

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 228 OF 1991

RAM CHANDRA NANDI

VS

THE STATE OF WEST BENGAL

Amicus Curiae : Ms. Anuska Bose, Adv.
For the State : Mr. Ranabir Roy Chowdhury, Adv.
Mr. Mikrza Firoj Ahmed Begg., Adv.
Last heard on : 17.09.2025
Judgement on : 11.11.2025
Uploaded on : 11.11.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an appeal filed under Section 374 (2) of the Code of Criminal Procedure, read with Section 12 AB of the Essential Commodities Act by the appellant against the judgement of conviction dated June, 22, 1991 passed by the learned Judge, Special Court under the Essential Commodities Act, Contai, in E.C.A case no. 4 of 1988 thereby convicting the appellant on the charge framed for commission of offence punishable under Section 7(1) (a) (ii) of the Essential Commodities Act for alleged violation of clause 12 of the West Bengal kerosene control order, 1968 and clause 3 of the West Bengal lubricating oil licensing order, 1967 and sentencing him to suffer rigorous imprisonment for

1 year and to pay a fine of ₹2000 in default to suffer further rigorous imprisonment for 3 months.

- 2.** The prosecution case in short is that on the basis of a complaint lodged by one G.C Bose, Sub- inspector of Police of Egra Police Station case no. 12 dated 24.7.88 was registered alleging that on 20.7.1988, said G.C Bose, along with other police officers held an inspection in the shop room of Ram Chandra Nandi, the Appellant herein which is situated at Kalna at about 10 PM. On demand, Ramchandra produced the license in respect of his business in kerosene oil but failed to produce other papers. On physical verification, 1900 litre of kerosene oil and 40 litre of mobil oil contained in a barrel were found to be stored there in and on enquiry, it was informed by said Ramchandra that the relevant papers are lying deposited with the food and supplies department.
- 3.** On consideration of such fact, no specific case under the Essential commodities Act was lodged and he was arrested in connection with a case started under Section 41 of the Code of Criminal Procedure read with others and the commodity were seized and left in the zimma of one Kamala Kanta Nayak. Later on the informant ascertained from the local food and supply office over phone that no such papers were deposited with the side office by Ramchandra. On 24.7.19 88, Ramchandra was again interrogated, and he admitted that the papers were not actually deposited by him with the food and supply office, and then on 24.7.88, the complaint was lodged and the specific case started under section 7(1) (a) (ii) of the Essential Commodities Act against Ramchandra for violation of para 12 of the West Bengal kerosene control order, 1968 and Clause 3 of the West Bengal lubricating oil licensing order, 1967. In Course of trial, the prosecution examined 5 witnesses and excepting

the plea of innocence, no other defence was taken and the Learned Court after assessing the evidences found Ramchandra guilty of the charges levelled against him and accordingly passed the order of conviction. Being aggrieved by and dissatisfied with the same judgement and order of conviction dated June 22, 1991, this criminal appeal has been preferred.

4. The Learned Amicus Curiae argued that the charge levelled against the applicant was defective and no conviction could be passed on such defective charges. Furthermore the learned judge failed to take note of the discrepancies in the evidence of the prosecution witnesses and also failed to give due weightage on the evidence of P.W.4 to the effect that raiding party arrived at the shop with the present appellant in the police jeep.

5. That apart, the Learned Judge committed an error in observing that the accused had violated the condition no.3 of the license granted under the clause 12 of W.B. Kerosin control order which required maintenance and exhibition of records on any day during inspection. It was further argued that the examination of the accused was not done in conformity with the rules envisaged under section 313 of the code of criminal procedure. As such the order of conviction and sentence is bad and illegal. Another point was raised that Ramchandra never dealt with Mobil oil and the seized Mobil was burnt mobile for which no license was necessary. Accordingly, prayed for setting aside the order of conviction.

6. The learned prosecution on the other hand submitted that the appellant though was given opportunity to produce relevant documents, he made false statement about depositing the necessary papers with the Food and Safety Department, and he failed to produce any single paper for storing such huge

quantity of kerosene oil in a barrel and also the Mobil oil. The prosecution did not arrest him, only enquired, and satisfied that no such documents are lying with the department as claimed by the appellant and only thereafter the complaint was lodged. In order to prove the charges, the prosecution cited five witnesses and the learned special court after assessing the evidences adduced and after hearing the learned defence counsel as well as the prosecution passed the order of conviction and thereby committed no illegality for which any interference is necessary. Accordingly, prayed for dismissal of this appeal.

