



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE  
AND ADDITIONAL CHIEF JUDICIAL MAGISTRATE,  
UNA**

**Criminal Case No.: 444 of 2012**

**State of Gujarat**

**... Complainant**

**Versus**

**Dilipbhai Mohanbhai Thakkar... Accused**

**JUDGMENT**

**Delivered by:**

**Shri Jayesh Kumar Kabhaibhai Khant**

<b>Event</b>	<b>Date</b>
<b>Date of Filing</b>	27/03/2012
<b>Date of Judgment</b>	18/04/2026
<b>Total Duration</b>	<b>14 Years, 0 Months, 22 Days</b>

**FORM- A**

<b>Case Details</b>	<b>Information</b>
<b>Judgment Date</b>	18/04/2026

<b>Case Details</b>	<b>Information</b>
<b>Criminal Case No.</b>	444/2012
<b>Sections of Offense</b>	Offence punishable under Section 7 of the Essential Commodities Act, 1955
<b>Crime Register No.</b>	Una police station ii 3047/2012
<b>Complainant</b>	The State
<b>For the Prosecution</b>	LEARNED A.P.P. K.D VASAVA
<b>Accused</b>	Dilipbhai Mohanbhai Thakkar Shankardas Asandas Hemjani
<b>Accused advocate</b>	Learned advocate M.G.NAQVI

**FORM -B**

<b>Milestone</b>	<b>Date</b>
<b>Date of Offence</b>	10/01/2012
<b>Date of F.I.R.</b>	17/02/2012
<b>Date of Framing Plea/Charge</b>	9/8/2018
<b>Date of Commencement of Evidence</b>	31/08/2021
<b>Date of Reserving for Judgment</b>	28/02/2026
<b>Date of Judgment</b>	18/04/2026

**ACCUSED DETAIL**

<b>Sr. No.</b>	<b>Name of Accused</b>	<b>Date of Arrest</b>	<b>Date of bail out</b>	<b>Section of offence</b>	<b>Verdict</b>	<b>Sentence Imposed</b>	<b>Period of Detention under section 468 of BNS S</b>
1.	Dilipbhai Mohanbhai Thakkar	18/02/2012	3/3/2012	Offence punishable under Section 7 of the Essential Commodities Act, 1955	<b>Acquittal</b>	Nil	
2.	Shankardas Asandas Hemjani	18/02/2012	3/3/2012	AS ABOVE	<b>Acquittal</b>	Nil	

**FORM-C -ORAL AND DOCUMENTARY EVIDENCE**

Sr. No.	Exh. No.	Description of Document
1	11	Statement of Jivabhai
2	12	Original Panch Rojkam
3	13	Seizure order
4	14	Statement of Accused Dilipbhai
5	15	Statement of Rickshaw Driver
6	16	report to collector
7	17	order of collector for filling of complaint
8	18	Written Complaint to Police
9	19	letter regarding institution of complaint to collector
10	41	Order of Investigation
11	42	FIR

PW No.		Witness Name	Designation
PW-1	10	Manubhai P. Jodia	Mamlatdar
PW-2	21	Himmatbhai Ramjibhai	Supply Dept.
PW-7	36	Pareshbhai Babubhai	Dy. Mamlatdar
PW-8	40	Punjabhai Vadhiya	PSO

PW No.		Witness Name	Designation
PW-9	43	Ramnath F. Gosai	ASI (I.O.)
PW-3,4,5,6	25,26,29,33	Babubhai Chanabhai Bareiya (Exh.25), Babubhai Pithabhai Chauhan (Exh.26), Vijaykumar Ishwarlal Jumani Exh 29, and Kishorbhai Mohanbhai Thakkar (Exh.33) Various (Panchas)	Private Citizens

**JUDGMENT**

This is a criminal case arising out of Cri. Case No. 444 of 2012, registered for the alleged offence punishable under Section 7 of the Essential Commodities Act, 1955, for the alleged violation of Section 3 of the said Act. The prosecution case, in brief, is that the accused was found in unauthorized possession and use of blue kerosene, which is an essential commodity distributed under the Public Distribution System, without holding any valid license or permit, and thereby committed an offence under the provisions of the Essential Commodities Act.

**1.Prosecution Version**

The prosecution case originates from a raid carried out on 10/01/2012 at Jalaram Sweet Mart, situated on Delvada Road,

Una, by the Mamlatdar, Supply Department, Una, along with other officers of the Supply Department, pursuant to a tip-off regarding illegal storage of kerosene. During the inspection, in the presence of panch witnesses and the accused, seven barrels containing approximately 1235 liters of blue kerosene were found stored in a godown situated behind the shop. The said kerosene was allegedly meant for distribution to ration cardholders under the Public Distribution System and was not permitted to be stored or used for commercial purposes.

**Alleged Admission and Seizure**

It is the further case of the prosecution that upon inquiry, the accused failed to produce any license or permit authorizing him to store or use the said kerosene and allegedly admitted that he had procured a part of the stock from a rickshaw driver and the remaining stock from ration cardholders over a period of time and was using the same for his business purpose. A seizure panchnama was drawn, the kerosene stock along with the barrels was seized, and the same was handed over to an authorized kerosene agent for safe custody.

**Registration of Offence and Investigation**

Thereafter, a report along with relevant documents was forwarded to the District Collector, Junagadh, and upon receiving due authorization, a written complaint was lodged at Una Police Station on 17/02/2012, pursuant to which an offence was registered under Section 7 of the Essential Commodities Act, 1955. The investigation was carried out, statements of witnesses

were recorded, and upon completion of investigation, a chargesheet came to be filed against the accused before this Court.

## 2.APPEARANCE & COMPLIANCE

Upon registration of the case, summons were duly issued and served upon the accused, pursuant to which the accused Dilipbhai Mohanbhai Thakkar appeared before the Court. The accused was furnished with copies of the police papers and relevant documents as required under law. Thereafter, the accused engaged a learned advocate of his choice, who appeared on his behalf throughout the trial. The accused pleaded not guilty to the charge and claimed to be tried. In this case charge against the accused has been framed vide exhibit 6 and explained him at that atge accused plead not guilty hence trial proceed against him as par crpc 1973 as par law

## 3. STATEMENT OF ACCUSED UNDER SECTION 313 Cr.P.C.

After completion of the prosecution evidence, the incriminating circumstances appearing against the accused were explained to him and his statement was recorded under Section 313 of the Code of Criminal Procedure, 1973. The accused Dilipbhai Mohanbhai Thakkar denied all the allegations levelled against him and stated that he is innocent and has been falsely implicated in the present case. He denied having unauthorized possession, storage or use of blue kerosene as alleged by the prosecution. The accused further stated that the alleged panchnama and

proceedings were not carried out in his presence and that the documents have been prepared falsely. He did not admit the correctness of the prosecution evidence and stated that no offence has been committed by him. The accused did not choose to lead any evidence in defence.

