

(2014) 08 CAL CK 0120**Calcutta High Court****Case No:** C.R.A. 311 of 1986

Gobinda Aru

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Aug. 28, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 251
- Essential Commodities Act, 1955 - Section 3, 7, 7(1)(a)(ii)

Citation: (2015) 2 CHN 552**Hon'ble Judges:** Shib Sadhan Sadhu, J**Bench:** Single Bench**Advocate:** Abhijit Ganguly, Advocate for the Appellant; Shiladitya Banerjee, Advocate for the Respondent**Final Decision:** Allowed**Judgement**

Shib Sadhan Sadhu, J.

This appeal has been directed against the judgment dated 29.05.1986 passed by the Judge, Special Court under the Essential Commodities Act, 1955 (henceforth "the Act"), Howrah, in S.C.T. No. 88/1984. By the impugned judgment, the appellant Gobinda Aru has been convicted u/s 7(1)(a)(ii) of the Act and sentenced to undergo Rigorous Imprisonment for four months and to pay a fine of Rs. 300/-, in default of payment of fine, to further undergo Rigorous Imprisonment for one month.

2. The case of the prosecution, in brief, is as under:

On 28.07.1984 at about 18.45 hours to 19.20 hours Inspector T.P. Dhole of D.E.B., Howrah along with S.I. B.N. Panday, S.I. R. Chatterjee and Constable 2074 Rambehari Singh inspected shop of the appellant at Domjur bazar. On demand, the appellant produced the licence for kerosene oil but he failed to produce the relevant registers or cash memo for selling kerosene oil. On physical checking 100 ltrs. of kerosene oil was found in the shop. The kerosene was seized under a seizure list

duly attested by the witnesses. The seized kerosene oil was left in jamma of one Syed Ali Molla. The appellant was arrested and thereafter they returned to Domjur Police Station. The said Inspector lodged a written complaint on the basis of which Domjur P.S. Case No. 10 dated 28.07.1984 u/s 7(1)(a)(ii) of the Act was registered. That case was investigated into and after completion of investigation charge sheet was submitted u/s 7(1)(a)(ii) of the Act against the appellant.

3. Thereafter the case was placed for trial before the Learned Judge, Special Court, (E.C. Act) Howrah, who examined the accused/appellant u/s 251 of the Code of Criminal Procedure and after conclusion of trial, held the appellant guilty and convicted and sentenced him as mentioned above.

4. Prosecution examined 4 witnesses in order to prove the accusation brought against the appellant. The documents admitted into evidence on behalf of the prosecution e.g. seizure list; copy of notice; written complaint, formal F.I.R.; Jimmanama and the licence have been marked Exts. 1, 2, 3, 3/1, 4 and 5 respectively and the signatures of the witnesses appearing on those documents were marked accordingly.

On the other hand, the appellant did not examine any witness in support of his defence but he adduced documentary evidence e.g. cash memo; stock register and sale register and those were marked Exts. A, B and C respectively.

5. I have heard the Learned Counsels for the parties at length and have also perused the entire record of the S.C.T. No. 88 of 1994 with utmost circumspection.

6. P.W. 4, T.P. Dhole deposed that on 28.07.1984 he was attached to D.E.B., Howrah as Inspector of Police. On that date he inspected the retail kerosene oil shop of Gobinda Aru at Domjur bazar along with S.I. Ramesh Chatterjee (P.W. 2), Constable Rambehari Singh (P.W. 1) and S.I. B.N. Panday. He served a notice to the appellant directing him to produce registers but he could not produce any stock register, sale register, cash memo etc. excepting the licence. On physical verification, they found that there was 100 ltrs. of kerosene oil in a drum. That kerosene oil was seized and was given in jamma to one Syed Ali Molla. The accused was arrested and brought to Domjur P.S. where P.W. 4 lodged a complaint.

In cross-examination, P.W. 4 stated that he did not get any local witnesses as it was evening time. He failed to remember whom he called to be a witness. There are other shops and residential houses adjoining the shop of the appellant. The stock register which was produced by the appellant (Ext. B) being shown to him, he admitted that on 28.07.1984 200 ltrs. of kerosene oil were in the stock, out of which 100 ltrs. were sold. He further admitted the sale register produced by the appellant and that was marked Ext. C. He further stated that within 10 minutes they reached Domjur P.S. after arresting the appellant.

7. P.W. 2 S.I. Ramesh Chandra Chaterjee corroborated P.W. 4 regarding the incident of inspection and seizure. In cross-examination, he stated that they did not take any container to measure the kerosene oil. The cash memos being produced and shown to him (Ext. A) he stated that these are issued by Government for granting cash memos to the customers after purchase of kerosene oil. He stated yet further that they called the neighbouring people who were present at the raid but they refused to sign the seizure list. He failed to say the names of those persons, as he did not call for the public. He denied the suggestion that the appellant told them to give him some time so that he could produce the papers.

8. P.W. 1 Constable Rambehari Singh also corroborated P.W. 4 and P.W. 2. In cross-examination he stated that there are many residential houses and shops adjoining the kerosene oil shop of the accused. He could not say the names of the local persons whom they called. They were called but none came forward to sign.

9. Thus it is apparent that the appellant was found in possession of 100 ltrs. . kerosene oil and he failed to produce the stock register, sale register and cash memo book on the date and time of inspection. There is no material to show that he illegally stored such kerosene oil with intention to sell it in black market in order to make illegal gain. Also there was no evidence to show that there was other occasions when the appellant was found to have stored kerosene oil. Further there is total absence of allegation of any harm much less substantial harm having been caused to the general public or to any individual by committing the breach of conditions of the licence and the order of 1978 nor there is any evidence that the public was denied supply of the kerosene oil or that there was any scarcity or shortage of the commodity so as to allure the appellant towards black marketing and illegal profiteering. On the contrary the appellant has produced the cash memo book; stock register and sale register (Exts. A, B and C respectively) from which it could be seen that on 28.07.84, 200 ltrs. . of kerosene oil were in stock out of which 100 ltrs. was sold. The prosecution did not challenge the veracity of such documents. On the contrary such fact is also admitted by P.W. 4.

10. The question, which therefore arises on the facts, found is whether the appellant had intentionally contravened the provision of Section 7 of the Act and the order made thereunder.

11. In this context I think it appropriate to refer to the observation made by the Hon"ble Supreme Court in the case of Nathulal Vs. State of Madhya Pradesh, which is as follows:

Mens rea is an essential ingredient of a criminal offence. A statute may exclude the element of mens rea; it is, however, a sound rule of construction which is adopted in England and also accepted in India, to construe a provision which creates an offence in conformity with the common law rather than against it except where the statute expressly or by necessary implication excludes mens rea. Of the question whether

the element of guilty mind is excluded from the ingredients of an offence the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is not by itself decisive. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be excluded from a statute. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof." and that

"When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and *prima facie* proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable grounds for a belief is evidence of the honesty of that belief.

12. Therefore, having taken a conspectus view of the facts and circumstances of the instant case, I have no hesitation to hold that the allegation of violation of non-production of the stock register, sale register etc. at the time of inspection is merely technical in nature which cannot be construed to be intentional contravention of the order made u/s 3 of the Act.

13. For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the appellant u/s 7 of the Essential Commodities Act is set aside. The appellant is acquitted of the charge framed against him. Presently he is on bail. He be discharged from his bail bond and be set at liberty at once.

14 Let the Lower Court Records be sent down to the Court below at once along with a copy of this judgment.

15. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.