GAHC010000072020

2026:GAU-AS:16670

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./1/2020

HRISHIKESH DAS
S/O LATE PADMALOCHAN DAS, R/O VILL-NAYAPARA, BILASIPARA, WARD NO. 7, P.O. AND P.S.-BILASIPARA, DIST-DHUBRI, ASSAM, PIN-783348

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DIPAK KUMAR PATOR
S/O LATE L. KALITA
INSPECTOR OF FOOD AND CIVIL SUPPLY AND CONSUMER AFFAIRS
BILASIPARA SUB-DIVISION
P.O. AND P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. A K HUSSAIN, MR. B HUSSAIN,MR A HAQUE

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

10/11/2026

Heard Mr. A K Hussain, learned counsel for the petitioner and Mr. P Borthakur, learned Additional Public Prosecutor, appearing for the State respondent. None has appeared for the respondent No. 2.

2. The petitioner by way of instituting the present revision petition has presented a challenge to the judgment & order dated 20.12.2019, passed by the Court of learned Additional Sessions Judge, Bilasipara in Crl. A. No. 7/2019, dismissing the same and thereby, affirming the judgment & order dated 21.05.2019, passed in C.R. Case No. 666/2017, by the learned Sub-Divisional Judicial Magistrate (M), Bilasipara, convicting the petitioner, herein, under Section 7 of the Essential Commodities Act and under Order 7(1)(c) of the LPG (Regulation of Supply and Distribution) Order, 2000 and sentencing him to undergo 3 (three) months Rigorous Imprisonment, along with fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for 10 (ten) days.

3. The prosecution case in brief is that on 20.05.2017, the respondent No. 2 visited the Tea Stall of the petitioner, namely, M/s Aparupa Restaurant and found 1 (one) filled domestic cylinder and 1 (one) empty domestic cylinder, along with rubber pipe and accordingly, seized the same and filed an offence report before the learned Trial Court. The learned Trial Court on receipt of the offence report, issued summons to the accused petitioner and on his appearance, formal charge under Section 7(1)(a)(ii) of the Essential Commodities Act and under Order 7(1)(c) of the LPG (Regulation of Supply and Distribution) Order, 2000 was framed.

The learned Sub-Divisional Judicial Magistrate (M), Bilasipara, upon conclusion of the trial, appreciating the evidences coming on record, proceeded vide judgment & order dated 21.05.2019 to convict the petitioner, herein, under Section 7 of the Essential Commodities Act read with Order 7(1)(c) of the LPG (Regulation of Supply and Distribution) Order, 2000 and sentenced him, as noticed hereinabove.

The petitioner being aggrieved by the judgment & order dated 21.05.2019, assailed the same by way of instituting a criminal appeal, being Crl. A. No. 7/2019 before the Court of learned Sessions Judge, Bilasipara. The learned Additional Sessions Judge, Bilasipara, on appreciating the arguments advanced in the matter, in the light of the evidences coming on record before the learned Trial Court, proceeded vide judgment & order dated 20.12.2019 to dismiss the said appeal, upholding the conviction of the petitioner, herein. However, the sentencing of the petitioner, herein, was modified to the extent that he was now required to undergo Simple Imprisonment for 3 (three) months in lieu of Rigorous Imprisonment for 3 (three) months, as directed by the learned Trial Court.

Being aggrieved, the petitioner has instituted the present criminal revision petition.

4. Mr. A K Hussain, learned counsel for the petitioner, after having drawn the attention of this Court to the conclusions drawn by the learned Trial Court as well as by the learned Appellate Court, has submitted that the said conclusions would find support from the evidences coming on record and the petitioner, herein, had not been able to bring on record evidence with regard to justify the presence of 2 (two) domestic gas cylinders in his commercial establishment.

4.1 Having made the said submission, Mr. Hussain, learned counsel for the petitioner submits that around 9 years have lapsed since the date of the seizure of the domestic LPG gas cylinders from the commercial premises of the petitioner, herein and accordingly, prays that considering the lapse of time occasioning in the matter, the petitioner be extended with the benefit under the Probation of Offenders Act, 1958.

5. Mr. Borthakur, learned Additional Public Prosecutor, appearing for the State does not object to the prayer made by the learned counsel for the petitioner. However, submits that the conviction of the petitioner would be required to be upheld.

