

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

Cr. Revision No. 387 of 2014

Reserved on: 15.10.2025

Date of Decision: 06.11.2025.

Rakesh Kumar

...Petitioner

Versus

State of H.P.

...Respondent

*Coram****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ Yes.***

For the Petitioner : Mr Adarsh Sharma, Advocate.

For the Respondent/State : Mr Tarun Pathak, Deputy
Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 27.11.2014, passed by learned Sessions Judge, Hamirpur, District Hamirpur, H.P. (learned Appellate Court) vide which the judgment of conviction and order of sentence dated 4.8.2012, passed by learned Judicial Magistrate First Class, Court No.3, Hamirpur, District Hamirpur, H.P. (learned Trial Court) were partly upheld and the sentence was reduced from six months to

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

three months. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Sections 3 and 7 of the Essential Commodities Act (EC Act). It was asserted that SI Guler Chand (PW6), HHC Daulat Ram (PW1), HHC Hoshiar Singh (PW2) and Constable Pawan Kumar (PW10) had set up a naka at Masyana Nalti Chowk on 28.12.2008. A vehicle bearing registration No. HP-22A-3289 came from Nalti towards Hamirpur at about 4.45 AM. The police signalled the driver to stop the vehicle. The driver identified himself as Rakesh (the accused). The police checked the dickey of the car and recovered eleven containers (Ex.P1 to Ex.P11) containing 170 litres of kerosene oil. The police demanded a permit for transporting the kerosene, but the accused could not produce any permit. The police seized the vehicle and the containers vide memo (Ex.PW1/A). One bottle each was taken out of each of the containers for chemical analysis. The container and the bottles were sealed with seal 'H'.

The seal impression was taken on a separate piece of cloth. Rukka (Ex.PW6/A) was prepared and sent to the Police Station, where FIR (Ex.PW6/B) was registered. The accused produced his driving licence, which was seized vide memo (Ex.PW1/B). SI Guler Chand (PW6) investigated the matter. He prepared the site plan (Ex.PW6/C). The accused produced the registration certificate of the vehicle, which was seized vide memo (Ex.PW6/F). The case property was deposited with MHC Vijay Prakash (PW5), who deposited it in Malkhana and made an entry at Serial No.1336/221/08 (Ex.PW5/A). He handed over the sample bottles and the seal impression to HC Amar Nath (PW7) with a direction to carry them to RFSL, Gutkar vide RC No. 186/8 (Ex.PW5/B). Amarnath deposited all the articles at RFSL, Gutkar and handed over the receipt to MHC Vijay Prakash on his return. The result of the analysis was issued, mentioning that blue kerosene was detected in the sample bottles. The blue colour was being used by the Public Distribution System in kerosene. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court charged the accused with the commission of an offence punishable under Section 7 of the EC Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined ten witnesses to prove its case. HHC Daulat Ram (PW1), HHC Hoshiar Singh (PW2), and HC Pawan Kumar (PW10) are the official witnesses to the recovery. Rakesh Kumar (PW3) was posted as a salesman in a public distribution system depot, who proved that the accused had not purchased any kerosene from the Depot. Joginder Pal (PW4) did not support the prosecution's case. Vijay Prakash (PW5) was working as MHC with whom the case property was deposited. Guler Chand (PW6) conducted the investigation. Amar Nath (PW7) carried the sample bottles to RFSL, Gutkar. Anjani Jaswal (PW8) signed the FIR and prepared the challan. Sunil Kumar (PW9) proved the entry in the daily diary.

5. The accused, in his statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that proceedings were wrongly initiated against him. He claimed that he was innocent and was falsely

implicated. Statement of Jalam Singh (DW1) was recorded in defence.

6. Learned Trial Court held that the testimonies of the prosecution's witnesses corroborated each other. Non-association of witnesses was not fatal. Moreover, it was not possible to join the independent witnesses as the accused was apprehended at 4.30 am. The contradictions were bound to come with time, and they were not sufficient to discard the prosecution's case. The Court cannot discard the testimonies of police officials without any cogent reasons. The report of the analysis showed that the sample bottle contained kerosene. Hence, it was proved that the accused was transporting 170 litres of kerosene. He did not produce any permit. Therefore, he was convicted of the commission of an offence punishable under Section 7 of the EC Act and was sentenced to undergo simple imprisonment for six months, pay a fine of ₹1,000/- and in default of payment of fine to undergo further simple imprisonment for one month.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was

decided by the learned Sessions Judge, Hamirpur, District Hamirpur, HP (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the testimonies of police officials corroborated each other and there was no reason to disbelieve the police officials. The quantity of kerosene recovered by the police was huge and could not have been planted by the police. It was not possible to associate independent witnesses because the search was carried out early in the morning. The accused failed to produce any permit for transporting the kerosene. The testimony of Jalam Singh (DW1) was not satisfactory. Therefore, the accused was rightly convicted by the learned Trial Court; however, the sentence imposed was harsh and was reduced to three months from six months.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the material placed before them. The prosecution had not placed any cogent and convincing material on record to prove the guilt of the accused. The statement of Jalam Singh (DW1) was wrongly ignored by the learned Courts below. No

cogent reason was assigned for the non-association of independent witnesses. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr Adarsh Sharma, learned counsel for the petitioner/accused, and Mr Tarun Pathak, learned Deputy Advocate General, for the respondent-State.

