

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. No.22 of 2015

Sri Kajal Kumar Sarkar,
son of Sri Prafulla Sarkar of Netaji
Palli, Icha Bazar, P.S. West
Agartala, District – West Tripura

..... **Petitioner**

– V e r s u s –

The State of Tripura

..... **Respondent**

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioner : Mr. P. Saha, Advocate
For the respondent : Mr. R.C. Debnath, Addl. P.P.
Date of hearing : 21.11.2016
Date of delivery of judgment and order : **30.11.2016**

Whether it is fit for reporting:

Yes	No
	✓

JUDGMENT & ORDER

This petition filed under Section 397 read with Section 401 of the Cr.P.C. is directed against the judgment and order dated 05.03.2015 delivered in Criminal Appeal No.54 of 2014 by the Sessions Judge, West Tripura, Agartala.

[2] The fact that would be essential for appreciating the challenge may be introduced at the outset.

On 13.06.2012, the officials of the Department of Food, Civil Supplies and Consumer Affairs, namely Manik Chandra Saha, Assistant Director (Food), Sri Partha Sarathi Bhattacharji, Inspector (Food) [PW-5], Sri Basab Bhattacharji

Inspector (Food), [PW-4] alongwith Dr. Reshma Das, Deputy Collector and Magistrate, Sadar raided the house of the petitioner at Netaji Colony, Ichabazar, West Dukli based on a secret information that some domestic LPG filled cylinders were stored in the house of the petitioner unauthorizedly. 15(fifteen) Nos. cylinders bearing Nos. SR 052361 S, SR 451770 R, SR 120953 S, SR 294696 S, SR 604770 T, SR 320832 T, SR 278094 T, SR 476929 S, SR 037225 S, SR 538081 T, SR 029474 S, SR 598673 S, SR 021632 S, SR 536828 T, SR 027688 S were found during the search and those were seized by preparing a seizure list [Exbt.2] by Sri Subrata Saha, Inspector (Food) [PW-3] in presence of the local witnesses including Sri Chitta Das [PW-2]. The storage was without any authority as the petitioner was neither a distributor nor could he have stored all these 15 Nos. of filled LPG cylinders as the consumer and hence, he was alleged to have violated the Clause-7(1)(c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 which provides as under:

"7(1) (c) : possess filled or empty cylinder, gas cylinder valve or pressure regulator, unless he is a distributor or a consumer."

[3] After seizure, those seized cylinders were kept in M/S. Satya Narayan Gas Agency on obtaining a 'Zimmanama' [Exbt.1]. The said zimmanama was authenticated by the Judicial Magistrate, First Class, Agartala, West Tripura on 09.01.2013. One Sri Laxman Bhowmik [PW-1] received those seized cylinders for M/S Satya Narayan Gas Agency. Before the seized cylinders were allowed to be kept by PW-1, Sri Subrata Saha

[PW-3] lodged a written complaint to the Officer-in-Charge, West Agartala Police Station informing the seizure and contravention of the said order. The contravention constitutes offence punishable under Section 7(1) (ii) of the Essential Commodities Act, 1955 as the control order was made under Section 3 of the Essential Commodities Act, 1955. After the investigation, the police filed the final police report chargesheeting the petitioner and accordingly, on taking cognizance of the offence, the charge was framed against the petitioner under Section 7(1)(a) (ii) of the Essential Commodities Act, 1955 for unauthorized storing of LPC cylinders. The petitioner pleaded not guilty and claimed to face the trial.

[4] In order to substantiate the charge, the prosecution adduced as many as 6(six) witnesses and introduced 2(two) documentary evidence including the said zimmanama [Exbt.1] and the seizure list dated 13.06.2012 as prepared by PW-3[Exbt.2].

After recording the evidence led by the prosecution, the petitioner was examined under Section 313 of the Cr.P.C. when he had taken a plea that he was implicated in the said case falsely. Thereafter, having appreciated the evidence, the Judicial Magistrate, First Class, Agartala, West Tripura by his judgment and order dated 11.08.2014 convicted the petitioner under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and sentenced him to suffer minimum statutory rigorous

imprisonment for 3(three) months with fine of ₹1,000/- (Rupees One thousand), in default of payment of fine, to suffer further rigorous imprisonment of 15(fifteen) days.

[5] Being aggrieved by that judgment and order dated 11.08.2014, the petitioner filed an appeal being Criminal Appeal No.54 of 2014 in the court of the Sessions Judge, West Tripura, Agartala. By way of affirmance, the said appeal was dismissed by the judgment dated 05.03.2015.

[6] Mr. P. Saha, learned counsel appearing for the petitioner has submitted that the prosecution has miserably failed to prove the seizure inasmuch as only independent witness who was examined by the prosecution, namely Sri Chitta Das (PW-2) did not support the prosecution's case as in the cross-examination, he has categorically stated that "*Kajal's family is a very big one. There are about 30 members in his family. There are about 30 other families of relatives of Kajal around his house. I do not know whose cylinders were those said cylinders. I do not know whether the said cylinders were recovered from the said 30 families. I do not know contents of the paper where I put my signature. Kajal earns living as daily wage working for people.*"

[7] Mr. Saha, learned counsel appearing for the petitioner referring to the seizure list, Exbt.2, has submitted that the another independent witness namely, Narayan Das was not examined by the prosecution. That apart, there is none whose name is recorded in the seizure list as the witness of seizure.

