

**IN THE COURT OF Munsiff No. 1 cum JMFC,
Nalbari**

Present: Dr. Nabanita Kalita

(Date of Judgment)
22.09.2022

E.C. Case No. 10/2015

(Details of FIR/Crime and Police Station)

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|----------------|--|
| COMPLAINANT: | STATE OF Assam |
| REPRESENTED BY | SMTI. PRITIMA DEVI, APP. |
| ACCUSED | 1) NRIPEN KALITA |
| REPRESENTED BY | GAUTAM BARMAN, RAJIB KR. NAZIR, ADVOCATES |

| | |
|--------------------------------------|------------|
| Date of Offence | 12.05.2015 |
| Date of complaint | 15.05.2015 |
| Date of offence report. | 28.05.2015 |
| Date of charge framing | 07.01.2017 |
| Date of commencement of evidence | 20.07.2019 |
| Date on which judgment is reserved | NIL |
| Date of Judgment | 22.09.2022 |
| Date of the Sentencing Order, if any | NIL |

Accused Details:

| Rank of the Accused | Name of Accused | Date of Arrest | Date Release on Bail | Offences charged with | Whether Acquitted or convicted | Sentence Imposed | Period of Detention Undergone during Trial for purpose of Sec 428 Cr.P.C |
|---------------------|-----------------|----------------|----------------------|---------------------------|--------------------------------|------------------|--|
| A-1 | Nripen Kalita | | | 7(1) (a) (ii) E.C. Act | Acquitted | N/A | N/A |

JUDGMENT

1. Complainant Madan Talukdar filed a complaint stating inter-alia that on 12.05.2015 complainant accompanied with Sri Raktim Barua, ACS Ex-Magistrate, Nalbari, Sri Nitual Sarma, Sri Nripendra Kr. Das, both are SI's of FCS&CA, Nalbari went to inspect one hotel situated at village Barjhar(Barama), Dist. Nalbari for checking of LPG domestic cylinder for commercial purpose. During the time of their inspection, they found in the kitchen of hotel using domestic LPG cylinder for commercial purpose like preparation of tea, snacks etc. Then on interrogation, one person namely Sri Nripen Kalita s/o Joy Charan Kalita, who introduced himself as proprietor of the hotel stated that due to non-possession of commercial cylinder @19.0 kg, he used domestic LPG cylinder for his commercial

purpose. But using of domestic LPG cylinder for commercial purpose is an offence and clear violation of Clause- 3(1) (C) of the Liquified Petroleum Gas Regulation of Supply and Distribution) Order 2000. Hence, this case.

2. A complaint was lodged before the court of Id. Chief Judicial Magistrate, Nalbari and thereby offence report was submitted against the accused person. It was the court of Id. Chief Judicial Magistrate, Nalbari who had taken cognizance of the matter and thereafter, the case was transferred to this court for disposal. The documents upon which the prosecution relied were furnished to the accused person. A formal charge u/s 7 1(a)(ii) of the Essential Commodities Act, 1955 was framed against the accused and same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. My Id. Predecessor vide order dtd. 7.1.17 inadvertantly framed charge against the accused person u/s 7 1(a)(ii) of E.C. Act. Thereafter, the case has been posted for evidence before charge. PW 1 Nripendra Kr. Das and PW 2 Madan Talukdar were examined and their cross examination were reserved. My Id. Predecessor vide order dtd. 7.1.17 though the case was fixed for EBC as earlier on 7.1.17 charges have been framed directed to cross examine PW 1 and PW 2 vide order dtd. 5.3.20.

Thereafter on 17.4.20, 15.7.20, 6.11.20 the case was adjourned for limited functioning of the court as per notification of the Hon'ble High Court due to Noval Corona pandemic. After resumption of court functioning, on 5.2.21, 8.4.21, 17.7.21, 19.10.21, 23.12.21, 18.2.22, 2.4.22, 10.6.22 and today i.e. on 21.7.22 case is posted for evidence but prosecution failed to produce PW 1 and PW 2 for cross examination and other remaining PWs for cross examination.

4. Vider order dtd. 21.7.22 prosecution side has been given last opportunity to bring their witnesses on next date fixed but they failed to bring their witness for cross examination to prove the case. Hence, considering long pendency of the case at the stage of PW evidence and failure of the prosecution side to bring their witnesses, this court vide order dtd. 26.8.22 closed the evidence of prosecution side.

5. Finding no incriminating materials against the accused person, the statement of defence was dispensed with. Defence declined to adduce evidence.

6. After hearing the learned counsel of both sides and after perusal of the case record, I do hereby framed the following as point of determination:

POINTS FOR DETERMINATION

i) Whether the accused person being the owner of a hotel situated at Barjhar(Barama) used one domestic LPG Cylinder on 12.5.15 at the hotel for the purpose of business of his hotel and thereby committed an offence punishable under section 7 1(a)(ii) of Essential Commodities Act, 1955?

