

**In the High Court at Calcutta
Criminal Appellate Jurisdiction**

C.R.A. 191 of 1989

**Kamal Saha
vs.
State of West Bengal**

Ms. Shampa Mondal

...Amicus Curiae

Ms. Sukanya Bhattacharyya,
Mr. Mirza Firoj Ahmed Begg

...for the State

The appellant, it is submitted by learned *Amicus Curiae*, expired during pendency of the appeal. However, the appeal remains alive only in respect of fine component of the sentence.

The charges levelled against the accused were under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for violation of para 3 of the West Bengal Rice and Paddy (Licensing & Control) Order, 1967 and para 3(2) of the West Bengal Declaration of Stocks and Prices of E.C. Order, 1977.

Upon hearing learned counsel for both sides, it is evident from the deposition of the Investigating Officer that the incident-in-question occurred on August 09, 1987. It is borne out from the evidence of the prosecution witnesses that the accused was in possession of the accounts and there was a display board in the place of occurrence in compliance with para 3(2) of the 1977 Order. Hence, the

prosecution case on such component, as covered under para 3(2) of the 1977 order, is demolished by the prosecution's own witnesses.

As far as the alleged violation of the 1967 Control Order is concerned, para 3 of the said Control Order deals with the regulation of business in rice and paddy and makes it mandatory for a dealer to run the business in rice and paddy with a licence granted under the said Control Order.

From the evidence-on-record and the findings of the court below, the following facts are demonstrated:

- (i) The father of the accused had held a valid licence under the 1967 Control Order, which was due to expire on December 31, 1987;
- (ii) The father of the accused expired on July 03, 1987;
- (iii) As per the accused, the application for renewal of the licence of father, by substituting the name of the accused, was deposited on August 11, 1987. As per the Court's Witness No. 1, the concerned office received such application on August 12, 1987.

Even taking it for argument's sake, without deciding on merits, that such application for renewal was received by the concerned office on August 12, 1987, it is explicit from the records and the material evidence that the shop was reopened after the demise of the accused's father only

after completion of the mourning period, that is, from August 06, 1987. Hence, the fault of the accused, if any, could only range between the period of August 06, 1987 and August 12, 1987, when the renewal application was received. However, technically, no *mala fides* on the part of the accused was shown or any intention to violate the provisions under para 3 of the Control Order, 1967 was proved. Hence, the conviction of the accused under Section 7(i)(a)(ii) of the Essential Commodities Act does not stand on sound footing, insofar as the conviction on the 1967 Control Order is concerned, as well, since, technically speaking, there was a valid licence subsisting at the time of apprehension of the accused, albeit in the name of his deceased father. Further, the accused had applied soon after the mourning period for renewal of such licence and for substitution of his name instead of his father. As such, no *mens rea* regarding violation of para 3 of the Control Order, 1967 has been made out beyond reasonable doubt for conviction of the accused (since deceased) on any of the grounds on which charges were levelled against him.

Hence, C.R.A. 191 of 1989 is allowed, thereby setting aside the conviction and sentence awarded against the appellant (since deceased) under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 by the Judge, Special Court in E.C. Case No. 82 of 1987. The appellant is acquitted posthumously of the offences alleged against him.

Department is directed to send down the lower court records to the court below immediately.

(Sabyasachi Bhattacharyya, J.)