#### **4. ARGUMENTS OF THE PROSECUTION**

Learned Assistant Public Prosecutor Shri Vasava has argued that the prosecution has successfully established the charge against the accused through cogent, consistent and reliable evidence of official witnesses. It is submitted that the evidence of Manubhai Popatbhai Jodia, the then Mamlatdar and complainant, Himmatbhai Ramjibhai, and Pareshbhai Babubhai Kargatiya, Deputy Mamlatdar, clearly proves that on 10/01/2012, the accused was found in unauthorized possession of 1235 liters of blue kerosene stored in seven barrels in the godown situated behind Jalaram Sweet Mart, Una. Learned APP submitted that blue kerosene is an essential commodity supplied to ration cardholders under the Public Distribution System, and its storage and use for commercial purposes without license amounts to a clear violation of the provisions of the Essential Commodities Act, 1955.

It is further argued that the accused himself admitted in his statement that he had no permit or license to store the said kerosene and that he had procured part of the stock from a rickshaw driver and the remaining from ration cardholders and was using the same for his business purpose. The statement of the

rickshaw driver and the measurement statement corroborate the prosecution version regarding the source and quantity of kerosene seized. Learned APP submitted that the panchnama has been duly proved through official witnesses and mere hostility of panch witnesses does not render the prosecution case doubtful, as it is a settled principle of law that evidence of official witnesses cannot be discarded solely on the ground that panch witnesses have turned hostile, particularly when no motive is attributed to them for false implication.

Learned APP further argued that the investigation has been properly conducted, the FIR (Exh.42) was registered after due authorization from the District Collector, and the chargesheet was filed after collecting sufficient material against the accused. It is submitted that minor procedural lapses, if any, do not go to the root of the case and should not result in acquittal when substantive evidence clearly establishes unauthorized possession and misuse of an essential commodity. Learned APP therefore prayed that this Court may hold the accused guilty and convict him for the offence punishable under Section 7 of the Essential Commodities Act, 1955, and impose appropriate punishment.

**5. ORAL AND WRITTEN ARGUMENTS VIDE- EXHIBIT 57  
ON BEHALF OF THE ACCUSED**

Learned advocate Shri M.G. Nakavi, appearing for the accused Dilipbhai Mohanbhai Thakkar, has strenuously argued that the prosecution has utterly failed to establish the basic and mandatory ingredients of an offence under Section 7 of the

Essential Commodities Act, 1955, and therefore the accused deserves an acquittal. It is submitted that the entire prosecution case rests on an alleged violation of a Control Order, but the prosecution has not produced or proved any Control Order issued under Section 3 of the Act, which is the very foundation of the alleged offence. Learned advocate pointed out that Manubhai Popatbhai Jodia (Exh.10), the complainant Mamlatdar himself, has categorically admitted in his cross-examination that the Control Order which was in force at the relevant time has not been produced in the present case, despite admitting that such Control Order contains provisions regarding storage limits, usage, distribution, and authority to conduct raids. Similar admissions have been made by Pareshbhai Babubhai Kargatiya (Exh.36), who has conceded that no Control Order or government notification was annexed either with the panchnama or the complaint. Learned advocate therefore submitted that in absence of proof of the Control Order, no offence under Section 7 can legally survive, irrespective of the alleged seizure.

Learned advocate further argued that the seizure itself is rendered doubtful, as all independent panch witnesses have turned hostile. Babubhai Chanabhai Bareiya (Exh.25), Babubhai Pithabhai Chauhan (Exh.26), Vijaykumar Ishwarlal Jumani(Exh.29 ), and Kishorbhai Mohanbhai Thakkar (Exh.33) have all clearly stated in their depositions that they were not present during any raid or seizure and that their signatures were taken on prepared documents. Though these witnesses have identified their signatures on the panchnama (Exh.12 / Exh.30), they have denied

the contents and the procedure, thereby demolishing the evidentiary value of the panchnama. Learned advocate submitted that in a case involving a penal statute, mere proof of signatures without proof of lawful procedure cannot sustain a conviction.

It is further argued that the prosecution has failed to establish conscious possession and ownership of the godown from where the kerosene was allegedly seized. Learned advocate drew attention to the cross-examination of Himmatbhai Ramjibhai (Exh.21), who has admitted that no documentary proof such as municipal license, ownership document, rent agreement, or trade license was collected to show that the godown belonged to or was exclusively possessed by the accused. Even admitted that such documents are normally required but were not seized during the entire procedure. Learned advocate therefore submitted that the essential link between the accused and the alleged place of seizure has not been proved.

Learned advocate Shri Nakavi further assailed the prosecution case on the ground of selective and incomplete investigation. He pointed out that the prosecution story itself alleges that kerosene was procured from ration cardholders, yet no ration cardholder has been examined, no ration card details have been collected, and no action has been taken against such cardholders, despite admitting in cross-examination that misuse or resale of kerosene by ration cardholders would itself constitute an offence. P.W4 (Exh.36) has further admitted that no investigation was carried out to ascertain from which villages or which ration cards the

kerosene originated, thereby making the prosecution version speculative.

Learned advocate also highlighted serious procedural lapses in investigation, relying upon the cross-examination of PW-6 Ramnath Fulnath Gosai, the Investigating Officer (Exh.43). The Investigating Officer has admitted that he did not draw any independent scene of offence panchnama, did not examine any independent local witnesses, did not record statements of ration cardholders, and did not collect any government order restricting the use of kerosene. He further admitted that the chargesheet was filed largely on the basis of the written complaint and departmental papers, and that he proceeded on the assumption that an offence had been committed. Learned advocate submitted that such an investigation falls short of the standard required in criminal law.

Learned advocate lastly submitted that even the alleged statements of the accused (Exh.14) and the rickshaw driver (Exh.15), relied upon by the prosecution, cannot by themselves form the basis of conviction, particularly when the statutory Control Order is not on record and the seizure itself is doubtful. It is well settled that criminal liability under the Essential Commodities Act is strict in nature but proof of statutory violation is mandatory, and that suspicion, however strong, cannot replace proof beyond reasonable doubt. Considering the cumulative effect of hostile panch witnesses, absence of the Control Order, lack of documentary linkage of the godown, failure to investigate alleged suppliers, and admissions elicited in

cross-examination of prosecution witnesses, learned advocate Shri Nakavi prayed that the accused be honourably acquitted by extending the benefit of doubt.

#### **6. POINT FOR DETERMINATION**

The central question that arises for determination by this Court is whether the prosecution has proved beyond reasonable doubt that on 10/01/2012, the accused was found in unauthorized possession, storage, and use of approximately 1235 liters of blue kerosene, an essential commodity meant for distribution to ration cardholders under the Public Distribution System, at the godown situated behind Jalaram Sweet Mart, Una, without holding any valid license, permit, or authorization under any Control Order issued under Section 3 of the Essential Commodities Act, 1955, and whether the alleged search, seizure, panchnama, and subsequent investigation were carried out in accordance with law, so as to bring home the guilt of the accused for the offence punishable under Section 7 of the Essential Commodities Act, 1955.

