

**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**C.R.A No.117 of 1992**

This is an Appeal under Section 374(2) of the Cr.P.C., which has been preferred by the Appellant against the judgment of conviction and order of sentence passed on dated 11<sup>th</sup> March, 1992 in G.R. Case No. 493 of 1990 by the learned Special Judge-cum-Sessions Judge, Balangir.

***Bhatakudu @ Bhatkudu Seth*** .... ***Appellant***

*-versus-*

***State of Orissa*** .... ***Respondent***

**Appeared in this case by Hybrid Arrangement**

**(Virtual/Physical Mode):**

***For Appellant*** - Mr.A.K.Nanda,  
Advocate.

***For Respondent*** - Mr.T.K.Praharaj,  
Standing Counsel.

**CORAM:**

**MR. JUSTICE A.C.BEHERA**

**Date of Hearing :25.09.2023 :: Date of Judgment : 13.10.2023**

**A.C. Behera, J.** This Criminal Appeal has been preferred by the Appellant against the judgment of conviction and order of sentence passed against him (Appellant) by the learned Special Judge-cum-Sessions Judge, Balangir in G.R. Case No.493 of 1990 on dated 11<sup>th</sup> March, 1992, wherein, the Appellant was convicted U/s 7 of the Essential Commodities Act, 1955 and was sentenced to undergo R.I. for three months.

2. Prosecution case in brief was that, on 07.10.1990, the Appellant/accused was found carrying 39 liters of kerosene in two containers loading the same in his bicycle without any authorised permit. Therefore, he was prosecuted U/s 7 of the Essential Commodities Act, 1955 for contravention of the provisions of Orissa Kerosene Control Order, 1962.

3. The plea of the defence was one of complete denial and false implication of the accused.

4. In order to substantiate, the above allegation against the Appellant/accused, prosecution had examined three witnesses as P.Ws.1, 2 & 3, but the defence had examined none on its behalf.

5. I have heard Mr. Nanda, learned counsel for the Appellant and Mr. Praharaj, learned Standing Counsel for the State.

6. The learned Trial Court below has convicted and sentenced the Appellant/accused U/s 7 of the Essential Commodities Act, 1955 by assigning the reasons in paragraph No.4 of the impugned judgment that, “as the Orissa Kerosene Control Order read with the Government Notification vide S.R.O.264/82 dated 19.04.1982 contemplates that, no person without authority shall store or have in his possession kerosene in quantity exceeding ten liters at a time, thus, the accused is guilty on contravening the said order for possession of more than twenty liters of kerosene. So, he is therefore, liable under Kerosene Control Order. For which, he (accused) is held guilty U/s 7 of the Essential Commodities Act, 1955 and convicted him for the same and passed the order of sentence against him as stated above.”

7. No evidence has been led on behalf of the prosecution either through any of the witnesses or through any document before the Trial Court that, the accused was a dealer or he was doing business in kerosene, which is *sine qua non* for attracting the provisions of Kerosene Control Order against an accused.

8. On this aspect, the position of law is very much clear as per the ratio of the decisions in the following like nature cases:-

*62 (1986) CLT- 656-Govind Prasad Jaiswal Vrs. State of Orissa*  
*1994 (II) OLR 301 (D.B.) - Puspa Ranjan Patel Vrs. State*  
*2002 (II) OLR 389: (2003) 24 OCR-351-Bairagi Sahu Vrs. State of Orissa*  
*2005 (ii) OLR 775: (2006) 34 OCR-155-Masad Baig Vrs. State, that-Essential Commodities Act, 1955-Section 7(1) read with Orissa Kerosine Control Order, 1962- Conviction-Appeal-*

“Absence of any proof that, the accused was dealer or he was doing business in kerosene, he can be said to be consumer only and not beyond that. It cannot be said that, the Appellant had violated the provisions of Orissa Kerosene Control Order. Therefore, he was not liable to be held guilty U/s 7 of the E.C. Act, 1955.”

9. In this instant case, none of the witnesses of the prosecution out of three has uttered a single word in their respective evidence that, the Appellant/accused was either a dealer of kerosene or he was doing business in Kerosene.

10. Therefore, in absence of any proof that, the Appellant was either a dealer or he was found doing business in kerosene, he (Appellant) can be said to be a consumer of kerosene only and not beyond that. For which, it cannot be held that, the Appellant had violated the provisions of Orissa Kerosene Control Order, 1962. So, he (Appellant) should not have been held guilty U/s 7 of the Essential Commodities Act, 1955 by the learned Trial Court.

11. As per the decisions and observations made above on the basis of the materials on record, the impugned judgment of conviction and order of sentence passed by the learned Trial Court below against the Appellant cannot be sustainable under law. The same are liable to be set aside. For which, there is merit in the Appeal of the Appellant, which is to be allowed.

12. In the result, the Appeal filed by the Appellant is allowed. The impugned judgment and the order of sentence passed U/s 7 of the Essential Commodities Act, 1955 against the Appellant on dated 11<sup>th</sup> March, 1992 in G.R. Case No. 493 of 1990 by the learned Special Judge-cum-Sessions Judge, Balangir are set aside. For which, the Appellant is acquitted from the offence U/s 7 of the Essential Commodities Act, 1955 and directed to be set at liberty forthwith on being discharged from the bail bonds.

(A.C. Behera),  
Judge.

Orissa High Court, Cuttack.  
13<sup>th</sup> October, 2023//Utkalika Nayak//  
Junior Stenographer