

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 435 of 1989

Arun Kumar Dey@ Arun Dey

-Versus-

The State of West Bengal

For the Appellants : **Ms. Monami Mukherjee, (Amicus)**

For the State : **Ms. Mamata Jana**

Hearing concluded on : **16.04.2025**

Judgment On : **24.04.2025**

Prasenjit Biswas, J:-

1. The instant appeal has been directed against the judgment and order of conviction passed by the learned Judge, Special Court (E.C.) Act, Hooghly in connection with case being No. 199/85, whereby and where under this appellant was convicted for commission of offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Para 3 of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Liscencing) Order, 1978 and sentenced him to suffer rigorous

imprisonment for one year and also to pay fine of Rs. 1000/- in default thereof to suffer further rigorous imprisonment for three months.

2. The brief facts of the prosecution case are that-

On 26.09.1985 police visited the shop-cum-godown of the accused appellant situated at 17, Panchanantala Street, Rishra, P.S. Serampore, Hooghly which was named and styled as "Variety Stores" and found that the stock-cum-rate board was displaying in the shop and it was written up to 25.09.1985. A huge stock of edible oil of the variety of Banaspati/Dalda of various brands were recovered from the shop of the appellant/convict. At the time of checking the appellant being the owner of the shop was not present therein but one Ajay Dutta who happens to be the employee of the appellant was present in that shop. On demand by the police the said Ajay Dutta failed to produce any licence or any authority to carry on trade in edible oil of any such brand. A complaint was lodged by the de-facto complaint against the accused person under Section 7(1)(a)(ii) of the E.C. Act for violation of Para 3 of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Licencing) Order, 1978 and Para 3(2) of the West Bengal Declaration of Stock of Prices of E.C. Order, 1977. After completion of investigation charge-sheet was submitted against the accused persons. The accused person was examined under Section 251 of Cr.P.C. and they pleaded not guilty and claimed to be tried.

3. In this case, five witnesses were examined by the side of the prosecution. Neither any oral, nor any documentary evidence was adduced by the side of the defence.

4. Ms. Monami Mukherjee, learned Amicus Curiae for the appellant submits that the learned Special Judge has failed to appreciate the facts and circumstances of the case and came to an erroneous finding. It is said that there are major discrepancies in the prosecution case which was overlooked by the learned Special Judge and those discrepancies appeared in the prosecution case is not at all a mere discrepancy. It is said by the learned Advocate that the complainant (PW1) did not have jurisdiction to

search and seized the articles without complying the provisions of Para 13 (e) of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Licensing) Order, 1978. The complainant failed to record reasons to believe that any provision of this order dated 1978 has been, is being or is about to be contravened in respect of such stock or any part thereof before proceeding to search the shop. Reliance has been made by the learned Advocate upon the decisions reported in **(1979) 2 SCC 115 (K.L. Subbayya -vs.-State of Karnataka)** and the decision reported in **1990 C Cr LR (Cal) 197 (New Roy Trading Co. & Ors.-vs.- State of W.B. & Ors)**. So, as per submission of the learned Advocate, the search and seizure made by the complainant was done in contravention of the provisions of Para 13(e) of the above sated order.

5. It is further assailed by the learned Advocate that the articles were recovered from the two shops one is owned by the appellant and other is owned by the brother of the appellant as would be evident from the evidences of PW2, PW3 and PW4. So, as per submission of the learned Advocate if the total quantity of article seized from the two shops measuring 8 quintals 85 kgs (885 kgs) is divided into two then it would come less than 5 quintals and does not come within the violation of Para 3 of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Liscencing) Order, 1978. It is sought to be contended by the learned Advocate for the appellant that PW1 and PW4 stated in his evidence that no weighment chart was prepared and therefore, it cannot be said conclusively that excess quantity of the prescribed limit was seized from the shop of the appellant. The seized articles were not produced before the Court and the prosecution failed to give any reasonable explanation regarding non-production of the seized article before the Special Court. It is argued by the learned Advocate that the learned Special Judge has failed to point out the deviation of evidences adduced by the police personnel in this case. She submits that the learned Special Judge should

have acquitted the present appellant from the case for want of sufficient evidences.

6. Ms. Mamata Jana, learned Advocate appearing on behalf of the State argued that the learned Special Judge has taken the evidences and after going through the materials on record, he was convinced about the involvement of the present appellant in the said offence. The appellant had no explanation regarding his innocence before the learned Special Judge. The appellant has failed to explain the allegations put against him at the time of examination under Section 313 of Cr.P.C. It is said by the learned Advocate for the State that the impugned judgement passed by the Special Judge is a speaking order and it cannot be set aside. There were no requirements for the police personnel to entangle the appellant with the present case without any reason.
7. I have considered the rival submissions advanced by both the parties. I have gone through all the materials gathered in the record.
8. PW1, Debdas Bhattacharjee, Inspector of Police stated that he found from the place in total 8 quintals 85 kg (885 kgs) of Banaspati of three different brands. In cross-examination, he said that there was another shop in the same building. PW2, Biswanath Pal stated in his cross-examination wherein he admitted the suggestion that Daroga recovered "Dalda" tins from both the shop of Arun and his brother Barun. PW3, another witness to the seizure stated that there is another shop of Barun, brother of the appellant beside the case shop. PW4, ASI, Santi Chakraborty, member to the Raiding Party stated in the same line of PW2 and PW3 that he saw the commodities brought out from the case shop from two rooms. So, the evidence of PW1/de-facto complainant that he seized in total 8 quintal 85 Kg Banaspati from the case shop is not corroborated by the evidence of PW2 (independent seizure list witness), PW3 (independent seizure list witness) and PW4 (one of the members of the raiding party and seizure list witness). PW2, PW3 and PW4 stated that the total quantity of seized articles was recovered from the shop Arun De (appellant) and Barun De

(brother of the appellant). So, it would be evident from the statements of these witnesses that there is doubt about recovery of articles only from the case shop.