**ANSWER IN NEGATIVE** -Accused acquitted under s.255(1) of crpc 1973

#### **7. PROSECUTION EVIDENCE**

In order to substantiate the charge against the accused, the prosecution has examined in all six official witnesses and four panch witnesses and has produced several documentary exhibits on record. The prosecution has mainly relied upon the evidence of PW-1 Manubhai Popatbhai Jodia, Mamlatdar and complainant

(Exh.10), PW-2 Himmatbhai Ramjibhai, Supply Department employee (Exh.21), and PW-4 Pareshbhai Babubhai Kargatiya, Deputy Mamlatdar (Exh.36), who have deposed regarding the receipt of information, raid conducted on 10/01/2012 at Jalaram Sweet Mart, Una, seizure of seven barrels containing approximately 1235 liters of blue kerosene, and recording of statements of the accused and other persons. The prosecution has also examined panch witnesses at Exh.24, Exh.26, Exh.33 and Exh.29, police witnesses including PW-5 Punjabhai Danabhai Vadhiya, PSO (Exh.40), who proved registration of FIR (Exh.42), and PW-6 Ramnath Fulnath Gosai, Investigating Officer (Exh.43), who deposed regarding investigation and filing of the chargesheet. The prosecution has relied upon documentary evidence including the panch rojakam (Exh.12), statement of the accused (Exh.14), statement of the rickshaw driver (Exh.15), measurement statement , FIR and other connected papers to prove the alleged offence.

**PW-1: Manubhai Popatbhai Jodia (Exh.-10)**

1. PW-1 deposed that on 10.01.2012, while he was serving as Mamlatdar, Una, he received information that the accused Dilipbhai Mohanbhai Thakkar, owner of Jalaram Sweet Mart, was illegally storing blue kerosene. He stated that he informed Deputy Mamlatdar P.B. Karkathiya and Supply Inspector H.R. Kordia, and along with them proceeded to the shop after calling two independent panch witnesses.

2. He stated that the accused identified himself as the owner of the shop. Upon inspection of the shop and the godown situated behind it, seven iron barrels containing blue kerosene were found. Since the barrels were partially filled, Jivabhai, an employee of the kerosene agent, was called to measure the stock using a dipstick, and the total quantity was found to be 1235 liters.
3. PW-1 further deposed that the blue kerosene was supplied by the Government under the Public Distribution System for domestic use of ration cardholders. When asked to produce any permit or licence, the accused admitted that he had no authority to store or use the kerosene and further admitted that he was using it illegally for business purposes.
4. He stated that a detailed panch rojakam was prepared in the presence of the panchas, the kerosene stock and barrels were seized, and the total value was assessed at Rs. 21,230.15/-. The seized muddamal was handed over to Karamsi Mulji Company for safe custody. A written seizure order was issued to the accused, which bears the accused's signature as well as his own.
5. PW-1 stated that thereafter a report was submitted to the District Collector, Junagadh, who by written order dated 08.02.2012 authorised filing of a complaint. Pursuant to the said order, a written complaint was lodged at Una Police Station.

6. In cross-examination, PW-1 admitted that blue kerosene is not sold in the open market and is distributed only through government-appointed agencies. He admitted that the Control Order in force was not produced in this case. He also admitted that documentary proof regarding restricted use of kerosene by cardholders was not produced, though he denied that cardholders could use kerosene for purposes other than cooking.

PW-2: Himmatbhai Ramjibhai (Exh.-21)

1. PW-2 deposed that in the year 2012, he was serving in the Supply Department, Mamlatdar Office, Una. On 10.01.2012, the Mamlatdar called him and Deputy Mamlatdar P.B. Kargatiya and informed them about a tip-off regarding illegal kerosene stock at Jalaram Sweet Mart.
2. He stated that he accompanied the Mamlatdar and Deputy Mamlatdar to the shop on Delvada Road. The accused disclosed his name as Dilipbhai Mohanbhai. Panch witnesses were called and inspection was conducted in presence of the accused.
3. PW-2 stated that in the godown adjacent to the shop, seven partially filled barrels of blue kerosene were found. For measurement, kerosene agent Kamalshih Mulji and his employee Jivabhai were called, and on measurement, the total quantity was found to be 1235 liters.
4. He deposed that the accused admitted that he had no licence or authority to store the kerosene and stated that he

had purchased about 400 liters from a rickshaw driver named Shankarbhai, while the remaining stock was collected from ration cardholders of Una and Delvada. The accused also stated that the kerosene was being used for preparing farsan in his shop.

5. PW-2 stated that the entire procedure was carried out in presence of panchas and a panch rojakam was prepared. The seized stock was handed over to a licensed kerosene dealer for safekeeping and the matter was reported to the District Collector, who authorised filing of the complaint.
6. In cross-examination, PW-2 admitted that no documentary proof regarding ownership of the shop or godown was taken. He admitted that no municipal or food licence was seized and that no action was taken against the ration cardholders who allegedly sold kerosene to the accused. He further admitted that the ration cardholders were not named as accused and no inquiry was made regarding their villages.

PW-3: Babubhai Chanabhai Bareiya (Exh.-25)

1. PW-3 stated that he did not know anything about the panchnama. He stated that the Mamlatdar made him sign a prepared document and that he had no knowledge about its contents.
2. He identified his signature on the panchnama at Exhibit-12.

3. At the request of the learned APP, he was declared hostile and was confronted with several suggestions under Section 154 of the Evidence Act, all of which he denied.
4. There was no cross-examination by the defence.

PW-4: Babubhai Pithabhai Chauhan (Exh.-26)

1. PW-4 deposed that he did not know anything about the panchnama and that the Mamlatdar had taken his signature on a prepared document.
2. He identified his signature on the panchnama produced at Exhibit-12.
3. He was declared hostile by the prosecution and denied all suggestions regarding his presence at the place of seizure, recovery of kerosene, and seizure procedure.
4. There was no cross-examination by the defence.

PW-5: Vijaykumar Ishwarlal Jumani (Exh.-29)

1. PW-5 deposed that he knew nothing about the panchnama and that the police called him to the police station and took his signature on a prepared paper.
2. He identified his signature on the panchnama at Exhibit-30 and stated that no arrest or seizure took place in his presence.
3. He was declared hostile by the prosecution. During questioning, he admitted that the accused was his friend.

4. In cross-examination, he admitted that he signed the panchnama at the instruction of the police.

PW-6: Kishorbhai Mohanbhai Thakkar (Exh.-33)

1. PW-6 stated that the panchnama related to kerosene and was conducted at Jalaram Sweet Mart, but he did not remember the procedure. He denied witnessing any arrest or seizure.
2. He identified his signature on the panchnama at Exhibit-30.
3. He was declared hostile, and during questioning he admitted that the accused Dilipbhai Mohanbhai Thakkar is his younger brother.
4. In cross-examination, he admitted that he signed the prepared panchnama at the instruction of the police.

PW-7: Pareshbhai Babubhai Kargatiya (Exh.-36)

1. PW-7 deposed that he was serving as Deputy Mamlatdar (Supply), Una, at the relevant time. On 10.01.2012, as per instructions of the Mamlatdar, he inspected the godown of Jalaram Farsan/Sweet Mart along with the Mamlatdar and Supply Inspector.
2. He stated that seven iron barrels containing blue kerosene were found in the godown and on measurement the quantity was found to be 1235 liters. The accused had no licence or authority to store or use the kerosene.