7. I have heard the learned counsel for both sides and have gone through the case record.

EVIDENCE ON RECORD

8. PW 1 Nripendra Kr. Das deposed in his examination-in-chief that he knows the informant. He does not identify the accused properly. PW 1 stated that on 12.5.15 along with inspector Madan Talukdar, Sub-Inspector Nitul Sarma and Magistrate Raktim Barua, they went to a hotel near Barama. The owner of the hotel was Nripen Kalita. PW 1 stated that they went for checking. Inside the kitchen of hotel, the accused person was using domestic cylinder instead of commercial cylinder. They seized that domestic cylinder. In front of Nripen Das and Nitul Sarma, they seized the cylinder. At the time of visiting hotel there were few customers. Later, their inspector submitted offence report in due court of Chief Judicial Magistrate. Later, domestic cylinder is given zimma of Drone Bharat Gas Agency.

9. PW 2 Madan Talukdar is the informant of this case. He deposed in his examination in chief that on 12.5.15 he was in Nalbari in his duty. On that day, he filed an ejahar. EAC Raktim Baruah and two SI Nripendra Kr. Das and Nitul Sarma and he went to Barjhar on their duty. In a hotel they found a domestic cylinder being used by the hotel owner Nripendra Kalita. He seized the cylinder and gave it zimma to Drone Bharat Gas Agency for safe custody. Later, he informed the same in office and submitted an offence report. Ext. 1 is offence report. Ext. 1(1) is his signature. Ext. 2 is seizure list. Ext. 2(1) is his signature.

DISCUSSION, DECISION AND REASONS THEREOF

10. After going through the evidence on record it transpires that though PW1 and PW2 stated incriminating against the accused in their evidence in chief but they remained absent and could not be cross examined by defense side. As such the evidence of the prosecution side not tested by cross examination on account of their non-appearance has no probative value. Therefore, it appears that there is nothing on record incriminating against the accused person to the alleged crime. As there is no evidence in the case to implicate the accused hence, I do not find any force in the prosecution

case to hold the accused person guilty of the alleged crime.

11. Now, it is the burden of the prosecution to establish the guilt of the accused person. From the evidence of the instant case, it appears that the prosecution has failed to adduced any evidence to hold the accused person guilty under the alleged sections of E.C. Act. Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused from the charge levelled against him. Hence, the accused person deserves acquittal.

12. Situated thus, it is found that the prosecution has failed to implicate the accused person Nripen Kalita of any offence u/s 7 1(a)(ii) of E.C. Act. As such, the points for determination are answered in negative and in favour of the accused person.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution failed to prove beyond reasonable doubt that the accused person had committed the offence under Section 7 1(a) (ii) of E.C. Act. As such, the accused person namely Nripen Kalita is acquitted of the charge

under Section 7 1(a)(ii) of E.C. Act and set at liberty forthwith.

The bail bond of the accused person and his sureties shall remain in force for a period of six months from today in compliance with section 437(A) Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and seal of this court on this 22nd day of September, 2022 at Nalbari, Assam.

(DR. NABANITA KALITA)
Judicial Magistrate, 1st Class,
Nalbari.

APPENDIX**LIST OF PROSECUTION/ DEFENCE / COURT WITNESSES****A. Prosecution:-**

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|-------------------|--|
| PW1 | Nripendra Kr. Das | Eye witness |
| PW2 | Madan Talukdar | informant |

B. Defence Witnesses, if any:

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|------|--|
| DW1 | NIL | N/A |

C. Court Witnesses, if any:

| RANK | NAME | NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|------|--|
| CW1 | NIL | N/A |

**LIST OF PROSECUTION/ DEFENCE /
COURT EXIBITS**

A. Prosecution:

| Sr. No | Exhibit Number | Description |
|---------------|-----------------------|--------------------|
| 1 | Ext-1 | Offence report |
| 2 | Ext-1(1) | Signature of PW 2 |
| 3 | Ext. 2 | Seizure list |
| 4 | Ext. 2(1) | Signature of PW 2 |

B. Defence:

| Sr. No | Exhibit Number | Description |
|---------------|-----------------------|--------------------|
| 1 | Exhibit D1/ DW1 | NIL |

C. Court Exhibits:

| Sr. No | Exhibit Number | Description |
|---------------|-----------------------|--------------------|
| 1 | Exhibit C1/ CW1 | NIL |

D. Material Objects:

| Sr. No | Exhibit Number | Description |
|---------------|-----------------------|--------------------|
| 1 | MO1 | NIL |

DR. NABANITA KALITA)
Judicial Magistrate 1st Class,
Nalbari.