

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 367 of 1989

Madhusudhan Manna

-Versus-

The State of West Bengal

For the Appellants : **Mr. Monish Sen,
Mr. Arijit Dey,
Ms. Oisani Mukherjee.**

For the State : **Ms. Faria Hossain, A.P.P.
Ms. Mamata Jana.**

Hearing concluded on : **29.04.2025**

Judgment On : **06.05.2025**

Prasenjit Biswas, J:-

1. This instant appeal is preferred at the behest of the appellant/convict challenging the impugned judgment and order of conviction dated 18.08.1989 passed by the learned Judge, Special Court (E.C.) Act, 1955 in connection with D.E.B.G.R. Case No. 26 of 1988 finding this

appellant guilty for commission of offence punishable under Sections 7(i)(a)(i) of the Essential Commodities Act (Act 10 of 1955) and sentenced him to suffer simple imprisonment for six months along with fine of Rs. 500/-, in default of payment of fine to suffer further simple imprisonment for a period of one month.

2. In short campus the story of the prosecution is that:

“On 18.06.1988 Madhusudan Manna of Village-Mayna, P.S. Goaltore, Dist. Midnapore, kerosene oil dealer received 700 litres of kerosene oil in two barrels from Humgarh for distribution in Anchal No. IV. On the way he dropped one barrel containing 200 litres of kerosene oil at village Hatimasan with intention to sell the same through the grocery shop of Kirity Patra. Anchal Pradhan of Anchal Nos. 5 and 6 enquired in to this matter and it was revealed vide G.D. Entry No. 585 dated 19.06.1988. After four days of the incident on 19.06.1988 the complainant had been to the house of Madhusudan Manna who was absent at the time in his house, no stock-cum-rate board was found at his place of business. One barrel of kerosene oil containing 200 litres was found in the house. On the demand met by the complainant, the inmates of Madhusudan Manna failed to produce any document. The said barrel containing 200 litres of kerosene oil was seized by the complainant and therefore, he went to Hatimasan on the same day and found one barrel of kerosene oil containing 200 litres at the compound of the house of Anil Mal. It was reported that the said oil was dropped

out by the driver of the cow cart with a view to run clandestine business of the said barrel of kerosene oil. The said barrel of kerosene oil was also seized by the complainant and it was kept in zimma of Sagar Das. A case was started by the concerned police station against Madhusudan Manna for alleged violation of Sections 4, 12(2) and 15 (c) of the West Bengal Kerosene Control Order, 1968 and for violation of Para 3(2) of the Declaration of Stocks and Prices of Essential Commodities Order, 1977 and the case was started under Section 7(i)(a)(i) of Act X of 1955.”

3. The accused pleaded not guilty and claimed to be tried. In this case, 14 witnesses were examined at the side of the prosecution and documents were marked as exhibits on its behalf.
4. Mr. Monish Sen, learned Advocate for the appellant said that there are apparent contradictions in the statements of the witnesses. The learned Trial Judge has failed to appreciate the discrepancies in the evidences of witnesses adduced and came to a wrong conclusion which caused serious prejudice to this appellant-convict. It is said by the learned Advocate that the enquiry was made in the absence of this accused/appellant which negated the story of the prosecution. The learned Trial judge failed to appreciate that there having no element of mensrea which is an essential element of the prosecution. The case was wrongly started on the fact that the appellant failed to produce any document at the time of enquiry. It is said that there are apparent

discrepancies in the deposition of PW14 but the learned Trial Court believed PW14 and other witnesses cited on behalf of the prosecution and passed the impugned judgment and order of conviction. The attention of this Court is drawn by the learned Advocate to the relevant portion of the judgment wherein it is held by the learned Trial Court, inter-alia, that PW5 stated in his examination-in-chief that on 18.06.1989 Bhanu Manna was bringing two barrels of kerosene oil through village Hatimasan, and he dropped one barrel by the side of the house of Anil Mal for selling the same in the black market. The Trial Court held that the prosecution has not adduced any convincing oral evidence nor has produced any scrap of paper to show prima facie that at any point of time, the accused has sold any quantity of kerosene oil in the black market and so mere dropping of one barrel of kerosene oil at Hatimasan by Bhanu Manna would not help the prosecution to prove the motive of the accused or selling the same at a price higher than that fixed by the appropriate authority.

