

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 2 OF 1993
BIDHI CHAND CHOWRASIA
VS
THE STATE OF WEST BENGAL

For the Amicus Curiae : Mr. Anirudha Bhattacharyya , Adv.

For the State : Ms. Manisha Sharma, Adv.
Ms. Pushpita Saha, Adv.

Last heard on : 3.12.2026
Judgement on : 06.02.2026
Uploaded on : 06.02.2026

CHAITALI CHATTERJEE DAS:-

1. This criminal appeal was filed under Section 374(2) of the Code of Criminal Procedure against the order of conviction and sentence dated December 18, 1992 passed by the special E.C Act, in Special Court case no. 87 of 1990 convicting the accused appellant under section 7(1)(a)(ii) of the essential commodities act for violation of paragraph 3(2) of the West Bengal declaration of stocks and prices of Essential Commodities order, 1977 and 3(2) of the West, Bengal, motor spirit, and high speed diesel oil (licensing control, and maintenance of supplies) order, 1860, and sentenced him to suffer, regardless

imprisonment for 6 six months and to pay a fine of ₹2000 in default to suffer as imprisonment for another one month

Fact of the case.

2.. On November 22, 1990 at about 14.00 hrs when the appellant was not personally present at the Sage service station and one employee of the firm, Anil Kumar Mishra was looking the business, some police officers, and enforcement branch, Hooghly raided the shop and found one wooden board with writing "Tail nahi hai" and they found after ported measurement, shortage in the stock to the extent of 279 L of the said oil, and they seized stock cum rate board. Subsequently Dankuni Police Station case no. 102 dated November 22, 1990 start and on completion of investigation, the charge-sheet was submitted against the present. Appellant and the learned Special Court passed the order of conviction. Being aggrieved by this Appeal was filed.

Submission

3. The learned Amicus representing the appellant argued that the measurement of H.S.D oil in the two underground tanks of the service station by D.E.B Officials was not done following the procedure. It is his further contention that no satisfactory explanation for the allegation of keeping hundred litres of oil as alleged. The specific defence was taken by the person who was present at the spot that the license was lying in the DM Office and hence such document could not be produced. The prosecution failed to prove the case as the independent witnesses became hostile. The Appellant was in a position to show that 750 Ltrs. of HSD oil sold on that day. The firm was not made a party and the raid was conducted in absence of the present appellant. The search

and seizure are absolutely doubtful and hence the order of conviction cannot stand.

4. The learned prosecution raises objection and argued that the prosecution case was proved beyond the shadow of reasonable doubt. In order to bring home the charges, they cited seven witnesses and the materials were exhibited and the learned special court, considering the facts and circumstances, such order of conviction which is not to be interfere with. Accordingly prayed for dismissal of this appeal.

5. Having heard both the learned amicus as well as the prosecution and on-going through the materials and record the issue appears to be decided is that as to whether the order of conviction was passed by the special court was right or not . The foundation of the prosecution case rests upon a complaint dated November 22, 1990 by the DEOIII, Surojit N. Biswas to the Officer-Charge Dankuni Police Station. It was alleged by the concern Officer that on receipt of secret information he along with S.IN.K Shikhdar W/C107 Vishwanath Dutta, both of DEB, visited M/S Chaurasia service station located at par – Dankuni under the direct supervision of deputy SP. DEB Hooghly.. On inspection the pump, they found one wooden board with writing *no oil* available display in front office room of the said petrol pump. During inspection, they checked Stock cum Rate Board, Stock, cum Sale Register, Cash Memo Book, etc. in respect of dealing with H.S.D oil and found opening stock on November 23, 1990 as 3447 L, but on physical verification of the underground tank of the said petrol pump found shortage of 279 L oil. They also found one barrel containing hundred litres of H.S.D oil kept on the northern side of the petrol pump clandestinely. They took the sample in two containers from the same

barrel and sealed both the sample containers in presence of the witnesses. The tank was inspected in presence of the accused and witness, namely Jawaharlal Ghosh and Utpal Ghosh and W/c 107, Bishwanath Dutta. They also found that 750 L of said oil were sold on that day to various customers against seven cash memos. They also seized the above articles and the articles were duly labelled and one copy of the S.L was handed over to the accused person. It was also mentioned in the complaint that the appellant disclosed himself as main partner of the said service station and reported that another partner is Surendra Prasad Chaurasia. The licensed dealer /appellant could not produce any license in support of dealing of H.S oil and took the plea that the licence has been lying in DM 's office for renewal but could not show any receipt in support of his statement .

