

Form No. (M) 34

FORM A

IN THE COURT OF THE JUDICIAL MAGISTRATE, 1st CLASS, KALIMPONG. Present: Smt. Saptamita Das, Judicial Magistrate, 1st Class, Kalimpong. JO Code WB 01314 Date of delivery of Judgment: <u>The 4th day of September, 2024</u> <u>G.R Case No 64 of 2022</u> <u>CIS No. GR 151 of 2022</u> <u>CNR WBDJ08-0000883-2022</u> <u>Kalimpong P.S. Case No. 60 of 2022 dated 23-03-2022 under Section 7 (1) (a) (ii) of E.C. Act</u>	
COMPLAINANT	State of West Bengal
REPRESENTED BY	Ld. APP Sri Sanjay Chaurasia
ACCUSED	1. Hirmaya Chhetri
REPRESENTED BY	(1) Ld. Advocate M. Poudyal

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Saptamita Das

Judicial Magistrate (1st Class), Kalimpong

JO CODE: WB01314

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Form No. (M) 35

FORM B

Date of Offence	23-03-2023
Date of Complaint	23-03-2023
Date of Chargesheet	30-04-2022
Date of Framing of Charge/Plea	08-05-2023
Date of commencement of Evidence	23-08-2024
Date on which Judgment is reserved	04-09-2024
Date of Judgment	04-09-2024
Date of the Sentencing Order, if any	Not applicable

Form (M) 36

Form C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
PW1	Parijat Sarkar	Complainant
PW2	Sourav Koilara	Witness
PW3	Anita Sharma	Witness
PW4	Nabin Chettri	Witness
PW5	Anish Biswakarma	Witness
PW6	Shyamal Mardi	I.O.

B. Defence Witnesses, if any:

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RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
N.A.	N.A.	N.A.

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS OTHER WITNESS)
N.A.	N.A.	N.A.

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P1	Seizure list
2.	Exhibit P1/1	Signature of Parijat Sarkar on the seizure list
3.	Exhibit P1/2	Signature of P.W-4 on the seizure list
4.	Exhibit P1/3	Signature of P.W-5 ont the seizure list
5.	Exhibit P2	Zimmanama Bond.
6.	Exhibit P2/1	Signature on the zimmanama bond
7.	Exhibit P3	Complaint
8.	Exhibit P3/1	Signature of Parjat Sarkar on the complaint
9.	Exhibits P3/2	Receiving endorsement on the complaint

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10.	Exhibit P4	Formal FIR
11.	Exhibit P4/1	Signature on the FIR
12.	Exhibit P5	Rough sketch map and index
13.	Exhibit P5/1	Signature on the rough sketch map and index

B. Defence:

Sr. No.	Exhibit Number	Description
N.A.	N.A.	N.A.

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
N.A.	N.A.	N.A.

D. Material Objects:

Sr. No.	Material Object Number	Description
N.A.	N.A.	N.A.

JUDGMENT

Factual Backdrop:

1. The prosecution case had its genesis from a complaint made by the de-facto complainant namely, Parijat Sarkar of D.E.B Kalimpong on 23-03-2022. in his complaint he stated that on the very day at about

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16.10 hours they got a secret information and acting upon it held a raid at pradhan hotel at Kirney Bazar with his force. It was found there that the staff were preparing food and other items in the kitchen and selling the same to the customer for commercial gain. The cylinder that was used was domestic cylinder. No valid document could be produced by the staff. As such the cylinders were seized. Hence, the complaint.

2. Hence the present case and on the basis of such complaint Kalimpong police case being 60 of 2022 dated 23-0-2022 was initiated and after investigation charge-sheet was submitted against the accused person u/s. 7 (1) (a) (ii) of E.C. Act

3. The accused person appeared before the Ld. C.J.M Court and subsequently the case was transferred to this court for disposal. Subsequently under section 7 (1) (a) (ii) of E.C. Act. Charge was framed and also was read over and explained to which the accused persons pleaded not guilty and claimed to be tried.