5. It is further said by the learned Advocate that it would be evident from the First Information Report that the date of occurrence was written as 18.06.1988 but after gapping of four days i.e. on 23.06.1988 the instant complaint was lodged and no explanation has been given to that extent. PW1 at the time of giving deposition stated that at about 10A.M., on 19.06.1988 he submitted one written complaint in the thana. The attention of this Court is drawn to the statement of this

PW1 wherein he stated that he was not on the spot when police seized the kerosene oil. It is said by the learned Advocate that it would appear from the evidence of PW1 that there was a rivalry in between the son-in-law of this witness and this appellant/convict to get M.R. dealership for the same place and it has been admitted by this witness that both of them had applied for getting M.R. dealership for the same place prior to the occurrence. So, there is every possibility of false impleadment of the accused with the offence alleged by the complainant/PW1. It is said by the learned Advocate that PW2, Bhanu Manna, the driver of the cow cart was declared hostile and cross-examined by the side of the prosecution. This PW2 in his examination-in-chief stated that he dropped one barrel of kerosene oil at Hatimasan in front of the house of Anil Mal as the bullocks of his cart refused to move anyway and he asked Madhu Manna to keep watch over that barrel. On cross-examination of this witness by the prosecution nothing has come out from his deposition which may help the the prosecution to prove its case. The learned Advocate only relied upon the evidences of PW1, PW2, PW10, PW11, PW13 and PW14 and said that there are apparent contradictions and omissions in the deposition of the witnesses which may lead doubts in the mind about the truthfulness of the case of the prosecution. As per submission of the learned Advocate that the investigation was not done properly and in accordance with law as the Investigating Agency had refused to see the documents and papers of

the business of this appellant-convict whereas it is admitted position that this appellant is a retailer in kerosene oil. So, it is not believable that he failed to produce any piece of paper regarding his business of kerosene oil. It is submitted by the learned Advocate that the impugned judgment and order of conviction passed by learned Trial Court may be set aside.

6. Ms. Faria Hossain, learned Advocate for the State said that there is no illegality or irregularity in the impugned judgment and order of conviction. As per submission of the learned Advocate for the State that all the witnesses barring few witnesses supported the case of the prosecution. It is said by the learned Advocate that this appellant received 400 litres of kerosene oil of two barrels and on the way this appellant dropped one barrel of kerosene oil containing 200 litres at village Hatimasan with intention to sell the same through the local grocery shop. The search and seizure was held and investigation was also properly done by the Investigating Officer. There is culpable state of mind of the appellant at the relevant point of time and as such he contravened the provisions of the relevant Order and Act. As per submission of the learned Advocate there is nothing in the evidences for which the story of the prosecution can be disbelieved. There is nothing illegality in the impugned judgment and order of conviction passed by the learned Trial Court and as such; there is nothing to interfere with it.

7. I have considered the rival submissions advanced by both the parties. Perused all the materials as gathered in the record.
8. It is admitted position that this appellant is a retailer in kerosene oil. The instant case was started on the basis of a complaint lodged by PW1 who was an Anchal Pradhan of Patharpara, Anchal No. 4 who also admitted that this appellant is a retailer in kerosene oil. It appears from the formal FIR that the date of occurrence was on 18.06.1988 and it was reported after gap of four days i.e. on 23.06.1988 at 10.35 hrs. There is no explanation regarding such delay in lodging of FIR by the side of the prosecution. It is said by the witness (PW1) that he was not on the spot when police seized the kerosene oil. It is the case of the defence that this appellant and the son-in-law of this PW1 had applied for getting M.R. dealership for the same place prior to the occurrence and as such, false entanglement of this appellant-accused with the offence allege cannot be ruled out. PW1 admitted this fact in cross-examination that his son-in-law and this appellant prior to the occurrence applied for getting M.R. dealership for the same place.
9. PW2, Bhanu Manna is the driver of the cow cart and it is the allegation against him that at the instruction of this appellant he dropped out one barrel containing kerosene oil of 400 litres. In examination in chief this PW2 stated that he dropped one barrel at Hatimasan in front of the house of Anil Mal, as the bullocks of his cart refused to move anyway. This statement of this witness was not contradicted by the side of the

prosecution. This witness was declared hostile by the side of the prosecution and cross-examined him but nothing has been elicited from such cross-examination which may help the prosecution to prove its story. Rather in the cross-examination of this witness by the side of the defence he said that this appellant did not accompanied him for bringing kerosene oil from Humgarh on 18.06.1988 and after giving direction upon this witness for bringing the kerosene oil on 17.06.1988, this appellant went to saradah ceremony and gave this witness written authority which he deposited with Manoranjan Roy. In cross-examination, this witness said that they never sold kerosene oil in the black market and for bringing the barrel he went on the spot with one cow cart but the villagers did not allow him to bring back the barrel.