- 6.** From the evidence of Surojit Narayan Biswas, the admission of that opening stock shown in the stock register and the stock cum rate board was found in consonance. The witness was not aware that the underground tank of the service station had a sloping. He had no knowledge about the measurement and diameter of the underground tank in question and admitted that no measurement chart of the oil in the underground tank of the service station in question was made. He could not say about the measurement of the oil kept in the underground tank with reference to evaporation, handling loss linkage etc. he also admitted that the writing on the board displayed outside the service station and noted by him was permanently written and the said board is removable. P.W.2 Vishwanath Dutta, who was attached to D.E.B, Chinavada on November 22, 1990, accompanied Inspector Surajit Biswas at the service Station. According to this witness with the help of a stick given by the accused

Anil, the oil in the underground tank of the service station was measured and found 3447 L of diesel and 2138 L respectively. They arrested Anil Mishra and they arrested the appellant while proceeding to Thana. This witness was declared hostile.

7. P.W.3 Jawaharlal Ghosh the year 1990 in one evening when he went to service station to bring oil, he noticed the police at the state station He could not collect the exact quantity of diesel he purchased from the service station on that day. He signed on a paper as per asking by the police on the plea that they came there for the purpose of checking. This witness identified his signature on the seizure list but did not notice whether any checking was done by the police. Not any recovery of the said service station. He could not identify any person on the dock. This witness was declared hostile.

8. P.W.4, Jung Bahadur Shukla, an employee of Chaurasia Service Station. He and Anil Mishra was present when Police went to their Service Station. He deposed that a board with writing “not available” kept over in Almirah was taken into custody by the police. He could not say the quantity of oil found out by the police during checking of the underground tank with deep rod. They also noticed $\frac{3}{4}$ litres of oil kept at the station, which was taken by Daroga Babu. He accepted the zimma of all those articles by signing on the zimmanama. He deposed also in his cross-examination that the correct calculation of oil in the underground tank can be made if two sides of the said underground tank was measured with deep rod as the underground tank to some extent had sloping. The measurement of the oil in the underground tank was not done by the Daroga Babu and his men of the service station properly.

9. P.W.5 Mr. Shah depose that on receipt of the sample taken in connection with Dankuni P.S case no. 102 of November 22, 1990, he submitted a report after examination through scientific process. He proved his report. His cross examination was declined. P.W.6 N.K Shikdar during his evidence could not recollect the particulars of the stock noted in the stock registered and stock and rate board. He could recollect on verification of the physical stock of diesel kept on the underground tanks with reference to the stock of diesel noted in the relevant register and rate board and found shortage of 270 L of diesel. He could not say the quantity of oil found from the other tank at the time of adducing evidence. He denied that there was no shortage.

10. P.W.7 Debobroto Das the I.O. of the case. He submitted the charge-sheet on completion of the investigation against the appellant and Anil Kumar Mishra. He admitted that Witness Jawaharlal Ghosh stated to him that outside the office room of the pump a board with writing the oil is not available in English and in Hindi was hung and he requested Anil Mishra to sell at least 20 L of diesel to him. Otherwise he there would be damage to his cultivation. Anil did not sell diesel to him by saying oil was not available and by the time officer from D.T.B office came to the petrol pump for the purpose of checking the stock. From the above evidence, it is seen that accepting P.W.1, all other witnesses become hostile, who was said to be present at the spot along with P.W.1. Constable who accompanied the P.W.1 was also declared hostile since he stated that Anil Kumar Mishra was arrested first and on the way to proceed towards Thana, the present appellant was arrested. That apart, he also said that with a stick, the measurement was taken in respect of the storage of underground tank of the service station on the basis of which the shortage of

297 L of diesel oil was detected. The P.W.1 admitted that the opening stock shown in the stock register and the stock cum rate board was found in consonance.