3. PW-7 stated that the accused admitted purchasing 400 liters from rickshaw driver Shankarbhai and collecting the remaining stock from ration cardholders for use in his farsan business.
4. He deposed that statements of the accused, rickshaw driver, and the measuring person were recorded and the stock was seized in presence of panchas. The seized stock was handed over to a government-authorized kerosene dealer.
5. He stated that the matter was reported to the District Collector, who authorized filing of the complaint under the Essential Commodities Act.
6. In cross-examination, PW-7 admitted that the Control Order was not produced, no investigation was conducted against ration cardholders, and no document showing Collector's authority was attached. He denied false implication of the accused.

PW-8: Punjabhai Danabhai Vadhiya (Exh.-40)

1. PW-8 deposed that on 17.02.2012, while serving as PSO, Una Police Station, he received a written complaint from the Mamlatdar and registered an offence under Section 7 of the Essential Commodities Act.
2. He proved the FIR at Exhibit-42 and the complaint at Exhibit-18, bearing his signature.

3. In cross-examination, he admitted that the complaint was registered as a second-part offence and that no government order under Section 3 was received along with the complaint. He further admitted that he had no personal knowledge of the offence.

PW-9: Ramnath Fulnath Gosai (Exh.-43)

1. PW-9 deposed that on 17.02.2012, he was handed over the investigation of the offence by the PSO. He stated that he inspected the scene, recorded statements of witnesses, seized the rickshaw, arrested the accused, and thereafter filed the chargesheet.
2. He identified the panchnama, FIR, complaint, and other connected documents.
3. In cross-examination, PW-9 admitted that no scene panchnama was prepared, no independent local witnesses were examined, and no government order under Section 3 was received. He admitted that the chargesheet was filed based on papers received from the Mamlatdar. He denied conducting a false investigation.

8.ESSENTIAL COMMODITIES ACT, 1955

SECTION 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 defense 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 any 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;

<sup>9</sup>-(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,-

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) 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 purpose 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 10[\*\*\*] 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;

~~11~~—[(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 foodstuff 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 foodstuff 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 food- stuff, 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 the 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.

<sup>12</sup>[(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 -

(a) 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;

(b) the general crop prospects;

(c) 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

(d) 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 -

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) 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 1 - For the purpose of this sub-section, "producer" means a person carrying on the business of manufacturing sugar.]

'Explanation II.-For the removal of doubts, it is hereby declared that the expressions "fair and remunerative price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers co-operative society.'

(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, authorize 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 authorized 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.

• **SECTION 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 ;

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

(c) any packing, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property 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.

24[\*\*\*]

(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. 24

[\*\*\*]

(2B) [\*\*\*]

(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 10AA : Power to arrest**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no officer below the rank of an officer in charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act.]

**9.CITATION**

**9.1 GUJARAT HIGH COURT Hon'ble Judges: Akshay H.Mehta Vipul Nandlal Ramani Versus State Of Gujarat Criminal Appeal No. 987 of 1994 ; Decided on:- 13-03-2003**  
**Acts and Rules Referred : CODE OF CRIMINAL PROCEDURE, 1973 Section - 211, 251 ESSENTIAL COMMODITIES ACT, 1955 Section - 7, 3, 12AA Essential Commodities Act, 1955 - S. 3, 7, 12AA**

- appellant found in possession of concealed cylinders of cooking gas - appellant convicted in summary case - requirement to give information about accusation levelled - alleged breach of control order - appreciation of evidence - prosecution failed to produce any material which would indicate that appellant had committed breach - held, court is required to inform accused about accusation levelled against him - prosecution has not produced any material to show that cooking gas is declared to be essential commodity - orders of conviction and sentence set aside - appeal allowed.**Imp.Para:- 6**

6. It appears from the record that the appellant alongwith three other original accused was booked for committing offence u/S. 3 read with sec. 7 of the Act. Sec. 3 of the Act confers power on the Central Government to control production, supply, distribution, etc. of essential commodities. By virtue of subsection (2) of sec. 3 it has been empowered to issue orders as envisaged under subsection (1) of section 3 of the Act with regard to the items contained in clauses (a) to (f). The other provisions of sec. 3 are not relevant for the purpose of deciding this case. Section 7 deals with penalties and the words of subsection (1) thereof are "If any person contravenes any order made under Sec. 3,". The rest of the provisions of this section provide for imposition of different penalties in respect of different clauses of subsection (2) of sec. 3 of the Act and also for forfeiture of the property in respect of which order has been contravened. So far the gist of the prosecution case is concerned, it says that the appellant and other accused were having clandestine dealing in the cooking gas

cylinders. So far appellant is concerned, while recording his plea, it has been put to him that on 22nd March, 1993 at about 3.30 p.m. he was found by Police Sub Inspector Mr. Kathi of Special Squad, who was on patrolling alongwith his staff near Bavaliya Hanuman temple in Jawahar colony, in suspicious condition having 45 cylinders of cooking gas which were concealed in the cluster of babul shrubs and on inquiry he was not able to render any explanation regarding how he came into possession of these cylinders. It has been further put to him that in this surreptitious dealing he was aided by original accused nos. 2 to 4 and thereby they had contravened provisions of sec. 3 for which he had committed offence made punishable under Sec. 7 of the Act.

6.1. Section 12-AC of the Act provides for application of Code to proceedings before a Special Court. Sec. 2 (ia) of the Act defines "Code" means the Code of Criminal Procedure, 1973 (2 of 1973). As stated above, clause (f) of sub-section (1) of section 12-AA prescribes that all offences under the Act shall be tried in a summary way and provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as possible, apply to such trial. Sections 262 to 265 (both inclusive) are contained in Chapter XXI of the Code. Sec. 262 of the Code deals with procedure for summary trial and it says that in trials under this chapter, the procedure specified in the Code for the trial of summons-case shall be followed subject to certain exceptions. Chapter XX of the Code deals with trial of summons-cases by Magistrate. Sec. 251 of the Code is

contained in Chapter XX and it is required to be reproduced verbatim.

"251. Substance of accusation to be stated.- When in a summons-cases the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

6.2. It may be noted here that though Sec. 251 of the Code. does not envisage a formal charge being framed in a trial of summons case, it does prescribe that the accused is required to be stated the particulars of the offence of which he is accused. Now what these particulars should be, some guideline can be derived from sec. 211 of the Code. which deals with contents of a charge in warrant triable cases.

"211. Contents of charge.- (1) Every charge under this Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to

constitute the offence charged was fulfilled in the particular case. (6) The charge shall be written in the language of the Court. (7) xxx xxx xxx xxx xxx "

Sub-sections (1) to (5) require that the accused is to be informed precisely and if there is name of the offence, by name, otherwise by describing the offence and the provision of law which constitute commission of the act of the accused an offence. This is the minimum that is needed to be done while framing the charge and even if no formal charge is required to be framed in a summons-case, compliance of the aforesaid requirement is a must.

