

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 423 Of 1988

Swapan Kumar Bera

-Versus-

The State of West Bengal

For the Appellant : **Mr. Soham Banerjee,
Mr. Prasar Baidya**

For the State : **Ms. Faria Hossain, Ld. APP
Mr. Samarjit Balial.**

Hearing concluded on : **14.08.2025**

Delivered on : **26.08.2025**

Prasenjit Biswas, J:-

1. The judgment and order dated 30.08.1988 passed by the learned Judge, Special Court (E.C. Act), Midnapore in D.E.B.G.R. No. 15 of 1986 arising out of Daspur P.S. case 11.16.1986 is assailed in this appeal.

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 Act X of 1955 and was sentenced to simple imprisonment for six months along with a fine of Rs. 1,000/- and in default of payment of fine to undergo further simple imprisonment for one month.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction the present appeal is filed at the behest of the appellant.

4. The instant case was started on the basis of a complaint lodged by S.I. of Police, D.E.O. of Ghatal District Midnapore stating interalia that on 11.06.1986 in between 9:30 hours and 11:30 hours the complainant along with his raiding team held raid in the unauthorized shop and godown of the accused situated at Barasat Bazar within P.S. Daspur. They found the accused was dealing with light diesel oil and kerosene oil kept in barrels in his godown. On demand the accused could not produce any license or any authority in support of dealing in such kerosene oil and light diesel oil. Moreover, no stock cum rate board was found displayed at the place of business of the accused. The barrels containing the kerosene and diesel oil which were kept in front of the shop were seized by the raiding team and kept in zimma of one Susil Kr. Jana. A sample of kerosene oil and light diesel oil was taken and subsequently, it was sent to the Indian Oil Corporation for test. It is stated that as the accused has violated the provision of Para 11(2) of the West Bengal Kerosene Control Order, 1968 and Para 3 of the West Bengal Declaration Stock and Prices of Essential

Commodities. Order 1977 and for that the accused is liable to be convicted under Section 7(1)a(ii) of Act X of 1955.

5. In this case 8 witnesses were cited by the side of the prosecution and documents were marked as exhibits on his behest. Neither any oral nor any documentary evidence was adduced on behalf of the appellant.

6. Mr. Soham Banerjee learned Advocate appearing on behalf of the appellant said that there are apparent contradictions and omissions in the evidences of the witnesses cited on behalf of the prosecution and as such the impugned judgment and order of conviction passed by the learned Special Court is not sustainable under the eye of law. It is said that there is every doubt regarding the place of seizure of the articles. The attention of this Court is drawn by the learned Advocate regarding evidence of PW 1, the D.E.O./complainant who has stated in the written complaint that the place of seizure is the unauthorized shop and godown of the accused situated at Barasat Bazar and this witness corroborated the same at the time of giving deposition. However, PW2 one of the seizure witnesses who turned hostile has stated in his evidence that the seized barrel containing kerosene oil and light diesel oil were found on a football ground. It is further said that the PW5, the another seizure witness who also turned hostile has stated in his evidence that the raid was conducted by a police at the shop of one Sital Mondal on the relevant date and time.

7. It is further assailed by the learned Advocate for the appellant that the de-facto complainant/D.E.O (PW1) mentioned that he had collected 200 grams

of kerosene oil and 200 grams of diesel oil from the seized barrels as sample but no explanation has been given by the side of the prosecution that how the samples were measured in grams when the same was collected in the bottles. It is said that in the written complaint 3 barrels were seized but the de-facto complainant collected only two numbers of samples and the prosecution has failed to give any reasonable explanation in this regard. It is said that although PW1 has stated in his cross-examination that he prepared no measurement chart but one of the members of the raiding party i.e. PW 4 stated about the quantities of the seized oil from his memory and this witness said that no measurement chart was prepared.

8. It is further said by the learned Advocate that PW8 (investigating officer) although examined some non seizure witnesses but he only mentioned the name of PW7 as charge-sheeted witnesses. PW7 has stated that he owned a diesel shop and the cultivators used to purchase diesel from his shop. It is said by the learned Advocate that the oil which was seized was stored by this appellant for the purpose of running the machine owned by the appellant. Lastly, it is said by the learned Advocate that the learned Trial Court did not at all consider the case of the defense and the answers given by the accused at the time of his examination under Section 313 Cr.P.C. In support of his contention learned Advocate placed reliance upon a decision rendered by the Hon'ble Apex Court in case of **Nagaraj vs. State represented by Inspector of**

Police, Salem Town, Tamil Nadu¹. So, it is said by the learned Advocate that the impugned judgment and order of conviction passed by the learned Trial Court suffers from illegality and material irregularity which cannot stand under the eye of law.

