

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present: - Hon'ble Justice Chaitali Chatterjee (Das).

CRA 309 of 1994

Baidyanath Das

Vs.

State of West Bengal

For the appellant : Ms. Tannistha Bandyopadhyay, Adv.

**For the State : Ms. Sreyashee Biswas, Adv.
Mr. Puja Goswami, Adv.**

Heard On : 09-04-2026

Judgment on : 09-04-2026

Uploaded On : 20-04-2026

Chaitali Chatterjee(Das), J.:-

- 1.** This instant criminal appeal has been filed under Section 374(2) of the Code of Criminal Procedure against the judgment and order of conviction and sentence dated 06.04.1994 passed by the learned Judge, Special Court constituted under the Essential Commodities Act, Durgapur in D EB G. R. No. 18/92 thereby holding the appellant guilty of a charge punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and sentencing him to suffer rigorous imprisonment for two years.
- 2.** The brief fact of the case is that one N.T.S.P.S No.37 of 1992 was registered on complaint lodged by the Sub Inspector of police and the D.E.O. Durgapur Zone, Sri B. D. Chowdhury alleged tht on April 16, 1992 at about 11.10 hrs., a raid was held by him

along with force at the grocery shop cum coal depot of the appellant was found to be dealing in the business of Steam Coal, Soft Coal, Kerosene Oil and other grocery articles like Mustard oil, Salt etc. The said raid was upon notice to the appellant, who failed to produce any document in respect of the said business including the Stock Rate & Price Board, and it was presumed that appellant had violated the provisions of Section 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 read with Section 11(2) of the West Bengal Kerosene Control Order, 1968, Section 12(E) of the Colliery Control Order and Section 4(2) and 8 of the West Bengal Soft Coal Licensing Order.

- 3.** In course of trial, the Prosecution examined four witnesses all of whom allegedly were the members of the raiding party. De facto complainant was also examined and certain documents were exhibited. No private witnesses were examined. Learned Special Court after considering such evidences, such order of conviction against which the instant is filed.
- 4.** Learned counsel was engaged to represent the appellant through the Calcutta High court Legal services Committee, submits that the learned Court failed to appreciate that there was material discrepancy and contradiction in the evidence of the prosecution witnesses and place of occurrence was not established and the order of conviction is liable to be set aside. .
- 5.** It is further argued that the entire evidence was perfunctory. Learned court did not appreciate that the present appellant was not at all found in the shop and the signature of the appellant was taken only afterwards at the police station.

- 6.** Learned Prosecution, on the other hand, raised objection. He submits that learned Trial Court after considering all aspects of the matter and the documents exhibited as well as evidences adduced by the witnesses, passed such order of conviction. Accordingly, prays for dismissal of this appeal.
- 7.** Heard the submissions and on careful perusal of the record, it transpires that the complaint case was initiated on the basis of the complaint lodged before the Officer-in -Charge, New Town Shop Police Station. On April 16, 1992, the persons attached to S.I. Office DEO, Durgapur Zone. On perusal of such contents of the written complaint, it reveals that the accused was produced under arrest. On that date, the complainant with S.I. S. R. Chokraborty, DEO, Andal, S.I. N. C. Bhadra of Bidhan Nagar P.S. I/C, P.S.N.T. S. H/C/275 Nitya Ranjan Chatterjee and others went to the grocery shop cum-coal Depot of the present appellant and the notice that he was possessing and dealing with steam coal soft Coke K. Oil and other grocery articles like mustered, Oil salt. Etc. After exposing their identities, they issued a notice to the aforesaid shopkeeper for production of all relevant documents in respect of coal, kerosene for carrying such business at the material time, which was duly acknowledged shopkeeper but he failed to produce any of the required documents mentioned in the notice attached with the FIR including the stock Rate and Price Board. Therefore, it is presumed that the shop kept without any licnese and authority was dealing with processing the above essential commodities.
- 8.** From the written complaint, it further transpires they seized 60 bags of steam coal weighing 1 quintals each along with other articles like kerosene etc. and out of such seized articles coal and balance of grocery articles were left in the

zimma of the accused shop keeper Baidyanath Das and rest were brought to N.T.S. P.S. where from the kerosene oil including the two seized cans were left in the zimma of M.R. Dealer Sri Radhashyam Saha of Tulsi Bhandar, Momro Bazar, P.S. N.T.S. on the strength of a Zimmanama.

9. P.W.1, S.I. Sudhir Ranjan Chakraborty adduced his evidence on December 9, 1993 and reiterated thereof was mentioned in the Written Complaint. This witness wrote the original F.I.R. under dictation S.I. of B. D. Choudhury. Subsequently, investigated the case .From his deposition during cross examination reveals that they did not record any G.D. Entry on that day at the time of departure from the P.S. and no document was seized in his presence from the place of occurrence. It also disclosed that local people were called to witness the operation of seizure etc. but none of them came up to the place of occurrence. The witness could not say the exact time when the notice was given and he could not say anything about the notice from his personal of knowledge. However, seized article were weighed and he could not say such weighment chart was framed or not but he could not say whether any weighment chart was prepared or not. He could not recollect what grocery articles were seized on the day. No local person was examined about ascertainment of ownership of the shop about his presence.