6.3. Thus, at the time when the plea of the accused is being recorded, the concerned Court is required to inform him about the accusation levelled against him. This would mean that he is required to be informed about the commission of the act by him which is complained of and which constitutes offence and the provision of law of which he is alleged to have committed breach of and the ultimate offence which would be constituted on account of committing such breach. It is a matter of common knowledge and judicial note can be taken of the fact that under the provisions of the Act and in particular provision of sec. 3 of the Act the Central Government as well as by virtue of delegation of power u/S. 5 of the Act, the State Government have issued number of orders in respect of different essential commodities. Such orders are statutory orders having force of law. It is, therefore, incumbent upon

the prosecution as well as the trial Court to inform the accused about the accusation levelled against him including the particulars of the order issued u/S. 3 or u/S. 5, as the case may be, of which he is alleged to have committed the breach. In absence thereof, it will be very difficult for the accused to know with exactness what breach he had committed and how to defend his interest at the trial. If these details are not provided to him, it will simply render the accused groping in the dark and that would virtually amount to committing violation of the principles of natural justice. In the instant case while recording the plea of the appellant nothing more has been informed to him except what has been stated above. Not only that but the prosecution has also not produced on record any material which would indicate that the appellant has committed breach of particular provision of a particular order. Moreover, the prosecution has even not produced any material to show that the cooking gas is declared to be an essential commodity as provided under clause (a) of sec. 2 of the Act, nor the prosecution has shown that for maintaining or increasing supplies of essential commodity, namely the cooking gas or for securing equitable distribution and availability at fair price or for prohibiting the production, supply and distribution of such commodity order has been issued by the Central Government u/S. 3 or by the State Government by virtue of delegation of powers u/S. 5 of the Act. In absence of such vital evidence, it is very difficult to hold the appellant

committing breach of a particular order issued u/S. 3 of the Act and thereby contravening the provision of sec. 3 which is made punishable u/S. 7 of the Act. If that be so, the conviction recorded by the learned trial Judge of the appellant for committing offence u/S. 7 of the Act for contravening the provisions of sec. 3 of the Act cannot be sustained. Even in the oral evidence of the prosecution witnesses no whisper has been made about the alleged breach or violation of provisions of a particular order committed by the appellant. It is, therefore, difficult to believe and accept that the appellant has contravened the provisions of any order issued under sec. 3 of the Act. If the prosecution is unable to prove the contravention of provisions of order issued u/S. 3, no offence can be said to have been committed which is made punishable u/S. 7 of the Act by him. In view thereof, the finding given by the Ld. trial Judge is erroneous and it is hereby quashed and set aside.

- **9.2 BOMBAY HIGH COURT Hon'ble Judges: R.K.Batta Laxmikant Sarda Versus State Of Maharashtra Criminal Application No. 1034 of 2001 ;Decided on:- 30-08-2001 Acts and Rules Referred : ESSENTIAL COMMODITIES ACT, 1955 Section - 10AA CODE OF CRIMINAL PROCEDURE, 1973 Section – 438**
- **(a) Essential Commodities Act, 1955 - S. 3, S. 7 - Maharashtra Kerosene Dealers Licensing Order, 1966 -**

*Petroleum Products (Supply and Distribution) Order, 1972*

- application for anticipatory bail in connection with alleged illegal unloading of kerosene outside specified area  
- applicant contended that seizure and investigation were conducted by an unauthorized officer, rendering actions illegal - Held, the PSI conducting the search and seizure lacked authority under relevant provisions of law as specified in the Licensing Order and other applicable orders - thus, the seizure was deemed illegal and could not be relied upon for prosecution purposes - anticipatory bail granted subject to conditions. (Paras 1-34)

- *(b) Essential Commodities Act, 1955 - S. 10-AA* - challenge to legality of arrest made by police officer below rank of officer-in-charge of police station - applicant argued that only empowered officers could conduct arrests under the Act - Held, since arrest was made by a PSI who is not authorized under S. 10-AA of the Essential Commodities Act, such arrest was deemed illegal and without jurisdiction - this further supported granting anticipatory bail. (Paras 20-22)
- *(c) Essential Commodities Act, 1955 - S. 14* - prosecution's burden to prove contravention of orders related to essential commodities - applicant claimed no mens rea or public complaint regarding kerosene diversion - Held, prosecution must establish culpable mental state as per S. 10-C; however, evidence indicated diversion of kerosene intended for public distribution to unauthorized parties at

applicant's instance – prima facie case established against applicant warranting further investigation. (Paras 19-19)

- *(d) Maharashtra Kerosene Dealers Licensing Order, 1966 - Cl. 12* - contention regarding authority for search and seizure operations conducted by police - Held, powers for entry and search are restricted to licensing authority or authorized officers; PSI Gorhe did not meet these criteria thus rendering his actions invalid – this finding supported the decision to grant anticipatory bail. (Paras 22-22)
- **19.** The conclusions which follow on the basis of the provisions already referred to above and seizure by PSI Gorhe is concerned, prima facie, the facts disclose violation of sec. 3(2)(a)(d) and (f) of the said Act, read with Cls. 3, 5, 2(f) of the Licensing Order, 1966, Cl. 3 of 1993 Order read with sec. 7 of the Essential Commodities Act. Sec. 10-C of the Essential Commodities Act, provides for presumption of culpable mental state. It provides that in any prosecution for any offence under this Act, which requires culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but, it shall be defence for the accused to prove that he had no such mental state with respect to the act charged as offence in that prosecution. Explanation appended to Sec. 10-C(1) states that in the section, culpable mental state includes intention, motive, knowledge of the act or any reason to believe the fact. Sub-sec. (2) of sec. 10-C of the said Act states that for the purpose of this section a fact is

said to be proved when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by preponderance of probabilities. Sec. 14 of the Act provides for burden of proof on the prosecution for contravention of orders made under sec. 3. The material which has been produced by the investigating agency shows that the tanker got the essential commodity, that is, kerosene from the Hindustan Petroleum Corporation Ltd., Khapri, depot Nagpur, for the purpose of distribution to Gadchiroli district for which the applicant had the license. Instead of taking the truck to Gadchiroli by tampering the challan by replacing word Gadchiroli with Nagpur district, the tanker passed through the check post of octroi and was taken inside the premises of Ramsons Casting. It is pertinent to note that Gadchiroli does not fall on the way from the place where the tanker was loaded and the premises of Ramsons Casting where it was taken. It was found by the raiding party that pipe had been connected with the tanker and the tank of Ramsons Casting and with the help of electric motor the contents that is to say kerosene were being emptied into the tank. Besides this during the course of the investigation number of statements have been recorded which prima facie go to show that diversion of the essential commodity kerosene from the public distribution system to Ramsons Casting was at the instance of the applicant. In this state of affairs presumption of culpable mental state in terms of sec. 10-C comes into play and the defence put forward by the

applicant that it was heavily raining and the tanker was loaded late in the evening will have to be examined in the light of the letter from the India Meteorological Department, Nagpur, wherein it is stated that on 23.7.2001, Nagpur had 00.33 mm of rain and Gadchiroli had 0.02 mm of rain as also the fact that the tanker had in fact been loaded with essential commodity kerosene at about 2 p.m. Therefore, prima facie it appears that offence is committed under the Act and the orders referred to in this paragraph.

