from the godown. The written complaint, however, asserts in unambiguous terms that both the rice and atta were seized from the house and godown of the accused. This contradiction not only weakens the credibility of the seizure proceedings but also casts serious doubt on the veracity of the complaint itself.

20. PW6, Constable No. 324 (Upendra Nath Basak) has stated that no weighment of the seized article was made in his presence.

21. PW7 (Sk. Kuddus) has stated in his evidence that the accused, Kamal Kumar Das, showed paper to the raiding authority. He also stated in the same line of PW 6 that no weighment of the seized article was made.

22. In the present case, the credibility of the alleged search and seizure conducted by the prosecution is seriously doubtful. The testimony of the public witnesses, namely PW1, PW2 and PW3, is of particular significance.

They have categorically stated in their depositions that they did not witness any actual seizure being carried out by the Investigating Officer or other police personnel. On the contrary, they admitted that, as per the direction of the police officer, they had only put their signatures on the seizure list. This establishes that their role was confined merely to signing documents at the behest of the police, without being eye-witnesses to the recovery or seizure of any article. Such a statement directly weakens the evidentiary value of the seizure list, which under law requires independent corroboration by unbiased public witnesses.

23. Furthermore, the testimony of PW8, who is a police constable, directly contradicts the depositions of PW5, PW6 and PW7, who are official witnesses with regard to the alleged search and seizure. PW8 has falsified the version of PW5, PW6 and PW7 by giving a different account of how the alleged seizure was made. When witnesses from the same prosecution side, particularly police personnel, contradict each other on a material point like search and seizure, the entire process becomes clouded with suspicion and loses its sanctity. In the present case, the prosecution's story is self-contradictory and suffers from serious infirmities with regard to the place of raid and the nature of seizure. In the written complaint itself, it has been clearly stated that the raid was conducted at the godown and house of the accused. This forms the basis of the entire prosecution case. However, PW8, who was part of the raiding team, has categorically deposed that he along with the raiding party went to the shop of the accused and it was

there that they allegedly found 62 bags of boiled rice weighing about 100 kgs each and 9 bags of boiled rice weighing about 90 kgs each.

24. This material contradiction between the written complaint and the oral testimony of PW8 creates a grave doubt as to where exactly the search and seizure were conducted. If the raid was actually at the godown and house of the accused, then the testimony of PW8 that such large quantities of rice were found at the shop is patently false. On the other hand, if PW8 is to be believed, then the very written complaint on which the prosecution is based is incorrect. In either case, it demonstrates that the prosecution witnesses are not speaking the truth and their evidences cannot be relied upon.

25. Adding to this inconsistency, PW9, who was another material witness, has not even mentioned the exact time at which the seizure was carried out. The omission to specify the time of seizure is not a trivial lapse, because the timing of seizure is a crucial factor in linking the accused with the alleged recovery. The absence of such detail further creates doubt as to whether any genuine seizure actually took place at the place, time, and in the manner as alleged by the prosecution.

26. In view of these contradictions and omissions, the prosecution has failed to establish the legality, genuineness and reliability of the alleged seizure. The signatures of PW1, PW2 and PW3 on the seizure list cannot be treated as independent corroboration of seizure, since they themselves admitted not witnessing the same. The falsification by PW8 of the version of other police witnesses renders the prosecution story doubtful, and the

failure of PW9 to mention the time of seizure makes the alleged recovery wholly unreliable. Thus, the entire prosecution case with respect to search and seizure stands vitiated and cannot be safely relied upon.

27. In the instant case, the very foundation of the prosecution's allegation stands on weak ground. It is alleged that the accused failed to display the stock register and price board in his shop, thereby violating the statutory requirements. However, from the evidence brought on record, it is clear that the search and seizure were not carried out at the shop premises of the accused where such display is required by law, but rather at his godown and residential house. The requirement of displaying a price board and stock register is specifically linked with a "shop" or "place of business" where articles are offered for sale to the public. The godown and house of the accused do not fall within the purview of such a public-facing establishment. A godown is essentially a storage facility meant for keeping stock in bulk, and the residence of the accused is obviously not a place of sale or display. Therefore, the prosecution's allegation regarding non-display of stock or price board becomes wholly immaterial and irrelevant in the context of search and seizure being made at places other than the shop.

28. It is a settled principle that penal provisions requiring compliance with display of stock and price lists must be strictly construed. Unless the prosecution establishes that the alleged non-compliance occurred at the shop premises where the accused was carrying on business with the public, the charge cannot be sustained. In the present case, no such

evidence has been adduced to show that the shop of the accused was inspected or that the mandatory requirements of display were found to be breached there. Instead, the seizure was admittedly made from his godown and house, which cannot attract the mischief of non-display provisions. Thus, even assuming the seizure of certain articles from the godown and residence is proved, it does not automatically establish violation of the provisions relating to display of stock and price board.

29. In cases of alleged seizure of incriminating articles, the prosecution is required to prove the factum of seizure with clear, cogent and reliable evidence. In the present case, serious doubt is casted upon the prosecution version by the testimony of PW6 and PW7, who were examined as material witnesses in respect of the alleged seizure. Both these witnesses, in their depositions, have categorically stated that no weighment of the seized articles was carried out at the place of occurrence or at any subsequent stage of the raid. If admittedly no weighment was conducted, the question naturally arises as to how the raiding team came to know and record the exact weight of the articles allegedly seized. The seizure list prepared by the investigating agency mentions specific weights of the items, but in absence of any weighment being carried out in their presence, the same becomes highly doubtful and creates a serious lacuna in the prosecution case. The seizure list cannot be treated as sacrosanct if the figures mentioned therein are not corroborated by the independent witnesses. The contradiction between the seizure list and the testimony of PW6 and PW7 goes to the root of the matter. When the witnesses themselves deny the process of

weighment, the entries in the seizure list regarding weight appear to be manufactured and do not inspire confidence. This discrepancy virtually discredits the factum of seizure itself because the prosecution has failed to establish by reliable evidence that the articles were weighed, identified, and properly seized in accordance with law.

30. The witness, who is cited on behalf of the accused person (DW 1), has stated in his evidence that the police came to the godown, which was closed at the relevant point of time, and he accompanied the accused and thereafter the godown was opened and the police officer had seen the board.

31. In view of the above facts and circumstances and discussions made above the prosecution has therefore failed to bring home the charge leveled against the accused and the allegation is rendered immaterial and inconsequential to the facts and circumstances of the case.

32. Accordingly, the instant appeal be and the same is hereby **allowed**.

33. The impugned judgment and order of conviction passed by the learned Trial Court dated 19.01.1998 in connection with D.G.R. Case No. 66 of 1995 is hereby set aside.

34. The appellant is on bail. He is to be discharged from bail bond and be set at liberty if not wanted in connection with other case.

35. In view of provision of Section 437A of Cr.P.C. (Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023) the appellant shall have to execute bail bonds with sureties and such bail bonds shall be in force for six months.

36. Let a copy of this judgment along with the Trial Court Records be forthwith sent down to the learned Trial Court.
37. Urgent Photostat Certified Copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Prasenjit Biswas, J.)