4. The prosecution evidence was closed on 04.09.2024.

5. After closure of the prosecution evidence on 04.09.2024, the accused persons are examined under Section 313 of the Code of Criminal Procedure (in short Cr.P.C). They declined to adduce any evidence from his side. So, defence evidence was closed and argument was heard from both sides and the case was fixed for judgment.

Points for Consideration.

1 Whether the accused person has committed the offences labeled against her?

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2 Whether the prosecution has been able to prove the instant case beyond all shadow of reasonable doubt?

Decision with reasons

6. It is settled principle of law that initially burden of proof lies upon the prosecution in order to prove its case and if there is any doubt the accused person will get the benefit of that doubt. In order to prove this case the prosecution has examined five witnesses accordingly.

7. In the instant case the de-facto complainant deposed as PW-01. He stated that on 23.03.2022 upon a raid being made at Pradhan hotel at Kirney Bazar it was found that food was being prepared using domestic LPG cylinders by the hotel staff for selling it to customer for commercial gains. The staff of the said hotel Nabin Chettri and Anish Biswakarma failed to produced any documents. The owner of the hotel as mentioned by the staff was Hirmaya Chhetri Pradhan who was not present in the hotel at the relevant time and out for medical treatment. The cylinders were seized and later were released to Arun Tamang of Sindebong Gramin Indane Bitarak Distributopr on execution of a zimmanama B ond. He also stated that the shop licence and the gas booking book of Pradhan Hotel were not seized by him.

P.W-02 Sourav Koirala and P.W-03 Anita Sharma were accompayi8nbg de-facto complaint the raid. They deposed in the same manner as that of de-facto complainanyt. They could not said as to whether the command certificate were seized by the I.O. or not.

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Nabin Chettri and Anish Biswakarma who happened the staff of Pradhan Hotel as stated by de-facto complainant in his evidence where the only seizure witnesses in this case both of them stated that they were asked to sign on blank papers by O.C. of Melli O.P. as witness and they could not say anything about the content of the seizure list.

The investigating officer of this case did not seize ownership document of the restaurant. The charge-sheet does not contain the batch number or other detail of the cylinders those were seized.

The prosecution witnesses could not prove the fact that the pradhan hotel where the raid was made whether it belonged to Hirmaya Chhetri or not. Even whether the said cylinders were used for commercial gain or not could not be established before court by the witnesses. The accused was not present when the raid was made. The only independent witnesses were the staff of the said hotel. It is astonishing as to why the investigating officer did not cite any other independent witnesses in this case whereas the hotel was at the Kirney Bazar which is a pretty populated area of Kalimpong.

8. After careful scrutiny of the evidences of the corroborating witnesses it appears to me that witnesses did not corroborate the prosecution case in any way . In the result, the prosecution case fails and to my mind the accused persons deserve an order of acquittal.

9. Thus, from the deposition of prosecution witnesses, it is absolutely clear that none of the witnesses could say anything which can prove the involvement of the accused person in the alleged offence.

10. Thus from the evidence on record it is clear that the prosecution has not been able to prove the alleged incidence. The allegation made in

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the complaint does not prove the case of the prosecution and it requires proof by cogent evidence. No incriminating materials have come from the deposition of the prosecution witness. Therefore in my considered view the prosecution has failed to prove the instant case beyond all shadows of reasonable doubt.

H e n c e, It is,

ORDERED

11. That all the accused persons namely **Hirmaya Chhetri Pradhan** being found not guilty of the offence punishable u/s 7 (1) (a) (ii) of E.C. Act and are acquitted from the charge of this case u/s. 248(1) Cr. P.C.

Let the accused person be released at once and be discharged from bail bond.

In compliance with the direction of the Hon'ble High Court in *Sabitri Bhunya vs. The State of West Bengal and Others* in CRA 266 of 2020 (decision on 29-03-2022), it is hereby endorsed by this Court that the victim has the right to prefer an appeal under proviso to Section 372 of Cr.P.C and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal.

Sureties are discharged from their liabilities.

Seized alat if any, be disposed of after the expiry of period of appeal.

The judgment is pronounced and delivered in Open Court on this 4th day of September, 2024.

Typed and corrected by me

Sd/-
(Saptamita Das)
J. M. 1st Class, Kalimpong

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