10. Mr Adarsh Sharma, learned counsel for the petitioner/accused, submitted that the petitioner is innocent and was falsely implicated. The prosecution did not join any independent witnesses, and the prosecution's case was highly suspect. There were major contradictions in the statements of the official witnesses, and SI Guler Chand (PW6) was not competent to carry out the investigation. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

11. Mr Tarun Pathak, learned Deputy Advocate General, for the respondent-State, submitted that the learned Courts below had rightly held that the accused was apprehended early in the morning, and it was not possible to associate any

independent witness. The testimonies of police officials corroborated each other. This Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Therefore, he prayed that the present revision be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the

provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294, wherein it was observed at page 695:

14. The power and jurisdiction of the Higher Court under Section 397CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander* [*Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it

emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC.”

15. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275, while considering the scope of the

revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappraising the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any

relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

14. In the above case, also a conviction of the accused was recorded, and the High Court set aside [*Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753*] the order of conviction by substituting its view. This Court set aside the High Court's order, holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

16. A similar view was taken in *Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13*, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

17. This position was reiterated in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069 wherein it was observed:

27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: *Bir Singh* (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GMBH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

18. The present revision has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

19. The prosecution has based its case upon Kerosene (Restriction of Use and Fixation of Prices Order), 1993 (in short Kerosene Order). Clause 3 of the Kerosene Order provides that no person shall use kerosene supplied under the Public Distribution

System for any purpose other than cooking or illumination, and no dealer shall sell, distribute or supply kerosene under the Public Distribution System to a person other than one to whom the supplies are meant. Clauses 4, 5 and 6 deal with the obligations of the dealer. Clause 7 with the obligation of the parallel marketeer.

20. It is not the case of the prosecution that the accused is a dealer or that he had used the kerosene for a purpose other than cooking and illumination. As per the prosecution, the accused was simply found in possession of 170 litres of kerosene without any permit. It was held in *Puspa Ranjan Patel v. State of Orissa, 1996 SCC OnLine Ori 295*, that the provisions of the Orissa Kerosene Control Order, 1962, does not apply to a consumer. It was observed: -

“7. When this matter came up for hearing, Hon'ble Justice D.P. Mohapatra (as his Lordship then was), finding apparent conflict in the aforesaid two decisions, thought it appropriate to get an authoritative pronouncement on the point by a Division Bench and accordingly, the matter was referred. A Division Bench by its judgment dated 3-5-1994 answered the reference. Hon'ble C.J.G.T. Nanavati, (as his Lordship then was) speaking for the Court, expressed thus:—

“We, therefore, answer the question by stating that the Orissa Kerosene Control Order, 1962, does not apply to a consumer. We, however, make it clear

that a person who poses to be a consumer but is really found to be doing business in kerosene would be covered by the Control Order, and that would depend upon the facts of each case.....”

8. After the reference has been answered, the matter has come for final hearing. In view of the position of law enunciated by the Division Bench, it is to be seen whether the petitioner was really doing business in kerosene or not. Admittedly, he was found to be in possession of the seized kerosene. Sri B. Pujari, the learned counsel for the petitioner, has taken me through the evidence of p.w. 1, the Police Constable and the Officer in charge. p.w. 2. P.W. 1 has deposed that the petitioner was carrying two tins of kerosene in his cycle, and he took him to the police station along with the kerosene. P.W. 2 has stated that he had seized the kerosene and drawn the F.I.R. There is no evidence whatsoever that the petitioner was doing business in kerosene. As the Division Bench has indicated that storage by a consumer does not require any licence. Admittedly, the petitioner is not a dealer and therefore, the control order does not cover him. As has been found by the Division Bench, a consumer can only be held liable if he carries on business with kerosene. In the absence of any evidence that the petitioner was carrying on business, it can be safely concluded that he is not covered under the Control Order, and once he is not covered, he cannot be held liable for the offence under Section 7(1)(a)(ii) of the Act.”

21. Punjab and Haryana High Court in *Abdul Rashid v. State of Haryana*, 2013 SCC OnLine P&H 21014, that the prosecution is required to prove that the accused was a dealer appointed under the Public Distribution System, in the absence of which a person cannot be punished for violation of the order.