The seizure was caused by Sri Subrata Saha [PW-3], Inspector of Food. According to Mr. Saha, learned counsel, PW-3 is totally a partisan witness. On his statement, the incidence of seizure cannot be proved. That apart, the other witnesses, such as PWs-4 and 5 did not sign on the seizure list and as such, there is no record that they were present at the time of seizure. Mr. Saha, learned counsel has submitted that at the time of seizure, the petitioner was not present at his house. Mr. Saha, learned counsel in his last lap of submission has stated that Dr. Reshma Das, the Deputy Magistrate & Collector, Sadar and Manik Saha, Assistant Director (Food) were not examined in the trial, even though they were present at time of search and seizure. That creates a serious doubt why those high officials were not examined in the trial.

[8] From the other side, Mr. R.C. Debnath, learned Addl. P.P. appearing for the State has submitted that even PW-2 in his examination-in-chief has categorically stated that from the petitioner's house, 15 Nos. of LPG cylinders were recovered and he signed on a paper being asked by the police. He identified his signature on the seizure list as Exbt.2/1. Mr. Debnath, learned Addl. P.P. has further submitted that even though PW-4, Sri Basab Bhattacharji and PW-5, Partha Sarathi Bhattacharji did not sign on the seizure list but they were present at the time of search and seizure. Their testimonies are, therefore, very relevant for proving the seizure. PW-3 has categorically stated that those cylinders were stored in a locked room and he could see those cylinders peeping through the window as the room

was locked. They searched the storage on the tip of secret information. He has stated further that those cylinders were handed over to the Manager of M/S. Satya Narayan Gas Agency with the permission of the court. In the cross-examination, he has clearly stated that PW-1 did not submit any document regarding the fact that the place of storage belonged to the petitioner or in whose names those seized domestic LPC cylinders were issued. PW-4, Basab Bhattacharji did not said much except about how 15 Nos. filled domestic LPG cylinders were searched and seized and those were later on kept under a zimmanama in the custody of M/S. Satya Narayan Gas Agency. He has also admitted that there is no document regarding the fact that the place of storage belonged to the petitioner. PW-5, Sri Partha Sarathi Bhattacharji, according to Mr. Debnath, learned Addl. P.P, has corroborated the statement of PWs-3 and 4 in such a manner leaving no space for doubt. However, PW-5 has also stated that he did not see any document as regards the ownership or possession of the place of storage, whether it belonged to the petitioner or not. PW-6, Sri Srikanta Chakraborty investigated the case and he has submitted that a *prima-facie* case has been established against the petitioner for contravention of Clause-7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000. He has categorically stated that he did not direct the investigation to unfold in whose name those cylinders were issued.

[9] Having scrutinized the records, the question falls for consideration is that whether the place of storage belonged

to the petitioner or whether the petitioner stored those 15 cylinders in contravention of Clause-7(1) (c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 or not.

[10] There is no documentary proof to establish that the place of storage belonged to the petitioner. The only neighbouring witness (PW-2) also did not shed any light wherefrom those 15 cylinders were recovered belonged to the petitioner. On the contrary, the statement he made in the cross-examination has created a serious doubt about the ownership of the place of storage. Mr. Saha, learned counsel appearing for the petitioner has submitted that during the trial those LPG cylinders were not produced to be identified by the seizing officer [PW-3] and as such, the seizure has become highly questionable. Both the courts below by relying the apex court judgment in the matter on reliance of the testimonies of the police personnel in respect of the seizure, convicted the petitioner. Except PW-6 in this case, no police officer has been examined to prove the seizure. PW-6 did not claim that the seizure had taken place in his presence. He was only entrusted for conducting the investigation. Therefore, if the seizure of those 15 LPG cylinders were to be proved, those were to be proved by PWs-2,3,4 & 5. The admitted position is that PWs-4 & 5 even were not cited as the seizure witness though PW-3 has stated that they were present during the seizure. In such circumstances, their testimonies would be shrouded by serious doubt. PW-3 has stated that he seized 15 Nos. filled domestic

LPG cylinders from a room covered by jute sacks and at that time Dr. Reshma Das, DCM, Sadar was present when he entered the said locked room. But Dr. Reshma Das was not examined by the prosecution. Since PW-1 had taken zimmanama of 15 cylinders and PW-2 has stated in his examination that 15 cylinders were recovered from the petitioner's house, it can be held that 15 cylinders were recovered. But whether those cylinders were recovered from the petitioner's place or possession or not, there is no substantive evidence. Thus, compulsion of disclosure under Section 106 of the Indian Evidence Act is remote and for not disclosing the special knowledge as held by the trial court and affirmed by the appellate court, no adverse inference can be drawn against the petitioner.

[11] Having held so, the impugned judgment and order is set aside on benefit of doubt. The petitioner be acquitted from the charge. The sureties are discharged from their obligation.

In the result, this petition stands allowed.

Send down the LCRs forthwith.

JUDGE

Sujay