9. Mrs. Faria Hossain, Ld. A.P.P., appearing for the state submits that there is nothing material in the record for which the impugned judgment and order passed by the learned Trial Court may be interfered with. It is said by the learned Advocate that all of the witnesses supported the case of the prosecution and the samples which was sent to the Indian Oil Corporation Laboratory who in turned sent the report confirming the seized oil being the kerosene oil and light diesel oil. It is said by the learned Advocate that as per provision of Para 11(2) of the West Bengal Kerosene Control Order, 1968 no person other than an oil distributing company, an agent or a dealer shall transport kerosene or store kerosene or shall have in possession kerosene exceeding 10 litters at a time except under and in accordance with a permit issued by the director or District Magistrate having jurisdiction.

10. As per submission of the learned Advocate that in this case 219 liters of kerosene oil was seized from the godown and shop of the appellant which apparently is violative of the provision mentioned above. It is said by the learned Advocate that if for a moment it is presumed that the accused has got any pumping machine then also he had no authority to store that amount of kerosene oil. Moreover, this accused/appellant failed to give any

¹ (2015) 4 Supreme Court Cases 739

reasonable/plausible explanation for storing the said 219 liters of kerosene as well as light diesel oil in his shop room. So, it is said that there is nothing illegality in the impugned judgment and order of conviction and the same may be upheld.

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

12. PW1 Himangshu Bimal Chowdhury, D.E.O. Ghatal has stated in his evidence that he and his raiding team held raid in the shop of the appellant on 11.06.1986 in between 9:30 hours to 11:30 hours. This witness further said that at the time of raid he found 125 liters of light diesel oil in one barrel, 75 liters of kerosene oil in one barrel and 144 liters of kerosene oil in other barrel and on asking this appellant/accused failed to show any document for his dealing with kerosene oil and diesel oil. Moreover, no stock cum rate board was displayed in the front of the shop and no books of account were also produced by the accused. The said kerosene oil and light diesel oil were seized by the witness by preparing a seizure list and after taking signatures of independent witnesses on it. It is said by this witness that he prepared the Zimmanama in the presence of Zimmader. This witness took sample of 200 grams of kerosene oil in one bottle and 200 grams of diesel oil in another bottle. This witness corroborated the contentions made in the written complaint which is marked as exhibit 2 in this case.

13. PW3 Bhuneswar Tiwari, a watcher constable and one of the members of the raiding team supported the contentions made by PW1/de-facto

complainant. This witness said that on the relevant date and time a raid was conducted in the shop of the appellant Swapna Bera and 75 liters in one barrel and 144 liters of kerosene oil in another barrel and 125 liters of light diesel oil were found in that shop which was seized by PW1 by preparing seizure list. This witness puts signature on the said seizure list which is marked as exhibit ¼ in this case. PW2 Sunil Kr. Jana and PW5 Baistha Deb Chowdhury who are the independent witnesses to the seizure list were declared hostile by the prosecution.

14. PW6, P.G. Murthy, Senior Quality Control Manager, Indian Oil Corporation proved the chemical examination report prepared by the Indian Oil Corporation Laboratory which confirms the seized articles are to be kerosene oil and light diesel oil.

15. It appears from the seizure list that the place of seizure has been described as in the front of the shop of the appellant and kerosene oil and light diesel oil were kept in different containers. PW3 and PW1 have stated in their evidence that appellant was present at the shop at the time of raid. It appears from the report prepared by the Indian Oil Corporation Laboratory (exhibit 8) that the sample tested is super quality kerosene oil as per the Indian standard.

16. PW7 although declared hostile by the prosecution but in examination in chief he has stated that he knew shop of the appellant which is two miles off from his shop and police officer went to the shop of the appellant on 11.06.1986 at about 9 am or 10 am. It is said by this witness that police officer seized diesel oil and kerosene oil from the shop. It is further stated by this

witness that when the police officer asked him to depose for such seizure, at that time the appellant was running the shop. So, it appears from the evidence of this witness that he has supported the prosecution case and seizure of kerosene oil from the shop of the accused.