9. PW1 stated in his evidence that he did not prepare any weighment chart as tins were sealed. PW4 also echoed the same voice of PW1 that no weighment was done. So, no positive evidence was brought before the Court about the excess quantity as prescribed in Para 3 of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Liscencing) Order, 1978. PW1 stated in his evidence that he kept the seized "Banaspoti" in the zimma of local businessman Kamal Kumar Laha. PW4 stated in his evidence that the seized commodities were kept in the zimma of one Mr. Laha and his name might be Arun Kumar Laha but it is quite astonishing that the said zimmadar Arun Kumar Laha was not cited as witness to the prosecution and no explanation was given by the side of the prosecution in this regard. PW2, Biswanath Pal stated that on seeing police he went to the case shop and on asking by the police officer he signed on a document. This witness could not remember correctly what articles were seized from the case shop and he also failed to state the quantity of "Dalda" seized from the shop. PW2 stated that as he was not present and as such, he could not say whether the accused or his employee Ajay produced any paper or not before the police officer. PW3, Arabinda Laha, other independent witness to the seizure stated in the same line of PW2 and stated that Tarak Dey asked him to sign on a blank paper but this witness could not say what Daragababu did there. It is said by this witness that he was not interrogated by the I.O. I have already stated that these witnesses i.e. PW2, PW3 and PW4 stated that the articles were seized from the shops of the appellant and his brother. PW1 the complainant did not prepare any weighment chart as required by law and further admitted that there was another shop in the same building. The seized articles were not produced before the Court by the prosecution and no explanation was given by the prosecution for non-production of the seized article before the Court.

Thus, in absence of any iota of evidence regarding quantity of article seized it can safely be said that no excess quantity of Banaspati was recovered from the case shop of the appellant.

- 10.** In this case, the I.O. was never examined by the prosecution which is a material lacuna in the prosecution case. PW5, Amit Goswami, S.I. of Police stated in his cross-examination that he was interrogated by the I.O. and he stated to I.O. that the name of the shop was "Variety Stores". He also stated to I.O. that they recovered commodities from the back side room of the case shop. On close scrutiny of the evidences of the eye-witnesses. I find that there are several variance and inconsistencies in depositions of the witnesses. The Investigating Officer has not been examined during the trial to explain the said discrepancies in the investigation.
- 11.** Thus non- examination of the investigating officer is fatal to the case of prosecution. As the I.O. did not enter into the witness-box, his non-examination has caused serious prejudice to the appellant. The non-examination of I.O. also caused serious prejudice to the defence as he was deprived of cross-examining PW5 relating to his statement.
- 12.** In this case, PW1, PW4 and PW5 are the police personnel and PW2 and PW3 are the independent seizure list witnesses but PW2 and PW3 did not say anything about the seizure of commodities as stated by PW1 and PW4. PW2 stated that on asking by the police officer he signed on a document and in the same line of PW2, PW3 also stated that he signed on a blank paper. Although, PW3 was declared hostile by the prosecution and he was cross-examined but nothing was elicited from such cross-examination by the side of the prosecution which may help the prosecution to prove its case. Moreover, the said PW3 was cross-examined by the defence and on such cross-examination, he stated that the commodities were checked and collected from both the shops which are sufficient to damage the truthfulness the story of the prosecution.
- 13.** I have already stated that I.O. of this case was not cited as a prosecution witness which creates a material lacuna in the effort of the prosecution to

nail the appellant and caused reasonable doubt in the prosecution case. There are contradictory statements of the witnesses in respect of search and seizure by the police personnel. The independent witnesses to the seizure denied the checking and seizure of the commodities. Moreover, the prosecution witnesses admitted that there was no actual weighment of the article seized. The learned Special Judge failed to appreciate the evidences on record particularly the corroborative part of the testimony of PW2, PW3 and PW4 with regard to the seizure of the commodities from the two shops rooms belonging to the appellant/convict and his brother. So, the evidence of PW2 and PW3 which was discarded by the learned Special Judge is not tenable under the law and as such, the impugned order of conviction and sentenced is fit to be set aside. As the prosecution has miserably failed to establish from whose shop the alleged recovery was made and the quantity recovered could not be ascertained in absence of cogent evidence. Moreover, the Investigating Officer and the zimmadar were not cited as the witnesses by the prosecution. So, it can be said that the prosecution failed to prove its case beyond all reasonable shadow of doubt.

14. Accordingly, the impugned order of judgment and conviction passed by the learned Trial Court is liable to be set aside.
15. Thus, the appeal being no. CRA 435 of 1989 is hereby allowed.
16. The judgment and order of conviction passed by the learned Judge, Special Court (E.C.) Act, Hooghly convicting this appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Para 3 of the West Bengal Pulses, Edible Oilseeds and Edible Oil (Dealers Liscencing) Order, 1978 in connection with Special Court Case No. 199/85 is hereby set aside. He is thus acquitted from the said case.
17. The appellant is discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
18. With the aforementioned observations, the instant appeal being no. **CRA 435 of 1989** is disposed of.

- 19.** Let a copy of this order along with the Trial Court record be sent down to the Trial Court immediately.
- 20.** Urgent Photostat Certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)