

HEADING OF JUDGMENT IN CRIMINAL CASE

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, FIRST
COURT AT CONTAI, DIST.- PURBA MEDINIPUR.

PRESENT : SHRI PRADIP KUMAR ADHIKARY,
Assistant Sessions Judge, 1st Court,
Contai, Dist.- Purba Medinipur.

DATED : Tuesday, 7th day of April, 2015.

S.T. Case No.- 03/February/2014

State of West Bengal Prosecution

versus.

Swadesh Ranjan Paul Accused(s).

This case coming on for final hearing on 27/03/2015

In the presence of

Sri Satyajit Maiti Advocate(s) for the prosecution.

Sri Debasish Ray Advocate(s) for the accused(s).

And having stood for consideration to this day, the court delivered the
following judgment :

J U D G M E N T

This is a sessions triable case instituted on police report punishable under sections 411 and 413 of the Indian Penal Code, 1860 (hereinafter referred to as I.P.C.) read with section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as E.C. Act) against the accused Swadesh Ranjan Paul.

CONCISE STATEMENT OF THE CASE

The fact of the case, in a nutshell, is that on 12/06/2012 the de-facto complainant Bijoy Lama, Inspector of police, DEB, Purba Medinipur lodged a written complaint before the Officer-in-Charge, Egra P.S. to the effect that getting secret information that the accused having illegally stocked L.P.G. cylinders, was selling the same and filling the gas illegally in different vehicles without any valid licence the de-facto complainant along with the force raided the house of the accused and asked him to produce valid documents in respect of the stocks, selling and filling of L.P.G. cylinders but he failed to produce any valid documents or license in support of his illegal business and accordingly, believing that the accused was running illegal clandestine business by holding, selling and filing a huge number of gas cylinders without any license and authority, the de-facto complainant seized the articles under seizure list and arrested the accused and produced him before the Officer-in-Charge, Egra P.S..

On the basis of the said complaint Egra P.S. Case No.- 129 dated 12/06/2012 punishable under sections 7(1)(a)(ii) of the E.C. Act and section 3 & 4 of the West Bengal Cooking Gas (Licensing and Control) Order, 1985 and sections 411, 413 & 414 of the I.P.C. was registered and the case was endorsed to Sri Prasanta Kumar Sen, Inspector of police, DEO – 1, DEB, Purba Medinipur for investigation and accordingly, he took up the case for investigation. After completion of necessary investigation the said IO submitted charge sheet punishable under section 7(1)(a)(ii) of the E.C. Act, sections 411, 413 & 414 of the I.P.C. and sections 3 & 4 of the West Bengal Cooking Gas (Licensing and Control) Order, 1985 against the above named accused vide charge sheet no.- 213 dated 24/09/2012 and accordingly, on 25/10/2012 cognizance was taken by the then Ld. ACJM, Contai and thereafter, on 6/02/2013 after furnishing to the accused, free of cost, copies of police report and relevant documents

or relevant extract thereof forwarded to the Magistrate with the police report under section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) in accordance with the provisions of section 207 of the Cr.P.C. the case record was taken to the file of the Ld. ACJM, Contai who on 07/03/2013 sent the same before the Ld. Sessions Judge, Purba Medinipur for commitment. On 26/07/2013 the Ld. Sessions Judge, Purba Medinipur committed the case to this Court for disposal.

After appearance of the accused before this Court on 21/02/2014 charge punishable under sections 411 & 413 of the I.P.C. and section 7 of the E.C. Act was framed against the accused and the same was read over and explained to the him and asked whether pleaded guilty of the offence charged or claimed to be tried to which he did not plead guilty and claimed to be tried and accordingly, the Court proceeded into trial for the examination of witnesses.

EVIDENCE

In order to prove its case the prosecution has examined the following witnesses :

1. P.W.- 1 – Anil Pahara;
2. P.W.- 2 – Samsul Khan;
3. P.W.- 3 – Tapas Paul, ASI of police;
4. P.W.- 4 – Kokil Chandra Mehata, Constant no.- 936;
5. P.W.- 5 – Uttam Bangal, ASI of police;
6. P.W.- 6 – Bijoy Lama, Inspector of police, de-facto complainant;
7. P.W.- 7 – Kalipada Chakraborty, ASI of police;
8. P.W.- 8 – Rampada Bhanja;
9. P.W.- 9 – Bibek Banenju; and

10.P.W.- 10 – Prasanta Kumar Sen, SI of police, IO.