- 10.** In this case, PW2, PW3, PW4, PW8, PW9 and PW10 were declared hostile by the side of the prosecution. Although, these witnesses were declared hostile by the side of the prosecution and cross-examined them, but for coming to just conclusion in this appeal I am mentioning some of their statements in following:-

PW3 said that he did not know nothing about any incident of 18.06.1988 and after seizure one drum of kerosene oil by preparing seizure list the said drum of kerosene oil was kept in his zimma under zimmanama.

PW4 in his cross-examination by the side of the prosecution stated that the ration card holders get kerosene oil according to quota

from the shop of this appellant and the statement was not contradicted by the prosecution. Moreover, in cross-examination by the prosecution, this PW4 stated that the seized barrel was found inside the courtyard of this house of this appellant and this appellant was not in his shop on that day and the shop was closed.

PW8 stated that on 19.06.1988 in the evening Daraga Babu went near the house of Anil Mal and seized kerosene oil from one field by the side of the house of Anil Mal but he could not say who the owner of the said kerosene oil was. It is said by this witness that the seized oil was kept in his zimma. In cross-examination by the side of the defence this witnesses said that he came to know from Anil Mal that being unable to carry two barrels, PW2 the driver of the cow cart kept one barrel with Anil Mal.

PW10 was also declared hostile by the side of the prosecution and cross-examined him but his deposition does not help the prosecution to prove its case.

- 11.** PW5, Ajit Nandi stated that his house is 2KM away from the house of Anil Mal of Hatimasan. This witness said that on 18.06.1988 PW2 was bringing two barrels of kerosene oil to village Hatimasan and he dropped one barrel by the side of the house of the Anil Mal for selling the same in the black market. It is said by this witness that he reached the spot and found the barrel there and many villagers on the spot. So, this witness accidentally was present at the time of dropping of one

barrel of kerosene oil by PW2 at the spot. In cross-examination, this witness said that he did not find Bhanu on the spot after reaching thereon and he heard from the villagers what he had stated. This witness further said that he had no strained relation with the complainant (PW1).

- 12.** PW6, Paresh Das is a witness to the seizure and admitted that the appellant is a kerosene dealer. On cross-examination this witness said that the seized barrel was on the vested land occupied by Madan Mal.
- 13.** PW7, Arshed Ali Khan stated in his cross-examination that many villagers excepting him saw that Bhanu Manna dropped the barrel and after reaching on the spot he heard from others that after dropping one barrel on the spot PW2 had driven away his cart with another barrel. This witness is not the witness to the incident and what he has stated before the Court had heard from others. So, reliance cannot be made on the deposition of this witness.
- 14.** PW9, Manoranjan is a dealer of kerosene oil and he used to supply kerosene oil to retail dealers of kerosene oil against allotment made by the Food and Supply Department. It is admitted by this witness that this appellant deals in kerosene oil and he drew kerosene oil from him and PW2 the cow cart driver of this appellant received 400 litres of kerosene oil on 18.06.1988 from him as per allotment granted by the Department. In cross-examination this witness stated that on 18.06.1988 this appellant sent the man with a letter to him stating

therein that he would go to saradah ceremony and stated in the later for delivering the kerosene oil to PW2. PW11, Santimoy Banerjee an U.D. Assistant attached to Kerosene Oil Section of Food and Supply Department of Sub-Divisional Controller of Food and Supply, Midnapore also admitted that this appellant is a retailer of kerosene oil as per their office records within P.S. Goaltore. This witness further stated that as per allotment list from 13.06.88 to 19.06.88, 400 litres of kerosene oil were allotted to this appellant.

- 15.** PW13, S.I. of Police stated that he had been to the house of the appellant at village Mayna and there found one drum containing 200 litres of kerosene oil but on being asked by this witness, the inmates of the appellants gave out that this appellant was not in the house at that time. This witness stated in cross-examination that he lodged the FIR on 23.06.1988 at 10.15 hrs. So, as per statement of this witness FIR was lodged after gapping of four days of the alleged incident. No explanation was given by the side of the prosecution for causing such delay of lodging FIR. This witness further stated in cross-examination that on the spot he did not record any statement of any witnesses.
- 16.** PW14, Investigating Officer of the case stated that PW10 made statement before him that on 18.06.1988 in the noon he along with others intercepted oil with this appellant and on 18.06.1988 at about 2 P.M. while going to his house with two barrels containing 400 litres of kerosene oil in a cow cart this appellant dropped one barrel of 200

litres in their village illegally but it is not the case of the prosecution that this appellant dropped one barrel of kerosene oil rather it was dropped by PW2, driver of the cow cart. So, it is apparent that there is a contradiction in the statement of the witnesses as to who dropped one barrel containing kerosene oil of 200 litres. Moreover, this witness in cross-examination stated that he could not say the description of the house of the accused and he would not be able to say at which particular place house of the accused is situated.