6. I have heard the learned counsel for the parties and perused the materials available on record.

7. At the outset, this Court would examine the conclusions drawn by the learned Trial Court vide judgment & order dated 21.05.2019.

8. On a perusal of the conclusions so drawn by the learned Trial Court, this Court finds that the conclusions so drawn are based on the evidences coming on record. The learned Trial Court had correctly held that the burden was on the petitioner to establish that the 2 (two) LPG domestic gas cylinders found in his possession in his commercial establishment, were so kept there under due authority.

9. From the evidences coming on record, this Court finds that the said burden was not discharged by the petitioner, herein. Accordingly, the conviction of the petitioner under Section 7 of the Essential Commodities Act read with Order 7 (1)(c) of the LPG (Regulation of Supply and Distribution) Order 2000 by

the learned Trial Court, would not mandate an interference from this Court.

10. Having drawn the said conclusion, this Court would now examine the conclusions drawn by the learned Appellate Court vide judgment & order dated 20.12.2019. The Appellate Court on examination of the evidences coming on record, had rightly held that the petitioner had violated the provisions of Section 3 of the Essential Commodities Act, which attracts the provisions of Section 7(1)(c) of the Act. Accordingly, the conclusions drawn by the learned Appellate Court would also not mandate an interference from this Court.

11. In view of the above discussion, the present criminal revision petition, insofar as its merit is concerned, this Court finds that no case is made out for interference with the concurrent findings of fact recorded by the learned Trial Court as well as by the learned Appellate Court.

12. It is an admitted position that the 2 (two) domestic gas cylinders were found in the commercial establishment of the petitioner and no explanation is forthcoming for its presence therein, from the petitioner, herein. Accordingly, the conviction of the petitioner by the learned Trial Court and the affirmation of the same by the learned Appellate Court would not mandate an interference from this Court.

13. Having drawn the said conclusion, this Court finds that the offence was committed by the petitioner on the date of inspection of his commercial establishment, i.e., on 20.05.2017, more than 9 years have lapsed since the date of commission of the said offence by the petitioner, herein. The petitioner had all along remained on previous bail. This Court also while entertaining the present criminal revision petition had permitted the petitioner to remain on

previous bail. Further, there is no allegation of the petitioner being involved in a similar offence during the pendency of the proceedings against him.

14. Accordingly, this Court is of the considered view that the petitioner is entitled to the benefit of probation under the provisions of the Probation of Offenders Act, 1958. An issue would arise as to whether the benefit under the provisions of the Probation of Offenders Act, 1958 would be permissible to be extended to the petitioner, when there is a minimum sentence provided in Section 7 of the Essential Commodities Act. The Probation of Offenders Act, 1958 is a later enactment and the Essential Commodities Act, being an earlier enactment and therein, even if a minimum sentence is provided, it is a settled position of law that the same will not be a hurdle for invoking the applicability of the provisions of the Probation of Offenders Act, 1958.

[Refer decision of the Hon'ble Supreme Court in the case of ***Lakhvir Singh Vs. State of Punjab and Ors***., reported in ***(2021) 2 SCC 763*** and the decision of the Hon'ble Supreme Court in the case of ***Tarak Nath Kesari Vs. State of West Bengal*** (judgment & order dated 10.05.2023 in Crl. A. No. 1444/2023.]

15. Accordingly, for the reasons recorded, hereinabove, the petitioner, herein, is given the benefit under the Act of 1958 and the sentence stands modified to the effect that instead of sending the petitioner to jail, he should be given the benefit under the Probation of Offenders Act, 1958.

16. This Court has only modified the sentencing with regard to imprisonment of the petitioner, herein, and the fine as imposed by the learned Trial Court not having been interfered with, the petitioner, herein, would be liable to deposit the

fine amount.

17. In view of the above discussion, it is directed that the petitioner, herein, will file two sureties to the tune of Rs.10,000/- (Rupees Ten Thousand), along with a personal bond before the learned Sub-Divisional Judicial Magistrate (M), Bilasipara and undertake to the effect that the petitioner, herein, shall maintain peace and good behaviour during the period of 1 (one) year from the date of filing of the bond. The aforesaid bond be filed by the petitioner within a period of 2 (two) months from the date of this order, along with the deposit of the fine amount as imposed by the learned Trial Court.

18. With the above observations and directions, the present criminal revision petition stands disposed of.

19. Send down the records of the case to the learned Trial Court along with a copy of this order for information and necessary action.

JUDGE

Comparing Assistant