The following documents have been admitted into evidence on behalf of the prosecution :

1. Exbt.- 1 – Signature of the P.W.- 1 on the seizure list;
2. Exbt.- 1(1) – Signature of the P.W.- 2 on the seizure list;
3. Exbt.- 1(2) – Signature of the P.W.- 3 on the seizure list;
4. Exbt.- 1(3) – Signature of the P.W.- 6 on the seizure list;
5. Exbt.- 1(4) – Signature of the P.W.- 7 on the seizure list;
6. Exbt.- 2 – Written complaint dated 12/06/2012;
7. Exbt.- 3 – Formal FIR dated 12/06/2012 ; and
8. Exbt.- 4 – Hand sketch map with index dated 12/06/2012.

On 17/07/2014 evidence on behalf of the prosecution was closed and thereafter, on 02/08/2014 for the purpose of enabling the accused personally to explain the various circumstances appearing in the evidence against him some questions were put to him with previously warning in compliance with the provisions of section 313 of the Cr.P.C. to which he pleaded to be innocent and declined to adduce evidence on his behalf and thereby, trial was concluded.

On 27/03/2015 the case was heard finally in the form for argument.

POINTS FOR DETERMINATION

Whether the prosecution has been succeeded to prove the guilt of the accused beyond reasonable doubts ?

DECISION WITH REASONS

In a criminal case degree of proof the Court must reach before conviction is that which a prudent man will employ in reaching a conclusion beyond doubt. The accused, however, need not prove his case to the same extent to make it acceptable. Criminal law does not require conclusive proof. It only requires proof beyond reasonable doubt.

This is a case under **sections 411 & 413** of the **I.P.C.** and **section 7** of the **E.C. Act**.

Sections 411 and 413 of the **I.P.C.** run as under

411. Dishonestly receiving stolen property.— *Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

413. Habitually dealing in stolen property.— *Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section 7 of the **E.C. Act** provides that

7. Penalties. —

(1) *If any person contravenes any order made under section 3,—*

(a) he shall be punishable,—

- i. in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and*
- ii. in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:*

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.

- (2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:*

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual, shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months, or six months, as the case may be.

- (3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the court*

in the order.

Section 3 of the E.C. Act says that

3. Powers to control production, supply, distribution, etc., of essential commodities.-

- (1) *If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.*
- (2) *Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—*
 - (a) *for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;*
 - (b) *for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;*
 - (c) *for controlling the price at which essential commodity may be bought or sold;*
 - (d) *for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;*
 - (e) *for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;*
 - (f) *for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,—*
 - i. *to sell the whole or a specified part of the quantity held in stock or produced or received by him, or*
 - ii. *in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by*

such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1 .—An order made under this clause in relation to food-grains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2. —For the purposes of this clause, “production” with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;

- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;*
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;*
- (i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;*
- (ii) for the grant or issue of licences, permits or other documents, the charging of fees therefor, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;*
- (j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,—*
 - i. of any articles in respect of which such person has reason to believe that a contravention of the order has*

been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found;

ii. of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

iii. of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor as hereinafter provided—

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any food-stuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order

made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor—

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.

(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to—

ii. the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

iii. the general crop prospects;

iv. the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable

prices to the consumers, particularly the vulnerable sections of the consumers; and

- v. the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.*

(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to—

- vi. the minimum price, if any, fixed for sugarcane by the Central Government under this section;*
- vii. the manufacturing cost of sugar;*
- viii. the duty or tax, if any, paid or payable thereon; and*
- ix. the securing of a reasonable return on the capital employed in the business of manufacturing sugar,*

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

Explanation. —*For the purposes of this sub-section, “producer” means a person carrying on the business of manufacturing sugar.*

(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the

Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation. —*For the purposes of sub-section (3D) and this sub-section,—*

- i) “producer” means a person carrying on the business of manufacturing sugar;*
- ii) “recognised dealer” means a person carrying on the business of purchasing, selling or distributing sugar;*
- iii) “sugar” includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.*

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorized controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,—

(a) the authorized controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any

functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,—

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual—

i. by delivering or tendering it to that individual, or

ii. if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

After reading of the sections 411 & 413 of the I.P.C. and sections 3 & 7 of the E.C. Act it is exigent that to bring home guilt of the accused under the charged sections the prosecution has to prove that the seized property were stolen and the accused possessed the same knowing to be stolen property and the accused also contravened the order of section 3 of the E.C. Act.