- **20.** Be that as it may, crucial question is as to whether the seizure and search conducted by the PSI Gorhe is illegal as contended by the learned Advocate for the applicant. Sec. 10-AA of the Essential Commodities Act, deals with power to arrest and provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer-in-charge of a police station or any police officer authorised by him in this behalf in writing shall arrest any person accused of committing an offence punishable under this Act. It is pertinent to note that sec. 10-AA starts with non obstante clause. Under sec. 41 of the Cr. P.C. any Police Officer may without an order from the Magistrate and without warrant arrest any person if one of the clauses thereunder are attracted which includes Cl. (a), which provides who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion

exists, of his having been so concerned. The offences in question are cognizable offences but, for sec. 10-AA of the Essential Commodities Act, any Police Officer could have arrested a person contravening the provisions of the Essential Commodities Act or the orders passed thereunder. Sub-section (2) of sec. 41 of the Cr. P.C. provides that any Police Officer in-charge of the police station may in the like manner arrest or cause to be arrested any person belonging to one or more of the categories of the persons specified in Sec. 109 or sec. 110. However, Sec. 10-A empowers an officer of the rank of the officer-in-charge of the police station or any Police Officer authorised by him in this behalf in writing shall arrest any person accused of doing any offence punishable under the Essential Commodities Act. Therefore, power under the Essential Commodities Act, can be exercised only by the officer of the rank of in-charge of the police station or any officer in this behalf in writing (Emphasis supplied). The learned Assistant Public Prosecutor on enquiry being made informed that the Police Officer in-charge of the MIDC Police Station which otherwise has normally jurisdiction over the place where the tanker was loaded is the Police Inspector. Therefore, according to sec. 10-AA, the power to arrest thereunder can be exercised only by the Police Inspector. Learned APP has placed before me Gazette Notification dated 11.04.1967, which is an under :

"In exercise of the powers conferred by sec. 5 of the Bombay Police Act, 1951 (Bom. 22 of 1951), the Govt. of Maharashtra hereby directs that whenever any officer of the Maharashtra State falling within any of the following categories investigates at any place in the State any offence, he shall be deemed to be an officer-in-charge of the police station within the limits of which such place is situated, namely :- (a) Officer of and above the rank of a Sub-Inspector of the Crime Branch, Special Branch I and Special Branch II, Criminal Investigation Department, Greater Bombay. (b) Officer of and above the rank of Sub-Inspector of the Crime Branch and Special Branch of Nagpur Police Force. (c) Officer of and above the rank of a Sub-Inspector of Crime Branch and Special Branch of the Poona Police Force. (d) Officer of and above the rank of a Head Constable of Intelligence Branch, Criminal Investigation Department, M. S. (e) Officer of and above the rank of Head Constable of Crime and Railways Branch, Criminal Investigation Department Maharashtra State. (f) Officer of and above the rank of Head Constable of Local Intelligence Branches in the districts and the two Railways Special Police Districts (viz. Central, Southern and Western Railways and Central, South Eastern and Western Railways)."

- **21.** No affidavit has been filed by the respondent to show that this Gazette Notification is still in force or that there has been no amendment in this Gazette Notification

subsequently. Be that as it may, this notification empowers the officer of and above the rank of Sub-Inspector of Crime Branch and Special Branch of Nagpur Police Force to conduct investigation at any place in the State for any offence and for that purpose he shall be deemed to be an officer-in-charge of the police station within the limits of which the place is situated. I have already pointed out that the police station in-charge of the MIDC Police Station is stated to be Police Inspector. By virtue of this notification dated 11.04.1967, PSI of crime Branch can by no stretch of imagination be equated to Police Inspector and probably realising this contingency in the said notification the powers to investigate were given to the Sub-Inspector and Officer of the rank above the Sub-Inspector. In other words if officer-in-charge of Police Station is Sub-Inspector investigation can be done by Sub-Inspector of Crime Branch and if the officer-in-charge of police station is Police Inspector, the investigation could be done by Police Inspector of Crime Branch. Moreover, Cl. 10 of 1993 Order provides for overruling effect over earlier orders. Therefore, prima facie PSI Gorhe is not an empowered officer to conduct the investigation into the offences.

- **22.** Under Cl. 12 of 1966 Order power to enter, search and seizure is restricted to the licensing authority or any officer authorised by him in this behalf. PSI Gorhe obviously does not fall in this category. Insofar as 1993 order is concerned, the power of enter, search and seizure is

provided under Cl. 9 of the said Order and by S.O. 509 which has already been quoted above besides other officers empowered thereunder are Police Inspectors not below the rank of Inspector, PSI Gorhe does not come under the category of Police Officer under the said standing order who has to be not below the rank of Inspector.

**10. FINDINGS / REASONS**

- Upon a meticulous, cautious and comprehensive appreciation of the entire oral and documentary evidence placed on record, read in light of the cross-examination of prosecution witnesses and the settled principles of criminal jurisprudence, this Court is of the considered opinion that the prosecution has failed to prove the charge against the accused beyond reasonable doubt. The prosecution case substantially rests upon the testimony of departmental witnesses, namely PW-1 Manubhai Popatbhai Jodia, the then Mamlatdar and complainant (Exh.10), PW-2 Himmatbhai Ramjibhai, employee of the Supply Department (Exh.28), and PW-7 Pareshbhai Babubhai Kargatiya, Deputy Mamlatdar (Exh.36), who have deposed that on 10/01/2012 a raid was conducted at Jalaram Sweet Mart situated on Delvada Road, Una, and that from a godown situated behind the said shop, seven iron barrels containing approximately 1235 liters of blue kerosene were allegedly found and seized. These witnesses have relied upon documentary exhibits such as the Panch Rojkam dated 10/01/2012 (Exh.12), the statement of the

accused (Exh.14), the statement of the rickshaw driver Shankarlal (Exh.15), and the dipstick measurement statement of Jivabhai to substantiate the alleged seizure and unauthorized possession.

- However, when the evidence of these witnesses is subjected to careful scrutiny, particularly in light of their cross-examination, serious infirmities and legal lacunae emerge which go to the root of the prosecution case. PW-1, the complainant Mamlatdar himself, has categorically admitted in his cross-examination that the Control Order issued under Section 3 of the Essential Commodities Act, which was allegedly in force at the relevant time and which governs the storage, possession, distribution, and use of blue kerosene, has not been produced or proved in the present case. He further admitted that such Control Order contains specific provisions regarding who is entitled to store kerosene, in what quantity, for what purpose, and also regarding the authority competent to conduct raids and initiate prosecution. Despite this clear admission, the prosecution has failed to place the said Control Order or any government notification on record. , the Deputy Mamlatdar, has also admitted that no such Control Order or authorization notification was annexed with the panchnama, complaint, or other procedural documents, nor was any documentary basis shown to establish that the District Collector was empowered under

a specific Control Order to authorize filing of the complaint.

