

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.A 237 of 1984

Nemai Chandra Majumder

-Vs-

The State of West Bengal

For the Appellant : Mr. Malay Bhattacharyya, Adv.
Mr. Subhrayyoti Ghosh, Adv.

For the State : Mr. Binay Panda, Adv.
Mr. Pratick Bose, Adv.

Heard on : 07.04.2022.

Judgment on: 13.04.2022.

Ananda Kumar Mukherjee, J. :-

1. This appeal has been filed by the convict appellant under section 374 (2) of the Code of Criminal Procedure assailing the judgment and order dated 15.05.1984 passed by Learned Judge, Special Court (Essential Commodities Act), Nadia, Krishnanagar in E.C. Case No. 10 of 1984, wherein the appellant was convicted for the offence under section 7(1)(a)(i) of the Essential Commodities Act and sentenced to rigorous imprisonment for 10 days and to

pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for 15 days and forfeiture of the grocery articles seized from the petitioner's shop.

2. The fact of the case in brief is that on 06.02.1984 one Harendra Kumar Bose, DEO, Karimpur accompanied by police held a raid and search of the grocery shop of the appellant at Debnathpur, P.S. Tehatta, District- Nadia and seized 560 kgs. of salt, 40 kgs. of flour, 40 kgs. of atta, 15 kgs. of mung dal, 15 kgs. of mustard oil. The Search and seizure was conducted without disclosing any reason to the appellant. Police Officer also arrested the petitioner.

3. A complaint was lodged by Harendra Kumar Bose/D.E.O against the appellant, alleging that the accused did not display the stock-cum-price list Board, in the shop as required under para 3(1) of West Bengal Declaration of stocks and prices of Essential Commodities Order, 1977. He could neither produce any stock and sale register nor any document relating to purchase and sale of grocery. After investigation police submitted a Charge Sheet against the accused appellant under section 7 (1) of Essential Commodities Act for violation of WBDSP Essential Commodities Order, 1977. The appellant was examined under section 251 of Cr. P.C. to the effect that on 06.02.1984 when the search party entered into his shop, he did not maintain stock register, sale register and stock-cum-price board. The accused/ appellant pleaded not guilty. A summary proceeding was carried out against the accused for violation of section 3(2)(i) of Essential Commodities Act and thereby committing an offence under section 7(1)(a)(i) of Essential Commodities Act. Prosecution examined Sudhir Biswas as PW-1, Anil Kirtania as PW-2, Ajit Kumar Mondal as PW-3,

Saidullah Sheikh as PW-4, Kanti Bhusan Nath as PW-5, H.K. Bose, the de facto complainant as PW-6 Mr. Dulal Chatterjee, SI of Police DEB (IO) as PW-7. Documents were produced as Exhibits. The accused person was examined under section 313 of Cr. P.C. He admitted that on 06.02.1983, H.K Bose, inspected his grocery shop at Debmathpur in presence of other witnesses. He also admitted that in the shop rice, atta, flour, salt and different variety of dal, soap, mustard oil, rapeseed oil and coconut oil were stored for sale. The accused however claimed that there was a stock Board but had no licence for selling of rice as he did not sell rice. No defense witness was examine.

4. After considering the evidence on record Learned Judge, Special Court held that at the time of search and seizure the accused petitioner was not found selling of rice. Therefore, the accused did not violate any provision of licensing order regarding rice. The Trial Court held that the accused violated West Bengal Declaration of stocks and price of Essential Commodities Order, 1977 which was promulgated in terms with section 3(2)(i) of Essential Commodities Act and the accused was found guilty of the offence under section 7(1)(a)(i) of Essential Commodities Act.

5. After considering the facts and circumstances and all aspects the accused was convicted for the offence and he was sentenced to rigorous imprisonment for 10 days and a fine of Rs. 500/- in default to suffer rigorous imprisonment for 15 days. The judgment passed by the court below reveals that the accused was in custody in this case from 07.02.1984 to 13.02.1984 and the period of detention was set off from the substantive sentence.

6. The seized articles like 5.60 quintals of salt, 40 kgs. of flour, 40 kgs. of atta, 15 kgs. of mung dal, 15 kgs. of masoor dal, 15 kgs. of mustard oil and 8 kgs. Coconut oil which were being stored for sale without displaying the stock and price board were seized and confiscated to the State. So far as the seized rice is concerned the same was returned to the accused.