11. In this case the appellant at the time of examination under Section 313 specifically stated that he was not present at the pump and the measurement was not done in the proper way. He denied the allegations level against him. The learned Special Court passed the order of acquittal in favour of accused, Anil Kumar Mishra, who was an employee of Chaurasia Service Station. The question arises as to whether the accused person can be indicated for non-display of stock and price list as required under para 3 (2) of W.B. Declaration of stocks and prices of E.C order, 1977. The fact of selling of 750 L of H.S.DL2 different customers under cash memos were not controverted, and there was nothing contrary proved and also therefore, the sale of such quantity was affected from the service station on that day was also proved. Jawaharlal Ghosh P.W.3 before he was declared hostile stated that he got oil from the service station on payment of price on the said date. He denied to have stated to the I.O. that outside the office room, he found the board written as oil not available. The other employee, Jung Bahadur Shukla PW 4 deposed that police took the board which was kept over an Almira and was taken into custody where it was written that oil is not available. It has also come that they had the board in their office which was to be used when required. This P.W.4 was not declared as hostile. That apart the other factor to be considered is the manner of measurement of the tank which had a slop, admitted by all the witnesses. It is also found that the measurement was taken only on the basis of a deep rod and not with the assistance of any other measurement tools. The P.W.1 had no

knowledge about the sloping of the underground tank and neither the measurement were taken from both sides of the same tank in order to assesses the actual quantity. That P.W.1 had no knowledge about the measurement and diameter of the underground tank in question and no measurement chart of the oil in the underground tank of the service station in question was made. Therefore, the quantity that was decided was not on the basis of a robust scientific mechanism, but mostly on primary measurement made with a stick.

12. The complaint itself manifest that regarding non-production of the license in respect of the dealing with H.S.D oil, it was specifically stated that the license was lying in D.M's office but no receipt in support office statement was recorded. The I.O. only on the averment of the present appellant did not proceed against the other partner when admittedly, it was a partnership business. In terms of the W.B. Declaration of stocks and prices of essential commodities order, 1977, Section 3 (1) provides that every producer and importer shall display conspicuously at a place near to the entrance of his place of business as possible at least inform a indicating the opening stock of each essential commodity held by him on each day. 3(2) read as '*every wholesaler, and every retailer shall display conspicuously at a place as near to the entrance of his place of business as possible, a list in Form B indicating the opening stock and the wholesale or retail price as the case maybe of each essential commodity held by him on each day.*'

13. The fact of not displaying the stock and price Board of the service station showing opening balance of oil as well as its sale price on the relevant day itself, remain doubtful in absence of any corroborative evidence with regard to the prosecution case. The learned Special Court relied upon the evidence of

P.W.1 and 6 for passing an order of conviction and the actual measurement of the oil found from the underground tanks, which has been challenged by the defence counsel was not considered as the zimma holder, did not demur the receipt of the quantity of oil mentioned in the document.

Conclusion

- 14.** On close scrutiny of all of the evidence of the witnesses and specially P.W.1, it is evident that, they found a board displayed outside the service station where it was mentioned that oil is not available but at the board was removable and it is doubtful whether at all at that time the Board was there or not.
- 15.** In terms of criminal jurisprudence the order of conviction can only be passed after the Court is satisfied that the prosecution has proved the case beyond the shadow of all reasonable doubts. Where the police accompanying the raid turned hostile, the foundation of the complaint remains doubtful and the officers measuring the excess quantity having no knowledge of the slopping of the underground tanks, create a doubt over the correct measurement of the quantity itself .Further the stock cum rate Board was found at the service station and seized, primarily do not established that the prosecutions proved the case beyond doubt that there was violation .
- 16.** Hence this criminal appeal stands allowed.
- 17.** The Judgement and order of conviction passed by the learned Special court is hereby set aside.
- 18.** This court records appreciation for the able assistance rendered by the learned Amicus Curiae in disposing of this appeal.

19. No order as to costs.

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

(CHAITALI CHATTERJEE DAS, J.)