- PW-2, though supporting the prosecution version in examination-in-chief, has made crucial admissions in his cross-examination which further weaken the prosecution case. He has admitted that no documentary evidence was collected to establish that the accused was the owner or lawful occupier of the godown from which the kerosene was allegedly seized, no municipal license, trade license, or ownership document was seized, and no material was collected to conclusively connect the godown with the accused. He has further admitted that although it was alleged that kerosene was procured from ration cardholders, no investigation whatsoever was carried out to identify those ration cardholders, their ration cards, or the villages from which the kerosene allegedly originated, nor was any action taken against such cardholders, despite admitting that misuse or resale of PDS kerosene by cardholders would itself constitute an offence. These admissions clearly demonstrate a selective and incomplete investigation.
- Most significantly, all independent panch witnesses examined by the prosecution have turned hostile. Babubhai Chanabhai Bareiya (Exh.24), Babubhai Pithabhai Chauhan (Exh.25), Vijaykumar Ishwarlal Jumani, and Kishorbhai Mohanbhai Thakkar have uniformly stated that they had no knowledge of the alleged seizure proceedings

and that their signatures were obtained on prepared documents. Though they have identified their signatures on the panchnama, they have categorically denied witnessing any seizure, measurement, sealing, or procedural formalities. In a prosecution under the Essential Commodities Act, which is a penal statute requiring strict adherence to statutory safeguards, mere proof of signatures without credible corroboration of the seizure procedure cannot be treated as sufficient proof, particularly when the statutory framework itself has not been placed on record.

- The evidence of Punjabhai Danabhai Vadhiya, PSO (Exh.40), merely establishes the formal aspect of registration of FIR (Exh.42). In cross-examination, he admitted that the complaint was received through staff, that no work order or Control Order under Section 3 accompanied the complaint, and that he had no personal knowledge of the alleged offence. His testimony, therefore, does not advance the prosecution case on merits. Ramnath Fulnath Gosai, the Investigating Officer (Exh.43), has also made material admissions during cross-examination. He admitted that he did not draw any independent scene of offence panchnama during investigation, did not examine any independent local witnesses from the vicinity of the alleged godown, did not record statements of ration cardholders from whom the kerosene was allegedly procured, did not collect or produce any government order restricting personal use of kerosene, and that he filed the

chargesheet largely on the basis of the written complaint and departmental papers. He further admitted that he proceeded on the assumption that an offence had been committed, rather than establishing the statutory violation through independent investigation.

- It is a settled position of law that for sustaining a conviction under Section 7 of the Essential Commodities Act, 1955, the prosecution must first establish the existence of a valid and operative Control Order issued under Section 3 and thereafter prove, beyond reasonable doubt, the specific violation thereof by the accused. In the present case, despite repeated admissions by key prosecution witnesses, no Control Order has been produced, proved, or even judicially noticed, rendering it impossible for this Court to ascertain the nature of prohibition, permissible limits, or conditions allegedly violated by the accused. In absence of such foundational statutory proof, the alleged admissions of the accused or departmental assertions cannot, by themselves, constitute proof of guilt.

### **11. Contradictions and Omissions**

- On careful scrutiny of the oral and documentary evidence, several material contradictions and omissions emerge, which go to the root of the prosecution case. Though PW-1 (Mamlatdar) and PW-2 and PW-7 (Deputy Mamlatdars) have deposed about seizure of 1235 litres of blue kerosene from the godown allegedly belonging to the accused, no

documentary proof has been produced to establish that the said shop or godown was owned, possessed, or exclusively controlled by the accused. PW-2 has categorically admitted in cross-examination that no municipal licence, food licence, or ownership document of the shop or godown was seized or verified. This omission creates a serious doubt regarding conscious possession. Further, though all official witnesses have repeatedly referred to violation of the Control Order issued under Section 3 of the Essential Commodities Act, it is an admitted position of PW-1, PW-7, PW-8, and PW-9 that no such Control Order was produced, proved, or annexed either during seizure, investigation, or trial. The absence of the Control Order, which defines the restriction on storage, use, authority to conduct raid, and penal consequences, constitutes a fatal omission, as mere seizure of kerosene without proving the specific violated provision is insufficient to attract Section 7 of the Act. It further emerges that the prosecution case rests heavily upon the panchnama, however, all independent panch witnesses have not supported the prosecution. They have consistently stated that their signatures were obtained on prepared documents either by the Mamlatdar or police and that they were not present during the alleged seizure. Though hostility of panch witnesses by itself is not fatal, in the present case, their evidence assumes importance because no independent corroboration remains to support the version of official witnesses. Another significant omission is regarding the

source of kerosene. The accused is alleged to have collected kerosene from ration cardholders of Una and Delvada. However, PW-2 and PW-7 have admitted that no ration cardholder was identified, examined, or arrayed as an accused, nor was any investigation carried out to ascertain from which village or card the kerosene originated. This omission weakens the prosecution version regarding illegal procurement. There are further contradictions in the investigation. PW-9, the Investigating Officer, admitted that no scene panchnama of the place of seizure was prepared by him, no neighbouring witnesses were examined, and no government order authorising investigation or seizure was obtained. He further admitted that the chargesheet was filed solely on the basis of the complaint and papers received from the Mamlatdar, without independent verification. PW-8 (PSO) also admitted that no government order under Section 3 was received at the time of registration of FIR. Additionally, though prosecution witnesses state that blue kerosene is meant only for domestic use, they have admitted that no documentary instructions or guidelines issued to ration cardholders regarding restricted use were produced. The prosecution has thus failed to clearly establish whether mere storage or use for business, without proving the violated condition of Control Order, constitutes an offence in the facts of the present case. Collectively, these contradictions and omissions—relating to ownership and possession, non-production of Control Order, hostile panch

witnesses, absence of investigation against alleged suppliers, and procedural lapses in investigation—create serious doubt about the prosecution story and materially affect the credibility of the alleged seizure and offence.

