

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 132 of 1990

Asadul Haque

-Vs-

The State of West Bengal & Ors.

For the Appellant	: Mr. Swapan Kumar Mallick Mr. Sudeshna Das
For the State	: Ms. Faria Hossain
Heard on	: 22.04.2024, 17.07.2025
Judgment on	: 01.08.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 28.02.1990 passed by the Learned Judge, Special Court (Essential Commodities Act), Murshidabad in E.C. Case No.20 of 1989 corresponding to T.R. Case No.57 of 1989 convicting thereby the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of Paragraph 3(7) of the West Bengal Motor Spirit & High Speed Diesel Oil (Licencing Control and Maintenance of Supplies Order, 1980) and sentencing him to suffer rigorous imprisonment for 4 months.

2. The prosecution case precisely stated on 26.02.89 at about 01:00 p.m., one Patit Paban Ghosh, erstwhile S.I. of Police and D.E.O., Murshidabad searched the fertilizer shop of the appellant at Sisapara along with witnesses and found 200 litres of Diesel inside the appellant's shop in a barrel and a drum along with funnel and measuring cans, in the presence of the appellant. The D.E.O./PW-4 demanded license from the appellant for storing diesel, who failed to produce the same. Thereafter, the D.E.O./PW-4 seized the diesel, cans and funnel in presence of witnesses by preparing a seizure list which was marked as Exbt.-1/2 and left the diesel in the zimma of the appellant on executing proper zimmanama. The D.E.O./PW-4 produced the appellant at Raninagar P.S. and lodged a written complaint stating the fact which was treated as F.I.R., marked as Exbt.-2.
3. On the basis of the aforesaid complaint, the Police initiated Raninagar P.S. Case No.20/89 dated 26.02.1989 under Section 7(1)(a)(ii) of the Essential Commodities Act against the appellant and proceeded with the investigation of the case.
4. Charges were framed against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 3 witnesses and exhibited certain documents.
6. The Learned Advocate representing the appellant submitted as follows:—

- i. The charge framed against the appellant could not be sustained both in facts and in law and as such the impugned order was liable to be set aside.
- ii. There was absence of cogent evidence that the appellant was carrying on business or he had at all business of high-speed diesel.
- iii. The evidence of PW-2 in his examination-in-chief stated that "*he has business in fertilizer. Accused does not sell diesel from his shop*". In his cross-examination PW-2 stated that "*accused has 30/40 bighas of land. They have two Shallow tube-wells. The Shallows was run by diesel. Diesel is purchased from Sheikh Para & Berhampore.*" He further stated in his cross-examination that the farmers purchased diesel one or two barrels at a time during Boro Seasons and they also store diesel and measure diesel for the purpose of driving pumps on hourly basis. The evidence of PW-2 was not considered.
- iv. PW-3 deposed in his examination-in-chief that "*I know the accused who has a fertilizer shop at Sisapara. I have no knowledge about recovery of one barrel of diesel in his shop*" and in cross-examination stated that "*accused does not deal in diesel. Accused has pump set. These pump sets are run by diesel*". *The cultivators purchased diesel in advance from Berhampore or Sisapara in barrels.*" The evidence of PW-3 was contrary to the prosecution case.
- v. No notice was served upon the appellant showing cause to produce any document in his support for alleged storage of diesel.

vi. The seizure was not conducted in presence of the PW-2 and PW-3.

PW-2 and PW-3 had no knowledge from which place the alleged seizure of diesel was made.

8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.
9. The evidence of the prosecution witnesses revealed that PW-2 and PW-3 did not support the narrative of the complaint and was not declared hostile by the prosecution. The appellant had obtained permission from A.D.O. for purchasing 200 litres of diesel oil and stored the same for his own agricultural use for operating the pump-set. PW-2 and PW-3 in unison corroborated the stance of such storage which should not have been discarded by the Trial Court. Moreover, the seizure of the diesel oil could not be proved through cogent evidence. Evidently the provisions of Section 7(1)(a)(ii) of the Essential Commodities Act should not have been directly attributable to the role of the appellant to be indicted.
10. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 132 of 1990 is allowed.
11. In view of the above discussions, the judgment and order dated 28.02.1990 passed by the Learned Judge, Special Court (Essential Commodities Act), Murshidabad in E.C. Case No.20 of 1989 corresponding to T.R. Case No.57 of 1989 is set aside.

12. Accordingly, the instant criminal appeal being CRA 132 of 1990 is disposed of.

13. There is no order as to costs.

14. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)