7. Being aggrieved with the judgment of conviction and sentence, the appellant preferred this appeal on the grounds inter alia, that the learned Judge ought to have held that seizure of commodities was malafide as the allegations of absence of Notice Board is not true or it would have been noted in the seizure list as the reason for seizure. It is further contended that the seizure was held without assigning any reason, therefore seizure is without jurisdiction and the same is not legally tenable. It is further contended that the order passed by learned court below is harsh and the goods seized are not liable to be confiscated. The appellant prayed for setting aside of the judgment of conviction and sentence and the order of confiscation of the goods.

8. It is argued on behalf of the appellant that the de facto complainant held search of the premises of appellant shop without assigning any reason. PW-6 had no reason to believe that the accused violated the provisions of West Bengal Declaration of stocks and prices of Essential Commodities Order, 1977. Therefore, the search conducted in the shop of the accused petitioner was illegal and the seizure made was contrary to the provisions of section 100 Cr. P.C. It is argued that before entering the premises of the appellant for search

and inspection, it was mandatory under Essential Commodities Order, 1977 to have reasons to believe that there was any contravention of such order.

9. Learned advocate for the State argued that in paragraph 5(1) of the order of 1977, any officer of the Department of Food and Supplies of the government of West Bengal, not below the rank of Sub-Inspector or any police officer not below the rank of Assistant Sub-Inspector may, with a view to secure compliance with the provisions of this order, enter, inspect and search any premises, places, vehicles, or vessels and seize any stock of any Essential Commodities in respect of which he has reasons to believe that any provisions of this order, has been, is being or is about to be contravened. It is submitted that nowhere in paragraph 5(1) of the order of 1977 it has been laid down that before entering into any premises dealing with Essential Commodities, the officers of such ranks as stated in the order have to assigned reasons for entering the premises. On the other hand, it has been laid down that for the purpose of securing compliance such officers of the Department of Food accompanied by police officers may enter into such premises.

10. Having considered the contentions of both sides on this issue, it appears to me that the argument advanced on behalf of the appellant that reasons have to be assigned prior to inspection or search of any premises does not hold good. For securing compliance, the respective officers can enter into the premises and find out if there is any violation.

11. On considering the evidence on record, it appears that essential food material had been stored by the appellant in his shop room without display of

any stock-cum-price board and he could not produce any accounts relating to this transactions and stock of essential commodities. Therefore, the decision reported in 87 CWN 975, relied on behalf of the accused before the trial court which refers to non food articles only does not have any application to some of the articles seized by police in presence of District Enforcement Officers.

12. Learned advocate for the appellant contended that no local person was cited as witness of seizure therefore, the procedure of seizure was vitiated and was not in compliance with section 100 of Cr. P.C. Having considered the seizure list marked as exhibit 1/1 and the signatures of the seizure witnesses. I have no hesitation to hold that there is no illegality in the procedure of seizure. Sudhir Biswas PW-1 identified the accused/appellant and deposed that the accused runs a grocery shop at Debnathpur. He also stated that on 06.02.1984 when he was waiting for bus, he found police vehicle in front of the shop of the accused. The witness identifies his signature on the seizure list as exhibit 1. The witness was declared hostile by prosecution and in his cross-examination he stated that he put his signature on the seizure list while standing in front of the shop on the road. PW-1 may be a chance witness but there is nothing to suggest that he has any ill will to make any false statement in respect of search and seizure which took place in the shop of the accused person. PW-2 Anil Kirtania, a local resident deposed that on 06.02.1984 police went to the grocery shop of the accused person and in his presence certain quantity of rice, atta and other articles were seized by police from the shop and it was given in the 'jimma' (in custody) of PW-2. The witness signed on the 'Jimmanama' which is

marked as exhibit 2. The witness was declared hostile by prosecution and he denied having stated to the police that the accused did not maintain stock-cum-price list or register in the shop. In course of cross-examination, the witness deposed that the accused has agricultural land and he did not purchase or sale rice or paddy.

13. PW-3 Ajit Kumar Mondal, stated that he was present in front of the shop of the accused. The evidence of this witness suggests that and occurrence took place when police entered the shop of the accused. The witness was declared hostile and he denied having stated to police that the accused on that day could not produce stock-cum-price board during inspection. He also stated that he did not do anything relating seizure but he had signed on some paper. The evidence of PW-3 goes to indicate that there was some search in the shop room of the accused person and on the relevant date he has put his signature on some document. PW-4 Saidullah Sheikh, Duty officer at Tehatta police station received the written complaint from H.K. Bose, S.I of D.E.B and filled the formal FIR, marked as exhibit 3. PW-5 Kanti Bhusan Nath, deposed that he has a constable attached to D.E.B Karimpur. On 06.02.1984 he accompanied H.K. Bose, SI of police, D.E.B to the grocery shop of Nimai Majumder at Debnathpur. He further deposed that there was neither any stock-cum-price board nor any register of accounts in the shop. The accused person was present any shop. In cross examination PW-5 deposed that he did not ask the accused person to meet H.K. Bose prior to the occurrence. He also denied that any stock-cum-price board and register were there in the shop. The evidence of