It was observed: -

“15. As indicated hereinabove, the appellants were charge sheeted for the contravention of the provisions of the relevant Order (Ex.PF), punishable u/s 7 of the E.C. Act, which deals with the dealers' licenses and not otherwise. Clause 2(a) defines 'dealer' to mean a person engaged in the business of purchase, sale or storage for sale of kerosene, whether wholesale or retail and whether in conjunction with any other business or not and includes his representative or agent and an oil company making wholesale supply from its storage or selling point. Clause 3 envisages that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the District Magistrate, and every such person shall obtain a licence within a period of thirty days of such commencement. Similarly, Clauses 4 and 5 deal with the procedure of issuance of licenses, fees and their other terms and conditions. Clause 8 escalates that no holder of a licence issued under this Order or his agent or servant or any other person acting on his behalf shall contravene any of the terms or conditions of the licence and if any such holder or his agent or servant or any other person acting on his behalf contravenes any of the said terms or conditions, then without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by order in writing of the District Magistrate.

16. Therefore, in order to attract the penal provisions of Section 7 of the E.C. Act, the prosecution was legally required to prove that the appellant was actually a dealer, appointed under the public distribution system, the recovered kerosene was supplied to him under the public distribution system or he was, in any way, dealing with the business of kerosene as a dealer or his agent or servant, as contemplated in the relevant Order.

17. Such thus being the legal position and the evidence on record, now the core controversy, which invites immediate attention of this court and arises for

consideration in this appeal, is as to whether the prosecution has been able to prove that the appellant had violated the indicated provisions of the relevant Order or not?”

22. Madhya Pradesh High Court held in *Banti Gupta v. State of Madhya Pradesh*, 2016 Cr.LJ 1384 that a person cannot be prosecuted for possessing the seven drums of kerosene in the vehicle unless it is shown that he was running a shop under the Public Distribution System. Hon'ble Supreme Court held in *Ipour GKC & RKC & Sons v. State*, (2008) 10 SCC 268 that the restriction imposed by Pondicherry Kerosene Control Order was on the sale and not on the purchase, and the purchaser cannot be held liable.

23. In the present case, the learned Courts below have not mentioned the provision of the Kerosene Order which was violated. Learned Trial Court did not refer to the provisions of the Kerosene Order at all. Learned Appellate Court held in para-19 of its judgment that a notification was placed on record, and it regulates the distribution of kerosene oil and fixation of the sealing price. Learned Appellate Court did not consider whether the kerosene order applied to a consumer or not. Thus, the

judgments passed by the learned Courts below suffer from jurisdictional error.

24. Clause 9 of the Kerosene Order provides for the power of entry, search and seizure and reads as under:

“Power of entry, search and seizure (a) An officer of the department of food and civil supplies of the Government not below the rank of an Inspector authorised by such Government and notified by the Central Government or any officer authorised and notified by the Central Government, or any officer not below the rank of a Sales Officer of a Government Oil Company authorised by the Government and notified by the Central Government may with a view to ensuring compliance with the provisions of this Order, with such assistance as may be required, for the purpose of satisfying himself that this Order or any Order made thereunder has been complied with:—

- (i) stop and search any vessel or vehicle, or any other conveyance which the officer has reason to believe has been or is being or is about to be used in contravention of this Order.
- (ii) enter or search any place with such aid or assistance, as may be necessary; and
- (iii) seize and remove with such aid or assistance, as may be necessary, books, registers and other records pertaining to kerosene business, along with vehicle, vessel or any other conveyance used for carrying such stock, if he has reason to believe that any provision of this order has been or is being or is about to be contravened and thereafter take or authorise the taking of all measures necessary for securing the production of the kerosene at the office of the Government Oil Company and the vehicle, vessel or other conveyance so seized before the Collector having jurisdiction under the

provisions of Essential Commodities Act, 1955 (10 of 1955) for their safe custody pending such procedures.

(b) The provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this Order.”

25. The Central Government has issued a notification no. S.O. 509 (E), in exercise of the powers conferred by sub-clause (a) of clause 9 of the Kerosene Order, 1993, notifying the empowered officers as under:

“In exercise of the powers conferred by sub-clause (a) of clause 9 of the Kerosene (Restriction on Use and Fixation of Ceiling Price) order, 1993, the Central Government hereby notifies the following officers of the State Governments, Union Territories and Government, Oil Companies mentioned below to take necessary actions under provisions of the said order within their respective jurisdictions, namely:

Himachal Pradesh

- (1) Director Food and Supplies.
- (2) All joint Directors, Food and Supplies.
- (3) All Deputy Directors Food and Supplies
- (4) All District Food and Supplies Controllers
- (5) All District Inspectors Food and Supplies
- (6) All Inspectors Food and Supplies

26. In the present case, no notification authorising SI Guler Chand (PW6) to follow the provisions of the Act was placed on record. Therefore, the proceedings conducted by SI Guler Chand (PW6) were not as per the Kerosene Control Order.