17. PW8 is the investigating officer who after completion of investigation submitted charge-sheet in this case.

18. After careful appreciation of the oral and documentary evidence available on record, particularly the testimony of PW1, PW3, PW6, PW7 and PW8, this Court finds that the prosecution has successfully established its case beyond all reasonable doubts. The evidence of the aforesaid prosecution witnesses is consistent, cogent and trustworthy, and the same stands corroborated by the seizure list prepared in course of investigation. It has clearly come on record that a substantial quantity of kerosene oil, amounting to 219 liters, together with light diesel oil, was seized from the shop room of the appellant. The provisions of Para 11(2) of the West Bengal Kerosene Control Order, 1968, categorically lay down that no person, other than an oil distributing company, an authorised agent or a licensed dealer, shall transport, store or possess kerosene in excess of 10 liters at a time. The object of the Control Order is to regulate the distribution of kerosene oil, which is an essential commodity, and to prevent its unlawful hoarding, black marketing or misuse. Any possession beyond the permissible limit, without lawful authority or supporting documents, is thus prohibited by law. In the present case, the seizure list unmistakably proves that as many as 219 liters of kerosene oil, along with

light diesel oil, were recovered from the possession of the appellant. The appellant, though confronted with such seizure, failed to produce any valid licence, authorization, or documentary proof to justify his possession of such large quantity of kerosene oil. His failure to provide any explanation consistent with lawful possession, in the face of overwhelming evidence of seizure, is a circumstance that further strengthens the prosecution case. Accordingly, it is apparent that the appellant was in possession of kerosene oil far in excess of the permissible limit fixed under Para 11(2) of the West Bengal Kerosene Control Order, 1968, and in absence of lawful authority to do so, his act squarely amounts to violation of the said statutory provision.

19. At the time of examination of this accused under Section 313 of Cr.P.C. he stated that he had no shop and he was not present at the time of raid. In reply to question put by the Court this appellant has stated that he kept the oil for his use in machine, even it is presumed to be correct then this appellant had no authority to keep oil beyond the permissible limit. At the time of examination of accused under Section 313 of Cr.P.C. it was claimed by the accused to cite witnesses on his behalf but subsequently, a petition was filed by the learned Advocate for the accused stating that this appellant would not adduce any defence evidence. The decision relied by the learned Advocate for the defence in case of **Nagaraj** has no manner of application in respect of facts of the present case.

20. I examined the entire evidence on the record and I found the present case in fact falls squarely under Section 7(1)a(ii) of Act X of 1955. I do not

intend to disturb the conviction in respect of offence under Section 7(1)a(ii) of Act X of 1955.

21. The facts indicate that incident pertains to more than 39 years ago. The question that thus arises for consideration is as to whether it would be appropriate to direct the petitioner to undergo the rest of the sentence. There is no over-emphasising the fact that speedy trial which is the essence of justice has been lost.

22. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair and just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It is trite law that if Art. 21 and the right to speedy public trial is not merely a twinkling star in the high heavens to be worshipped and rendered vociferous lip-service only but in deed is an actually meaningful protective provision, then a fortiori expeditious hearing of substantive appeals against convictions is fairly and squarely within the mandate of the said Article. It is trite that long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence.

23. Given the fact that the trial and appeal proceedings have in the case at hand continued for nearly 39 years by now causing immense trauma, mental incarnation and anguish to the appellant.

24. When I examine the facts of the case at hand, I find that firstly, the incident is of the year 1986, secondly, the case is pending for the last 39 years; thirdly, the appellant has now reached at the age of old; fourthly, he has so far, during the trial and after suffering conviction, undergone total jail sentence of 9 days; fifthly, he has been on bail throughout for the last 39 years and did not indulge in any criminal activities nor breached any conditions of the bail granted to him.

25. Mitigating circumstances in this case is that the appellant/accused is undergoing the agony of this protracted trial for the last more than 38 years and he can be compensated suitably by reducing the subsistence sentence imposed upon him to one already undergone by him. For the forgoing reason I reduced the substantive sentence of the appellant to the one already undergone by him.

26. In other words this Court alters the jail sentence and award him what is already undergone by him and at the same time enhances the fine amount of Rs. 1,000/- to 3,000/- to meet the ends of justice.

27. The appellant is therefore now not required to undergo anymore jail sentence. However, in case if fails to deposit a fine amounts of Rs. 2,000/- after adjusting the amount of Rs. 1,000/- if already paid by the appellant, he will have to undergo simple imprisonment for a period of one month.

28. In view of the forgoing discussion the appeal succeeds and is **partly allowed**. The impugned judgment and order is modified to the extent indicated above.

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

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

(Prasenjit Biswas, J.)