10. P.W.2, Shyamapada Mondal deposed that on April 16, 1992 he was attached to DEB, Durgapur and other to conduct a raid at Shastri Avenue, Durgapur in the grocery shop cum coal depot and one Baidya Nath Das and there were kerosene oil and some coal etc. but he failed to produce any stock and rate board, registers etc. Articles were then seized and he could not say the land on which the said shop was situated is a public land or not and could not remember whether DEO took any sample from the seized kerosene oil for

determination whether it was kerosene oil or not. He could not remember whether his statement under Section 161 of the Cr.P.C. was recorded or not.

11. P.W.3, N. C. Bhadra was also attached to Bidhannagar O.P. and was also a raiding party. He also reiterated whatever evidence has been adduced by the other two witnesses that the shop owner failed to produce the relevant papers including the licence even after service of notice. The witnesses were present at the spot and the accused put their respective signatures in their presence. This witness also signed and marked as Ext.1/6. According to him, the accused was present in the shop and the S.I. B. D. Choudhury made frantic search in presence of the witness and others as to find out who was the real owner of the shop in question. He could not remember only if sample or seized articles were taken and he left Bidhannagar O.P. and reached there for taking five to ten minutes for issuing notice, making search and seizure etc. The articles coal etc. was seized when he failed to produce any document. According to his evidence, the local people gathered near the shop. However, their identity could not be established as they did not come forward to call.

12. P.W.4, B. D. Choudhury, who went to raid with S.R. Chakraborty and others to the shop of the present appellant did not find any stock and rate board displayed nor would be produced and no document were produced and seized grocery articles, coal and kerosene and also prepared the seizure list the then articles were left at the zimma of B. N. Das. He further deposed that about 15 litres were brought to the P.S. and handed over to M.R. Dealer by zimmanama for zimma. This witness was endorsed to investigate the case later on in course of investigation, he also visited P.O. examined witnesses and submitted prayer for confiscation as violation of relevant Control Order and finally submitted C.S. against appellant. Admittedly, he did not enquire about the

ownership of the shop and despite vicarious attempt made by them. During enquiry for ascertaining, no fruitful result could be found. In this case, appellant was examined under Section 313 of the Code of Criminal Procedure and all the incorrect evidences were placed before him to which he only denied about the same and took specific point and he was aware, where the shop he had no business of his own. He totally denied that any zimmanama was executed. He denied to have served with any notice and his signature was taken on a blank piece of paper in the P.S. He specifically denied any article was given in his possession.

13. Learned Special Court considered the evidence that the accused was arrested there in the shop. Learned Court also arrived at the conclusion that the prosecution was able to prove the place of occurrence and the prosecution entirely shifted nor change. Learned Court arrived at a conclusion that the accused was the owner of the said grocery shop, there is no one to believe the accused himself disclosed about the ownership of the said shop cum depot. He was arrested from his shop and he failed to produce any documents nor even the licence asked for by the raiding party.

14. In terms of the relevant provision it is necessary that in case, prevention of the mandatory requirement of paragraph 3 (2) of West Bengal Declaration of Stocks and Prices of E.C. Order 1977 that was called and rate board should be displayed in his place of the grocery shop and it is specific case of the prosecution that despite giving notice to him and the search and seizure was made, he failed to produce the rate board and also any document with regard to articles found from the shop. It is the fact that no other private witness was examined. In this case, there is no occasion to disprove the version of the prosecution witness, who held raid and did not found the Rate chart displayed

and found the stock of the articles, which not only includes steam coal but the Mustered oil and other articles were also found . The accused was also found from the shop room and he was arrested from the said shop. He did not deny that he was not there in the shop. He did not intend to adduce any further evidence to show that he was not the owner of the shop or he was not present at the point of time when the raid was conducted. The evidence of the prosecution witnesses could not be impeached in the cross-examination and he specifically stated that all the grocery items were left under the custody of the said accused .The accused could not deny his signature in the seizure list and zimmanama but denied of entrustment of those seized materials. The evidence adduced by the prosecution witness not only disclosed about the handing over Kerosin oil of 15 litres to M.R Dealer B.N Das and in this regard no cross examination of the witness can be found .The version of the accused if can be put together it would disclose that the accused was arrested from the road and the police procured his signature on blank paper and took 15 rs from his pocket and he had no business and nothing was given in his zimma , which do not appears to give a very convincing picture and despite this the accused did not intend to adduce any evidence .

15. In view of the above facts and circumstances, this Court do not find any reason to interfere with the judgment and order of conviction passed by the Special Court.

16. Hence, this instant criminal appeal is dismissed.. The judgment and order of conviction stands affirmed.

17. Now, it is seen that the sentence was passed for two years to suffer rigorous imprisonment in the year 1994. In the meantime, there is passage of time for long 25 years. Therefore, though at that point of time, it was observed by the

learned Special Court that Probation Offenders Act was not applicable but considering long passage of time and that the age of the present appellant, who would be more than seventy years, this court of the view that the provision of Section 4 of the Offenders Act 1955 is to be invoked and the appellant instead of sending behind bars is remanded under probation for a period of six months from this date and to report before the Probationer Officer.

18. Let a copy of this judgement along with the trial court record be forthwith sent before the Trial Court

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Chaitali Chatterjee (Das), J.)