It was laid down by the Hon'ble Supreme Court in *Avtar Singh v. State of Punjab*, (2023) 18 SCC 717 while dealing with a similar provision in Liquefied Petroleum Gas (Regulation of Supply and Distribution Order), 1988 that only an authorized officer can carry out a search and when the Sub Inspector was not authorized, it was impermissible for him to carry out the search.

It was observed: -

“13. The facts in the case, as noticed above as such, are not in dispute. The only argument raised is about the power of the person who had seized the cylinder on the basis of which the appellants were prosecuted. Clause 7 of the Order, which is reproduced hereunder, prescribes officers who have the power.

“7. *Power of entry, search and seizure.*—(1) an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:

(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this order;

(b) Enter or search any place with such aid or assistance as may be necessary;

(c) Seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, along with the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this order has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production....”

14. It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid clause provides that, in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub-Inspector of Police was authorised to take action under the aforesaid Order.

15. It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to *Dharani Sugars & Chemicals Ltd. v. Union of India*, (2019) 5 SCC 480.

16. In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorised and have to be struck down.

27. Therefore, in view of the binding precedent of the Hon'ble Supreme Court, the whole proceedings conducted by SI Guler Chand (PW6) cannot be sustained.

28. The report of the FSL reads that the sample analysed was that of the kerosene, and the blue colour was added to the supply made under the public distribution. Clause 2 (e) of the Kerosene Order defines kerosene as a middle distillate mixture of hydrocarbons meeting BIS specification No. IS-1459 of 1974 with important characteristics of flash point at a minimum of 35°C and smoke point at a minimum of 18 mm. The report does not mention that the substance analysed met the BIS specification No. IS-1459 of 1974 with important characteristics of flash point at a minimum of 35°C and smoke point at a minimum of 18 mm. This was essential. It was laid down by the Hon'ble Supreme Court in *State of H.P. v. Jai Lal*, (1999) 7 SCC 280: 1999 SCC (Cri) 1184: 1999 SCC OnLine SC 885 that an expert has to furnish the material to the Court to enable the Judge to form an independent opinion. The report should state the facts and the opinion. It was observed:

“18. An expert is not a witness to fact. His evidence is really of an advisory character. The duty of an expert

witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished, which form the basis of his conclusions.

19. The report submitted by an expert does not go into evidence automatically. He is to be examined as a witness in court and has to face cross-examination. This Court in the case of *Hazi Mohammad Ekramul Haq v. State of W.B.* [AIR 1959 SC 488: 1959 Supp (1) SCR 922] concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

29. This position was reiterated in *Ramesh Chandra Agrawal v. Regency Hospital Ltd.*, (2009) 9 SCC 709: (2009) 3 SCC (Civ) 840: 2009 SCC OnLine SC 1625, wherein it was observed at page 715:

“19. It is not the province of the expert to act as Judge or Jury. It is stated in *Titli v. Alfred Robert Jones* [AIR 1934 All 273] that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact, and his evidence is really of an advisory character. The duty of an expert

witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished, which form the basis of his conclusions. (See *Malay Kumar Ganguly v. Dr Sukumar Mukherjee* [(2009) 9 SCC 221: (2009) 10 Scale 675], SCC p. 249, para 34.)

21. In *State of Maharashtra v. Damu* [(2000) 6 SCC 269: 2000 SCC (Cri) 1088: AIR 2000 SC 1691], it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In this regard, it has been observed in *State (Delhi Admn.) v. Pali Ram* [(1979) 2 SCC 158: 1979 SCC (Cri) 389: AIR 1979 SC 14] that “no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him”.

22. In the article “Relevancy of Expert's Opinion”, it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus, the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion, so that its accuracy can be cross-checked. Therefore, the emphasis has been on the data on the basis of which an opinion is formed. The same is clear from the following inference:

“Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence, even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.”

30. Therefore, the report of the analysis is not sufficient to prove that the samples analysed fell within the purview of the Kerosene Control Order.

31. Both the learned Courts below did not advert to these aspects of the case and simply proceeded based on the possession of 170 litres of kerosene oil; therefore, the judgments passed by them cannot be sustained.

32. In view of the above, the present revision is allowed, and the judgments and the order passed by the learned Courts below are set aside. The accused is acquitted of the commission of an offence punishable under Section 7 of the EC Act, 1955. The fine, if deposited, be refunded to the petitioner/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

33. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

34. A copy of this judgment, along with the records of the learned Courts below, be sent back forthwith.

35. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

6th November 2025
(Chander)