PW-5 inspires confidence. There is no incongruity to indicate that the accused person was been falsely implicated. It may be derived from his evidence that there was no stock-cum-price board or any register of accounts regarding sale and purchase of Essential Commodities in the shop of the accused person.

14. PW-6 H.K. Bose, the de facto complainant deposed that he visited the shop of the accused person on 06.02.1984 at 11:30 A.M, accompanied by watcher constable. He found articles like rice, salt, different type of pulses, oils, atta etc. were displayed for sale but there was no stock-cum-price board or stock register or sale register even no license could be produce for dealing with rice. The witness found six sacks full of rice, weighing 100 kgs. each and 5 partly filled bags. The accused had kept 8 bags of salt along with other article salt, flour, atta, sabu, mung dal, musoor dal and coconut oil. PW-6 deposed that all the food articles were seized in presence of witness and given in 'jimma' to Anil Kirtania. After returning to the police station PW-6 lodged a complaint at Tehatta police station on the basis of which this case started.

15. On considering the materials on record I find that prosecution has clearly established the accusation by credible evidence that food articles were seized from shop of the appellant and he did not have any Stock register cum price board nor any stock or sale register. Therefore, the prosecution has been able to prove that appellant has violated the provision in paragraph 3(2) of West Bengal Declaration of stocks and prices of Essential Commodities Order, 1977.

16. Regarding storage of nine quintals of rice in the shop of the accused person, learned court below has come to a conclusion that due to lack of evidence relating to purchase and sale of rice it could not be proved that the accused was dealing with rice in contravention of West Bengal Contrary Order, 1977. It was held that the accused did not violate any provisions of the licensing order and directed the return of seized rice to the accused.

17. In course of his examination under section 313 of Cr. P.C. the accused himself admitted he had stored rice, atta, flour, salt, different varieties of dal, soap, oil etc. for sell. Subsequently, he stated that he did not sell rice and also admitted that seizure took place from his premises. From the evidence on record, it appears that the accused person transacted in Essential Commodities but did not maintain any books of account and record relating to his business to furnish information of such stock and price. The appellant thereby violated section 3(2)(i) of Essential Commodities Act, and he has been justly convicted under section 7(1)(a)(i) of Essential Commodities Act.

18. In view of my discussion above, I do not find any illegality with the finding that the appellant is guilty of the offence under section 7(1)(a)(i) of Essential Commodities Act. The appellant was sentenced for such offence to undergo rigorous imprisonment for 10 days and to pay a fine of Rs. 500/- in default to suffer further imprisonment for 15 days. It appears to me that the accused appellant had undergone incarceration from 07.02.1984 to 13.02.1984 that is for a period of 7 days. He has been sentenced for a period of 10 days of rigorous imprisonment. After setting off the period of sentenced

already undergone by him the convict is yet to undergo 3 days of imprisonment. It has been submitted by learned advocate for the appellant that the appellant has already paid the fine amount. I have considered the facts and circumstances of the case and the arguments advanced by learned advocate for both parties. The offence relates to violation of regulation and orders which are archaic and diminished in force and relevance in the contemporary period. It has also been noticed that the appeal is pending since 1984 and the petitioner is undergoing the ordeal for 37 years. In view of such facts and circumstances it appears to me appropriate and just to modify the substantive sentence imposed against the appellant to rigorous imprisonment for 7 days instead of 10 days. Furthermore, setting aside the period of imprisonment already undergone by the appellant, it would be sufficient if the appellant deposited the fine amount of Rs. 500/-. However, I do not find any material to interfere with the order of confiscation of the food articles which were being sold from the grocery shop of the appellant and were seized by police.

19. In view of the above discussion the appeal is allowed in part by modifying the substantive sentence of rigorous imprisonment for 10 days to rigorous imprisonment for 7 days only.

20. The appeal is accordingly disposed of. Interim order if any stands vacated. Let a copy of this judgment along with L.C.R be transmitted to learned Judge, Special Court Essential Commodities Act, Nadia for execution of the sentence in the light of the above observation.

21. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)