In order to prove the seized property were found in possession of the accused the prosecution has examined Bijoy Lama, the de-facto complainant as P.W.- 6 and two seizure witnesses Anil Pahara and Samsul Khan as P.W.- 1 and P.W.- 2. From the written complaint (Exbt.- 2) and evidence the P.W.- 6 it is sprouted that he seized the alleged articles from the accused in presence of two witnesses Anil Pahari and Samsul Khan under seizure list prepared by him. But the prosecution has neither produced the seized articles before the Court nor the identification of the same through the P.W.- 6 has been done by the prosecution. The prosecution has also not produced the seized articles before the P.W.- 3, Tapas Pal, ASI of police and the P.W.- 7, Kalipada Chakraborty, ASI of police, other two signatories in the seizure list for identification of those articles.

The P.W.- 6, the de-facto complainant and arresting officer and the P.W.- 7, one of the raided parties have also failed to identify the accused before the Court.

From the evidence of the P.W.- 1 it is revealed that he signed on the seizure list as per direction of the police and the contents of the seizure list were neither read over nor explained to him. In his cross-examination the P.W.- 1 has stated that he does not know about the contents of the seizure list.

In his cross-examination the P.W.- 2 has also stated that he does not know the contents of the seizure list.

From the above discussion it is crystal clear that the prosecution has failed to establish that the seized property were found in possession of the accused, the crux of the case.

From the materials on record it is transpired that neither the prosecution made any report of the alleged seizure to the Collector of the district nor the Collector directed the seized articles being essential commodities be produced before him for inspection in terms of section 6-A of the E.C. Act. So, it is needless to say the provisions of the E.C. Act were not complied by the prosecution during investigation and even thereafter also.

The prosecution has also failed to establish by any cogent evidence that the seized articles are identical with the property said to be stolen. None of the prosecution witnesses has uttered any single word suggesting that the seized articles were stolen. The prosecution has also failed to prove that the accused received or retained the seized articles, and dealt with it habitually, knowing it to be stolen.

There is no such evidence on record showing that the accused contravened any of the provisions of section 3 of the E.C. Act.

On the above premises it is epilogued that the prosecution has failed to fulfill the ingredients of sections 411 & 413 of the I.P.C.

and section 7 of the E.C. Act for attracting those sections against the accused and thereby, the prosecution has miserably failed to prove its case and as such the prosecution case fails and consequently, the accused person is liable to be acquitted.

FINAL ORDER

Hence, it is

ordered

that the accused is found not guilty of the offence punishable under sections 411 & 413 of the Indian Penal Code, 1860 and section 7 of the Essential Commodities Act, 1955 and accordingly, he is acquitted under section 235(1) of the Code of Criminal Procedure, 1973.

The accused person be set at liberty at once and he is discharged from his respective bail bond(s). Surety/surities is/are also discharged.

The zimbanama in respect of the seized articles as mentioned in item nos.- 1 and 2 of the seizure list be made final and remaining seized article as mentioned in item no.- 3 of the seizure list be disposed of by delivering it to the person claiming to be entitled to possession thereof, in default such property shall be at the disposal of the State Government, in default by confiscation or forfeiture, as the case may be, in default by destruction after expiry of period of appeal or revision or if appeal or revision is preferred as per direction of the appellate or revisional Court.

Certified copy of the judgment be given to the parties without delay, if applied for.

Typed by me

Pradip Kumar Adhikary,
Assistant Sessions Judge, 1st Court,
Contai, Purba Medinipur.

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Assistant Sessions Judge, 1st Court,
Contai, Purba Medinipur.