

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 503 OF 1990
KRISHNA KAMAL PAUL
VS
THE STATE OF WEST BENGAL

For the Amicus Curiae : Mr. S. Banerjee, Adv.
For the State : Ms. Manisha Sharma, Adv.
Ms. Snigdha Saha, Adv.
Last heard on : 03.09.2025
Judgement on : 18.09.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This criminal appeal is filed under Section 374 (2)CrPC against the judgement and order of conviction and sentence dated November 17, 1990 passed by the Learned Judge Special Court (E.C. Act), Siliguri, District Darjeeling in special Court case No. 19 of 1990 whereby the present applicant is convicted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955, for validation of paragraph 11(2) of the West Bengal kerosene control order, 1968 and sentencing him to suffer regarding imprisonment for 3 months and to pay a fine of ₹400 in default to suffer rigorous prison for 15 days more.
- 2.** The prosecution case in a nutshell is that S.I ,D.P Gurung along with A.S.I K.K Ghosh were proceeding towards Kala Hati, Siliguri at 15:45 hours on 7.7.1989 to

perform routine duty when he allegedly found the petitioner/applicant in possession of 2 Jerriecanes and one tin containing altogether, 35 Liters of kerosene oil . After the information was lodged at Siliguri Police Station by S.I, D.P. Gurung and after investigation, the charge sheet was filed, the petitioner was tried.

3. In this case, in order to prove the charges, the prosecution examined six witnesses.

The defence case as it transpires from the nature of cross examination and the evidence adduced by the accused person that he did not possess the kerosene in question and was taken by the police to the police station to be a witness, and after that, the case started.

4. The learned *amicus curiae* Mr. Soham Banerjee argued that the seized articles were not labelled and sealed after seizure, neither the quantity of the contents thereof was ascertained on correct measurement, and this is the admitted fact which can be urged on behalf of the defence that the prosecution could not prove the case beyond reasonable doubt about the actual quantity of the content of the containers so seized.

5. The Learned Court passed the order of conviction, considering the evidences adopted by the prosecution witnesses, but did not consider the issue regarding absence of seal and label on the containers. The Learned Court relied heavily upon the evidence of both P.W.3 and P.W.6, who deposed before the Court that they seized two Jerri can and one tin.

6. Having heard both the learned prosecution and learned *amicus curiae* it is to be considered by this Court as to how far the prosecution was able to prove the case beyond the reasonable doubt.

7. P.W.1, the S.I of police was attached to Siliguri P.S as second officer on 7.7.89 and also was in charge of the Thana and he received a complaint on that date from S.I,

D.P Gurung , D.E.O Siliguri and accused was produced before him. He endorsed the case to said S.I, Mr. Gurung for investigation. P.W. 2, Shri H.N Roy was posted as A.S.I on 7.7. 89 and filled up the formal F.I.R. P.W 3K.C Ghosh, who accompanied S.I , D.P Gurung to Puran Bazar, Siliguri and found the accused coming with two Polythene Jerriecan and one big tin containing 15 Liters of kerosene oil. On challenge, the accused failed to show any paper, but disclosed that he purchased the same from one Ramakrishna Bhandar of Kala Hati but he failed to produce any receipt of the said shop. Hence, the accused was arrested. The seizure list was prepared by Mr. Gurung in their presence, and this witness proved the said signature in presence of local witnesses. It can further be seen that the said articles was left in the zimma of one Jawaharlal Saha under a zimmanama. This witness during his cross-examination deposed that he did not bring any paper to show that he was on duty at that time, and he did not find the seized articles in the Court.

8. P.W. 4, Suhail Kumar Chowdhury was standing near pan shop on 7.7. 89 at about 4:30 PM when police called him to the police station and he went to the Police Station and he was told that 35 liters of kerosene oil was seized from the accused and police wanted his signature on a paper and the police prepared the seizure list in his presence. During cross examination, he deposed that he signed at the third floor of the police station and further deposed that one man cannot carry all the three containers at a time. He also said that the accused had a cycle with him and there are grocery shops around Kala Hati. P.W.5 Jawaharlal Shah deposed that on 14.7.87 police kept in his custody, 35 liters of kerosene oil in three containers that is 2 jerriecan and one tin. He is a dealer in kerosene oil; police prepared a zimmanama where this witness signed. He produced the articles before the Court. He also said that there is no seal or label on any of the container.

9. D.P. Gurung deposed in this case as P.W6, who found the accused carrying in his possession two jerriecan and a tin containing 35 liters of kerosene oil. During his cross-examination, he admitted that Kala Hati is a busy area having number of shops around and he did not seal or put label on the seized Alamat . He also did not weigh the kerosene oil during the time of seizure. The accused signed on the seizure list at the police station. He also examined one Girish who was a rickshaw puller but not cited as a witness in this case.

10. On perusal of the seizure list it is seen that the place of seizure is mentioned as Kala Hati, Siliguri town, but as it can be seen from the evidence that it is a busy place having a number of shops no explanation can be found as to the exact location where from the articles were seized and why the seizure list was prepared at the police station. According to the prosecution case, the appellant was carrying 35 liters of kerosene oil in two plastic jerriecan and one tin. A person carrying such huge quantity of 35 liters of kerosene oil with three containers walking through road is difficult to imagine and the prosecution never said that the accused was plying in cycle and no seizure of cycle was there though the prosecution witness stated about presence of a cycle with the accused person at the Police Station. The evidence of the prosecution witnesses further manifest that there was no seal or label on the container and at the time of alleged seizure also the I.O did not put the seal or label. The prosecution from the inception has stated about 35.Liters of kerosene oil when it was never weighed. The appellant accused person in his evidence during 313. Cr.Pc stated before the court that he was coming from Bahar and on seeing a mob assembled therein he went there when police caught him and he put his signature on a blank paper and the entire allegation levelled against him are all false. His further stated that he found two jerriecan and one tin and as per

asking of police, he put his signature and after he left subsequently came to know about the complaint lodged against him with false allegations. It is also surprising that the police did not enquired about the shop where from the accused alleged to have purchased the said kerosene oil as can be found from the evidence of P.W. 3 and 6, when according to their evidence the accused specifically named the shop wherefrom he purchased the oil.

- 11.** It is a settled proposition of law that unless any clinching evidence can be found, and unless the prosecution is able to prove the case beyond the shadow of all reasonable doubt, and if there is possibility of two views, in that case, the view favouring the accused person to be considered in absence of cogent and trustworthy evidence. In the instant case, no effort was made to put identity mark by putting seal and label on the alleged seized container, and those articles were not placed before the court while the seizure list witness deposed. The police did not examine any of the local shop owner to prove the case that on the relevant day and time the police seized the container from the accused person. The Seizure list witness is of no help to the prosecution since he put his signature at the Police Station, not at the time of seizure which is in gross violation of provision of Section 100(4) Cr.Pc.
- 12.** In the light of above discussion, this court is unable to concur with the view expressed by the Learned Special Court and thereby the same is liable to be set aside.
- 13.** Accordingly this Criminal Appeal Stands allowed. The judgement and order passed by the Learned Trial Court is hereby set aside.

- 14.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