7. Heard the submission of both Learned Advocates. The seminal issue now falls for consideration is whether the learned court passed the order of conviction, rightly and or as to whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt. In this case, the prosecution has cited 5 witnesses, proved certain documents, including the F.I.R. The proceeding was initiated initially on the basis of an information received by the de-facto complainant S.I. G.C Bose/ P.W. 5, the then O.C Egra P.S that in spite of sufficient stock of kerosene oil, the accused was not distributing such oil to the ration card holders and accordingly at about 10 P.M on that day, he arrived at the Kerosine oil shop of the accused and found the accused in that shop. The said witness in presence of the public witnesses who are P.W.2 and 3 that is Biswanath Pradhan and Nanda Mati issued written notice to the accused person to produce the license and other papers of the kerosene oil business of the accused for his inspection. The said notice was duly received by the appellant herein and the accused could not produce any other account papers of such business, accepting the license. The question arose as to whether the accused being a licensed dealer in Kerosene oil maintained the account papers

of such business as required under class 12 of the West Bengal kerosene control order, 1968 and whether the accused dealt with Mobil without a license and thereby violated the provisions of clause 3 of the West Bengal lubricating oil licensing order, 1967. It is evident that the accused when asked to produce the relevant documents regarding production of papers, he took the plea that his account papers have been deposited with the Food Supply Department, which subsequently proved to be false. The oil seized from the shop of the accused in his presence was 1900 L of Kerosene oil in nine full barrels, and 1½ barrel and also 40 L of Mobil oil in a barrel, five empty barrels and some apertures for selling such oil and the said seizure list was signed by two public witnesses that is P.W.2 & 3.

- 8.** The learned court while assessing the evidence was of the view that the two independent public witnesses duly corroborated the case of the de-facto complainant. That apart the G.D entry on the material date was also proved and marked with exhibit 4 which manifest that the accused was not selling Kerosene oil in spite of sufficient stocks to proper customers. This evidence of the prosecution was also corroborated by the Officer who went to inspect the shop on getting such information. P.W.2 Vishwanath Pradhan deposed that in spite of sufficient stock of Kerosene oil, the accused was not distributing the same as was informed by a member of the Gram Panchayat who in turn informed the police, and that is why the police authority came to inspect. In his cross-examination, it was revealed that he himself went to take kerosene oil from the said shop. However, such statement was not made before the I.O. From the evidence of P.W.2, it has also come that the accused himself mentioned in the notice in writing that excepting the licence, he has no other

papers and such document was approved by the de-facto complainant. The learned court did not give much weightage to the evidence adduced by P.W.4 who stated in his cross-examination that the police authority arrived at the shop of the accused with the accused in the police jeep .P.W.2 lives at a distance of two and half kilometres from the shop of the accused. It was considered that two vital witnesses being P.W.3 and 4 are the men of the locality who has proved the seizure. It is indeed relevant to mention that in the license which has been marked with Mat. Exhibit 1 (torn condition) it was specifically mentioned that the business account papers of the dealers in kerosene oil must make available such papers at all times for inspection. Then admittedly, the license was granted to him by virtue of the provision of clause 12 of the West Bengal kerosene control order, 1968.

9. The accused during his examination under Section 313 Cr.Pc, admitted that at the time of inspection, there was a quantity of 1900 L of kerosene oil in his stock and it was not denied that the quantity of the said Mobil oil was not 40 liters. It is also an admitted fact that the said Mobil oil was not sent for any forensic test as to ascertain whether it was a burnt mobile oil or not. The claim of the accused person that it was burnt oil was never ascertained by the investigating authority from the appropriate authority.

10. Therefore from the above factual matrix coupled with the deficiencies in the process of investigation and failure on the part of the prosecution witnesses to adduced a clinching evidence do not ruled out the possibility of the other version as made out the defence to be more believable which triggered this court to differ with the judgement and order passed by the learned trial court and to pass an order giving benefit of doubt in favour of the appellant.

- 11.** Hence the instant criminal Appeal stands allowed .The judgement and order of conviction passed by the learned appellate court is hereby set aside.
- 12.** The copy of the order along with the T.C.R if any be returned to the concerned Court.
- 13.** Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)

