



THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.147 of 1993

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

Dayanidhi Jena

.....

Appellant

-Versus-

State of Orissa

.....

Respondent

For the Appellant : Mr. Mohammad Faradish, Advocate

For the Respondent : Mr. Aurobinda Mohanty, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 24.03.2026 :: Date of Judgment: 26.03.2026

S.S. Mishra, J. The present Criminal Appeal, filed by the appellant is directed against the judgment and order dated 30.04.1993 passed by the learned Special Court, Mayurbhanj, Baripada in 2(c)C.C. Case No.19 of 1991, whereby the appellant has been convicted for the offence under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of the



Orissa Kerosene Control Order, 1962. On that count, he has been sentenced to undergo R.I. for a period of one month.

2. Heard Mr. Mohammad Faradish, learned counsel for the appellant and Mr. Aurobinda Mohanty, learned Additional Standing Counsel for the State.

3. The prosecution case, in brief, is that the accused was running a shop near the weekly market at Betnoti. On 25.05.1990, the Marketing Inspector, Betnoti conducted a surprise inspection of the said shop and found that the accused was in possession of 27 litres of kerosene oil stored in three tins within the shop premises. As possession of kerosene oil in excess of 10 litres without a valid dealer's licence is prohibited, the Marketing Inspector seized the said three tins containing 27 litres of kerosene oil and submitted the prosecution report.

The accused does not dispute the factum of seizure of the kerosene oil and the tins from his shop. However, his defence is that only 7 litres of kerosene oil belonged to him for personal use, and the remaining 20 litres had been kept in front of his shop by another person without his knowledge or ownership.



4. In order to establish its case, the prosecution has examined two witnesses. P.W.1 was a Headmaster of the local M.E. Schol, and P.W.2 was the Marketing Officer. It is admitted by the witnesses that the accused was running a shop near the weekly market at Betnoti and that, on 25.05.1990, the Marketing Inspector, Betnoti seized two kerosene tins and one soybean tin containing kerosene oil from the shop premises of the accused.

In support of his defence, the accused has examined one witness, D.W.1, namely, Bijaya Kumar Das. He is a front-door neighbour of the accused and, in all likelihood, has deposed with a view to support the defence version.

5. Upon a meticulous scrutiny of the evidence on record, the learned trial Court arrived at the conclusion that 27 litres of kerosene oil, contained in three tins along with certain measuring implements were seized from the shop premises of the accused. Accordingly, it is held that the possession of 27 litres of kerosene oil by the accused stood duly established and, on such finding, the learned trial Court recorded as follows:-



“8. The evidence on record clearly shows that 27 litres of kerosene oil, 3 tins and some measures were seized from the shop of the accused. So the possession of 27 litres of kerosene oil by the accused has been established successfully.

9. The advocate for the accused offered an argument that there is no law or notification prohibiting a person from possessing more than ten litres of kerosene oil for his use. The order dated 19th April, 82 under the Orissa Kerosene Control Order, 1962 clause (8) vide S.R.O. No. 264/82 reads as follows:-

“In supersession of Food and Civil Supplies Department Order No. 20213-PL. IC-26/79, dated the 23rd May, 1979 as amended by Order No. 7635-PL. IC.26/79, dated the 23rd February, 1980 the State Government in exercises of the powers conferred by Clause 8 of the Orissa Kerosene Control Order, 1962 do hereby direct that no person other than a dealer or an oil company shall store or have in his possession kerosene in quantity exceeding ten litres at a time.”

This order clearly shows that possession of more than ten litres of kerosene oil by a person other than a dealer or an oil company has been prohibited and has been made punishable under the Orissa Kerosene Control Order, 1962. So the possession of 27 litres of Kerosene oil by the accused without any dealer licence is punishable u/s. 7 of the Essential Commodities Act.

10. I, therefore hold the accused guilty u/sec. 7(i)(a)(ii) of the Essential Commodities Act and convict him thereunder.”

6. Aggrieved by the aforementioned judgment of conviction and order of sentence passed by the learned Special Court, Mayurbhanj, Baripada, the present Appeal has been preferred by the appellant.



7. Mr. Faradish, learned counsel for the appellant has strenuously argued the case on merit and taken me to the evidence on record. After arguing for some time, he submitted that keeping in view the procrastinated judicial process undergone by the appellant in this case and the ordeal of trial faced by the appellant, he would confine his argument to the quantum of sentence rather than questioning the conviction on merit. He has submitted that the incident had taken place in the year 1990 (25.05.1990). Thereafter, the appeal was preferred in the year 1993 (14.05.1993). The appeal has been prolonging to be heard for about 33 years. At the time of incident, the appellant was very young at his mid-twenties. At present he is in his late fifties and leading a respectful life along with his family. He further submitted that the appellant has no criminal antecedents, and no other case of a similar nature or otherwise is stated to be pending against him. Over the years, he has led a dignified life, integrated well into society, and is presently leading a settled family life. Incarcerating him after such a long delay, it is argued, would serve little penological purpose and may in fact be counter-productive, casting a needless stigma not only upon him but also



upon his family members, especially when there is no suggestion of any repeat violation or ongoing non-compliance with regulatory norms. Therefore, in the fitness of situation, the appellant may be extended the benefit of the Probation of Offenders Act read with Section 360 Cr. P.C.

8. Taking into consideration the entire conspectus of the matter, it would be apt to rely on the judgment of the Hon'ble Supreme Court in the case of ***Tarak Nath Keshari V. State of West Bengal***¹, in which it was held thus: -

“11. Even if there is minimum sentence provided in Section 7 of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if minimum sentence is provided in the EC Act, 1955 the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958. Reference can be made to a judgment of this Court in Lakhvir Singh v. The State of Punjab.

12. The appeal is accordingly disposed of. The appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond and two sureties each to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing which he can be called upon to serve the sentence.”

¹ 2023 SCC OnLine SC 605



9. Besides the judgment quoted above, regard being had to the age of the appellant, his societal position, clean antecedents and the fact that the incident had taken place in the year 1990, I am of the considered view that the appellant is entitled to the benefit of the Probation of Offenders Act and Section 360 of Cr.P.C. Additionally, The Hon'ble Supreme Court in the case of ***Chellammal and Another v. State represented by the Inspector of Police***² has held that it is a statutory entitlement to every convict to seek for the benefit of the Probation of Offenders Act and the sentencing Court is duty bound to consider the prayer. In the said judgment, it has been held as under:-

“26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of Section 4 of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, Section 4 of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of Section 4 over any other law for the time

² 2025 INSC 540



being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the Probation Act but has not done so, it shall record in its judgment the special reasons therefor.

27. What logically follows from a conjoint reading of subsection (1) of Section 4 of the Probation Act and Section 361, Cr. PC is that if Section 360, Cr. PC were not applicable in a particular case, there is no reason why Section 4 of the Probation Act would not be attracted.

28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor. ”

10. In such view of the matter, the present Criminal Appeal in so far as the conviction is concerned, is turned down. But instead of sentencing the appellant to suffer imprisonment, this Court directs the appellant to be released under Section 4 of the Probation of Offenders Act for a



period of one month on his executing bond of Rs.500/- (Rupees Five Hundred) within fifteen days with one surety for the like amount to appear and receive the sentence when called upon during such period and in the meantime, the appellant shall keep peace and good behavior and he shall remain under the supervision of the concerned Probation Officer during the aforementioned period of one month.

11. Accordingly, the Criminal Appeal is partly allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 26th March, 2026/ Swarna