- **12. Main Points of Cross-Examination by the Defence**
- In the cross-examination of the prosecution witnesses, the defence has brought on record several significant aspects. It was elicited that blue kerosene is distributed under the Public Distribution System and that its storage, distribution, and use are governed by a specific Control Order issued under Section 3 of the Essential Commodities Act. However, all material witnesses, including PW-1, PW-7, PW-8, and PW-9, have admitted that the said Control Order was neither produced nor proved in the present case. The defence further established that no documentary evidence was collected to prove that the accused was the owner or exclusive possessor of the shop or godown from where the kerosene was allegedly seized. PW-2 admitted that no municipal licence, food licence, or ownership document of the shop or godown was taken during the raid or investigation. This line of cross-examination raises a serious doubt regarding conscious and exclusive possession of the seized kerosene. It was also brought out that although the prosecution alleged that the kerosene stock was procured from ration cardholders, no ration cardholder was identified, examined, or arraigned as an accused, nor was any investigation conducted to trace the

origin of the kerosene stock. PW-2 and PW-7 clearly admitted that no action was taken against any cardholder and that the villages or ration cards from which the kerosene allegedly originated were not investigated. The defence highlighted procedural lapses in the investigation. PW-9, the Investigating Officer, admitted that no scene panchnama was prepared, no neighbouring or independent local witnesses were examined, and that the chargesheet was filed solely on the basis of the complaint and papers supplied by the Mamlatdar, without independent verification. PW-8, the PSO, admitted that no government order under Section 3 was received along with the complaint at the time of registration of the FIR. It was further elicited that all independent panch witnesses examined by the prosecution turned hostile and stated that their signatures were taken on prepared documents either by the Mamlatdar or the police, and that they were not present at the time of the alleged seizure. Though hostility of panch witnesses is not by itself fatal, the defence successfully demonstrated that in absence of independent corroboration, the prosecution case rests solely on official witnesses. Lastly, the defence brought on record that while witnesses asserted that kerosene supplied under PDS is meant only for domestic use, no documentary instructions or guidelines issued to ration cardholders regarding restricted use were produced. This created a doubt as to whether mere storage or use for business, without proving

violation of a specific Control Order condition, would constitute an offence.

• **13. PROSECUTION DEFECTS / LACUNAE**

- On a cumulative and careful evaluation of the entire material on record, this Court finds that the prosecution case suffers from serious, fundamental and incurable defects, which strike at the very root of the alleged offence. The most glaring and fatal defect is the non-production and non-proof of the relevant Control Order issued under Section 3 of the Essential Commodities Act, 1955, which forms the statutory foundation of the prosecution. Though the prosecution witnesses, including the complainant Mamlatdar and the Deputy Mamlatdar, have categorically admitted during cross-examination that such Control Order was in force at the relevant time and that it contains provisions regulating storage limits, permissible use, distribution norms, and the authority competent to conduct raids and initiate prosecution, the said Control Order has not been placed on record nor proved in accordance with law. In absence of such Control Order, this Court is unable to ascertain what specific condition was allegedly violated by the accused, rendering the charge under Section 7 of the Act legally unsustainable. Further, the alleged seizure and panchnama proceedings are rendered doubtful and unreliable, as all independent panch witnesses have turned hostile and have categorically denied witnessing the raid,

seizure, measurement, sealing, or preparation of panchnama. Though the panch witnesses have admitted their signatures on the panchnama, they have consistently stated that their signatures were obtained on prepared documents. In a prosecution under a penal statute involving serious consequences, mere proof of signatures without proof of the procedure itself cannot be treated as reliable evidence, especially when the prosecution has failed to provide independent corroboration. The prosecution has also failed to establish conscious, exclusive and lawful possession of the accused over the godown from which the kerosene was allegedly seized. No documentary evidence such as ownership papers, rent agreement, municipal trade license, electricity bill, or any other material has been produced to conclusively connect the godown with the accused. Even the departmental witnesses have admitted that no such documents were seized or verified, thereby leaving a vital link in the chain of proof missing. Another serious defect lies in the selective and incomplete investigation conducted by the prosecution. Though it is the prosecution case that the kerosene was procured from ration cardholders, no ration cardholder has been identified, examined, or arraigned as an accused, nor have ration card details or village-wise distribution records been collected. This omission assumes significance in view of the admission by prosecution witnesses that resale or misuse of PDS kerosene by ration cardholders itself constitutes an offence. The failure to

investigate the alleged source of kerosene creates serious doubt about the veracity of the prosecution story and suggests a one-sided investigation.

- The investigation further suffers from procedural infirmities, as admitted by the Investigating Officer himself. No independent scene of offence panchnama was prepared during investigation, no local or neighbouring witnesses were examined, no contemporaneous photographs or sealing records were produced, and no statutory notifications or government circulars governing kerosene usage were collected. The Investigating Officer has also admitted that the chargesheet was filed primarily on the basis of the written complaint and departmental papers, without independent verification of statutory compliance. Such an approach falls short of the standard required in criminal investigation. Additionally, the prosecution has not produced any documentary proof to establish that the kerosene seized was conclusively government-supplied PDS kerosene, apart from oral assertions of departmental witnesses. No distribution register, stock register, batch number, or linkage with a specific fair price shop has been proved. The delay in lodging the FIR, coupled with absence of contemporaneous statutory authorization on record, further weakens the prosecution case. The cumulative effect of these defects—namely, absence of the Control Order, hostile independent witnesses, failure to prove possession,

lack of investigation against alleged suppliers, procedural lapses in seizure and investigation, and absence of statutory corroboration—creates substantial and reasonable doubt about the prosecution version. In criminal law, where the burden lies squarely upon the prosecution to prove its case beyond reasonable doubt, such deficiencies cannot be cured by oral assertions or assumptions. These defects therefore entitle the accused to the benefit of doubt. Criminal jurisprudence mandates that the burden lies entirely on the prosecution to prove its case beyond reasonable doubt, and that suspicion, however grave, cannot take the place of legal proof. When the evidence is evaluated cumulatively, the hostile nature of all independent panch witnesses, the admitted absence of the relevant Control Order, lack of investigation against alleged suppliers, absence of independent corroboration, and serious procedural lapses admitted by prosecution witnesses themselves, create substantial and reasonable doubt regarding the prosecution version. In such circumstances, this Court has no hesitation in holding that the prosecution has failed to establish that the accused committed any offence punishable under Section 7 of the Essential Commodities Act, 1955, and consequently, the accused is entitled to the benefit of doubt. Accordingly, the point for determination stands answered in the negative.

**FINAL ORDER**

1. In view of the findings recorded hereinabove and for the reasons stated, the prosecution has failed to prove the charge against the accused Dilipbhai Mohanbhai Thakkar, beyond reasonable doubt. **Hence, the accused Dilipbhai Mohanbhai Thakkar and Shankardas Asandas Hemjani is hereby acquitted of the offence punishable under Section 7 of the Essential Commodities Act, 1955, for the alleged violation of Section 3 of the said Act, by giving him the benefit of doubt, under the provisions of Section 248(1) of the Code of Criminal Procedure, 1973.**
2. The bail bond furnished by the accused Dilipbhai Mohanbhai Thakkar and Shankardas Asandas Hemjani stands cancelled, and the surety, if any, is hereby discharged, subject to the provisions of Section 437A of the Code of Criminal Procedure, 1973. Accused shall execute a fresh personal bond in the sum of ₹10,000/- with one surety of like amount to appear before the higher Court, if and when required, within the prescribed period.
3. The muddamal property, if any, seized in connection with the present case shall be disposed of in accordance with law after the expiry of the period of appeal, if any, and subject to the orders of the competent authority, if already confiscated.
4. The record and proceedings of the case be consigned to the Record Room after due compliance.

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**Pronounced in open Court on this 18/04/2026.**

*(Jayesh Kumar Kabhaibhai Khant)*  
*Additional Chief Judicial Magistrate, Una*

**JUDGE CODE NO GJ01086**

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