

E.C Act case no. 03/2015

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI

E.C Act case no. 03/2015

u/s 7(1) of the Essential Commodities Act.

State of Assam

-Vs-

Pramod Kalita.....Accused person

PRESENT: K.C Boro (M.A, L.L.B), A.J.S.

ADVOCATES APPEARED:

For the state : Mr. D. Talukdar, Ld. A.P.P,

For the accused : Smti. D. Bhattacharjee, Ld. Advocate,

Dates of evidence : 05/10/15, 18/01/16, 20/06/18, 24/12/18 &
26/11/19.

Date of argument : 15/12/20 & 06/01/21.

Date of judgment : 06/01/2021.

J U D G M E N T

PROSECUTION CASE:

1. Sri. Debajit Bujar Barua, who is an Inspector of the Food & Civil Supplies and Consumer Affairs, Nalbari on 17.01.14 visited to inspect one teal stall near Debiram Path, Nalbari town ward no. 9 along with Kalicharan Kalita and Prasun Maitra who are S.I's of FCS&CA, Nalbari and found that one person who introduced himself as Pramod Kalita was using one (1) number of domestic cylinder for commercial purpose. When asked, he said that he was using the same due to non

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possession of commercial cylinder @19.0 kg. As using of domestic cylinder for commercial purpose is an offence and clear violation of clause 3(1)(c) and on being satisfied that the provisions of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 have been violated by Pramod Kalita, hence, Sri Debojit Bujar Baruah submitted the offence report against the accused Sri Pramod Kalita.

2. During trial formal charge U/S 7(1) of the Essential Commodities Act was framed against the accused. The charge was read over to the accused to which he pleaded not guilty and claimed to be tried.

3. In support of their case, the prosecution examined four (4) witnesses including the informant. The defence declined to adduce evidence. The statement in defence of the accused person u/s 313 Cr.P.C was recorded.

4. After considering the relevant documents and after hearing the defence and the prosecution side, I find that following is the point to be determined in this case:

(I) Whether the accused person on 17/01/2014 violated the provision of clause 3(1)(c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and thereby committed an offence punishable under section 7(1) of the Essential Commodities Act, 1955?

5. DECISION AND REASONS THEREOF:

6. PW 1 Debajit Bujarbarua who is the informant deposed that on 17/01/14 at about 12:30 pm, he along with Kalicharan Kalita, Prasun Moitra (SI's Nalbari) went for inspection of Hotel & Restaurant and found that one Pramod Kalita was using domestic cylinder in his tea stall for commercial purpose. On being asked Pramod Kalita told that he does not have commercial cylinder. They seized one cylinder, rubber pipe and regulator used for commercial purpose from Pramod

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Kalita. They gave the seized articles in zimma to Red Horn Gas Agency. He made the seizure in the presence of Kalicharan Kalita and Pramod Kalita by taking their signature as witness. He then submitted report to D.C office. He prepared the offence report and forwarded the same to court while filing the case against Pramod Kalita.

7. PW 1 during cross-examination deposed that he was accompanied by Kalicharan Kalita and Prasun Moitra (SI's). He does not know whether the shop had any name belonging to the accused. The place where he made seizure is the road towards Debiram School. In that place there are shops at both the sides. He does not remember whether shops were open during afternoon time. He has not taken signature of nearby shopkeepers as witness in the seizure list. They found the cylinder while it was being used. He has not mentioned the quantity of remaining gas of the seized cylinder in the seizure list. He has not seen the seized cylinder and seized items in court. He gave the seizure items in zimma to a gas agency. The accused did not submitted any application stating that the cylinder belonged to him. The serial numbers of the seized cylinder and regulator were not distinct.

8. PW 2 Kalicharan Kalita deposed that he know the complainant Debajit Bujar Barua, Inspector of Food & Civil Supplies and Consumer Affairs, Nalbari. He has remembered accused Pramod Kalita who was present in a tea stall on the date of incident. In the month of January 2014, he along with Inspector Debajit Bujar Barua along with SI Prasun Moitra went for inspection. At about 12 pm, they visited one roadside tea stall near Debiram path where the accused introduced himself before them as the owner of the tea stall. Domestic cylinder was being used in the tea stall. Inspector Debajit Bujar Barua seized the cylinder along with pressure regulator and rubber pipe vide Exhibit 2 seizure list. The Inspector gave the seized articles in zimma to Red Horn Gas Agency.

9. PW 2 during cross-examination deposed that inspection is part of their normal duty. PW 2 deposed that they did not weighed the

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seized cylinder. PW 2 deposed that no public people were cited as witness at the time of making seizure list and zimmanama.

10. PW 3 Prasun Moitra deposed that on 17/01/14 he was working as Sub-Inspector, Food Civil Supplies and Consumer Affairs at D.C Office. On that day on the direction of Deputy Commissioner, he along with Inspector Debajit Bujar Barua and Sub-Inspector Kalicharan Kalita went for inspection at Nalbari ward no. 9 near Deviram path in the shop of Pramod Kalita and found that one domestic cylinder was being used for commercial purpose. Thereafter, Inspector Debajit Bujar Barua immediately seized the cylinder along with rubber pipe and one regulator in his presence by taking his signature and then gave the same in zimma to one Gas Agency.