17. It would be evident from the evidences cited by the prosecution that at that point of time of conducting raid this appellant being the retail dealer of kerosene oil was not present at the spot and it was admitted by PW4 that at that point of time the shop was closed and this appellant was not in his shop. It is the case of the prosecution that on being asked the inmates of this appellant failed to produce any document in respect of dealing kerosene oil by the appellant as retail dealer. PW9 stated that a letter was sent to him that this appellant would go to saradah ceremony and asked him for delivering the kerosene oil to PW2.
18. Reliance has been made by the learned Advocate for the appellant upon the decision rendered by a coordinate Bench of this Court in the case of **Adwaita Kumar Kotal –vs-State** reported in **(2008)2 C Cr LR (Cal) 282**. It is said that in the said report the Bench held that when the accused was absent and during such absence if they failed to produce

the relevant documents, no violation can be said to be concluded. It is profitable to quote paragraph 8 of the said report which entails that:

“8. It is submitted that the hour of inspection was in the evening when unquestionably the shop was closed and no business was transacted. The appellant was not in the shop nor in his house. His son was called to the shop and asked to produce documents and the son produced whatever he could be able to do and if the appellant had been given an opportunity to explain the alleged discrepancy. He could have explained by producing all documents and non-availability of licence or other document does not mean that they were not present or were not available with the appellant who was admitted not present in the village as he had gone to Bankura. The West Bengal Sugar Dealer Licensing Order, 1980 is neither applicable to the appellant nor to the M.R. shop in question. The son of the appellant cannot be said to be the competent person to produce the documents and registers. The son of the appellant admittedly was not found selling any commodity to anybody or was transacting any business from the shop room. The son of the appellant was not an employee of the M.R. shop of the appellant and he was made to open of the shop under the instruction of the F.I.R. maker. The law is very clear that the shop must be available for inspection during business hours whenever it was required for inspection and non-production of registers and documents to the

Inspector during the business hours on a working day is in the absence of proper explanation punishable under Section 7 of the Act for breach of licensing order. Here in the instant case, no business was being transacted in the shop and it was found closed. Therefore, in the circumstances when the appellant was not present in the shop or in his house could not be expected to produce all documents including licence instantly and because of such non-production he could not be punishable under Section 7 of the Act. In the circumstances, I find that the prosecution could not be proved.”

- 19.** So, in view of the decision of the co-ordinate Bench of this Court that when the appellant was not present in the shop nor in his house could not be expected to produce all documents including licence instantly and for such non-production he could not be punished. As it is admitted position that at the time of conducting raid this appellant was found absent and on asking of production of documents regarding the business of the appellant his inmates failed to produce any document. I have already said that it is an admitted position that this appellant is a retail dealer of kerosene oil. PW14 stated during investigation he visited the house of the accused and served one written notice on him directing him to produce relevant registers and documents relating to his business. Although, he received the notice on putting his signature on the original but this appellant could not produce any relevant

register or document and as such he arrested the accused. When it is admitted position that this appellant is a retail dealer of kerosene oil and then definitely he had documents with him. So, opportunity could be given to this appellant for production of these documents regarding his retail dealership of kerosene oil.

- 20.** I have already said that the learned Trial Court correctly held that mere dropping of one barrel of kerosene oil at Hatimasan by PW2 would not help prosecution to prove the motive of the appellant for selling the same at a price higher than the price fixed by the appropriate authority. So, the story of the prosecution in respect of dropping out one barrel of kerosene oil by PW2 does not stand in the eye of law. The other part of the prosecution story regarding dealing of kerosene oil as a retail dealership illegally does not also stand in the eye of law as per discussion made hereinabove. It is apparent that the learned Trial Court failed to appreciate all the discrepancies in the light of the evidences of witnesses and came to a wrong conclusion finding this appellant guilty for commission of the alleged offence.
- 21.** In view of the facts and circumstances and discussion made above I am of the opinion that the impugned judgment and order of conviction passed by the learned Trial Court dated 18.08.1989 passed in connection with D.E.B. G.R. Case No. 26 of 1988 under Section 7/1(a)(i) of the Act 10 of 1955 is liable to be set aside.
- 22.** Accordingly, the instant appeal being CRA No. 367 of 1989 is **allowed**.

- 23.** The impugned judgment and order of conviction passed by the learned Trial Court dated 18.08.1989 passed in connection with D.E.B. G.R. Case No. 26 of 1988 is hereby set aside.
- 24.** The appellant is discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
- 25.** Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
- 26.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)