11. PW 3 during cross-examination deposed that they visited the shop at around 11 am - 12 pm. He does not remember the exact time of their visit. There was no name of the shop. There were many other shops near the shop of the accused. They did not weighed the cylinder during its seizure. Domestic cylinder and commercial cylinder are two different types of cylinders. He did not hold the cylinder by himself and as such he does not know whether the seized cylinder was empty or full. He has not seen the seized cylinder, regulator and pipe in court. The seizure list was prepared at the place of inspection. The seizing officer has not seized any document from the accused to prove that the accused is the owner of the said shop. In exhibit 2, the serial number of the seized domestic cylinder was not written as unseen and it was stated therein that there was no serial number of the pressure regulator. The seizing officer prepared the zimmanama in Red Horn Gas Agency.

12. PW 4 Jolly Das Brahma deposed that on 18/04/15 she was working as ADC, Nalbari and on that day she directed to initiate inspection of gas cylinders and as per such direction, Debajit Bujar Barua (Inspector) visited one tea stall at Devi Ram path and found one domestic cylinder being used by the accused for commercial purpose

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and thereafter, Debajit Bujar Barua seized the domestic gas cylinder. As per procedure and as per direction of the Deputy Commissioner, the offence report has been filed. The FIR was given against Pramod Kalita.

13. PW 4 during cross-examination deposed that in general inspection comes under regular duty. Debajit Bujar Barua did not produced the seized articles before her. She filed the FIR on the basis of report submitted by Debajit Bujar Barua. She has not seen the accused from whom the articles were seized.

14. **Section 10 C (1) of the Essential Commodities Act** states as follows: In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: (1) In this Section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact; (2) For the purposes of this Section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

15. The effect of section 10 is that when an accused is found to have contravened the provisions of any order made under Section 3, a presumption of guilty mind, on the part of the accused in respect of offence under the EC Act, including Section 7, would arise; but it would be open to the accused to rebut the same by proving that he had no culpable mind, while contravening the provisions of the order and committing the alleged offence. Thus, in any prosecution under the EC Act, which requires a culpable mental state of mind on the part of the accused, the same must, as the law now stands, be presumed to have been existing unless the accused proves that he had no such mental state with respect to the offence for which he is tried. What is also

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extremely important to note is that according to the Explanation to Section 10(C), culpable mental state includes intention, motive, knowledge of a fact and belief in or reason to believe a fact. The degree of proof expected to rebut the presumption has been indicated by Sub-section (2) thereof, which states that a fact will be said to be proved only if it exists beyond reasonable doubt and it will not be sufficient to prove its existence by preponderance of probability. Thus, if an accused has to rebut the statutory presumption, which arises under the EC Act, the burden of proof is very heavy on the accused and the degree of proof shall be same as is required for proving existence of a fact by the prosecution.

16. In the backdrop of what has been pointed out above, the evidence of the prosecution witnesses no. 1, 2 & 3 are to the effect that they do not know whether the shop from where seizure was made had any name and they did not weighed the cylinder during its seizure and they do not know whether the same was empty or full. During cross-examination it was also deposed that the seizing officer did not seized any document from the accused to prove whether the accused is the owner of the said shop. Moreover, PW 4 who filed the FIR stated that she directed Debajit Bujar Barua (complainant) for doing inspection but PW 4 during cross-examination deposed that the complainant did not produced the seized articles before her and that she filed the FIR on the basis of report submitted by Debajit Bujar Barua.

17. From the evidence on record it appears that the prosecution has failed to prove beyond all reasonable doubt that the accused has committed an offence under section 7(1) of the Essential Commodities Act.

18. From the above discussions, I find that the accused cannot be held guilty of an offence under section 7 (1) of the E.C Act.

19. Accordingly, accused Pramod Kalita is hereby acquitted of the offence U/S 7(1) of the Essential Commodities Act. Bail Bond is

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extended for a period of six months. The seized articles be delivered to its lawful owner as per law.

20. Given under my hand and seal of this Court on this 6th day of January, 2021.

Chief Judicial Magistrate
Nalbari

APPENDIX

Prosecution witness:

PW 1- Debajit Bujar Barua (Informant),

PW 2- Kalicharan Kalita,

PW 3- Prasun Moitra,

PW 4- Jolly Das Brahma,

Prosecution Exhibits:

Exhibit 1 - Offence report,

Exhibit 1(1) - Signature of informant,

Exhibit 2 - Seizure list,

Exhibit 2(1) - Signature of informant,

Exhibit 2(2) - Signature of seizure witness Kalicharan Kalita,

Exhibit 2(3) - Signature of accused Pramod Kalita,

Exhibit 3 - Zimmanama,

Exhibit 3(1) - Signature of informant,

Exhibit 3(2) - Signature of Kalicharan Kalita,

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Exhibit 3(3) - Signature of Prasun Moitra,

Exhibit 4 - Offence report submitted by Addl. Deputy Commissioner,
Food, Civil Supplies and Consumer Affairs, Nalbari,

Exhibit 4(1) - Signature of Jolly Das Brahma,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Chief Judicial Magistrate,
Nalbari.