

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 31 of 1987

Islam Chowdhury

-Vs-

The State of West Bengal

For the Appellant : Ms. Pallavi Priyadarshee
(Amicus Curiae)

For the State : Ms. Shreyashee Biswas
Ms. Puja Goshwami

Heard on : 18.04.2024

Judgment on : 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 23.12.1986 passed by the Learned Special Court (E.C. Act), Hooghly in Special Court No. 124/85 whereby convicted the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act X/55 for contravention of Para 3(2) of West Bengal Declaration of Stock and Prices of Essential Commodities Order and sentencing him to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.1,000/- in default to suffer further rigorous imprisonment for one month.

2. The prosecution case in brief was that on 08.06.1985, the officer of D.E.B. along with force raided the grocery shop of the accused situated at Sodepur bazaar, in his absence. The shop was being managed by the brother of the accused. On being asked to produce the stock, price board, licence and registers, the brother of the appellant could not produce the same. The goods in the shop were seized after preparing seizure list and were given in Zimma.
3. The defence contrarily stated the appellant was present in the shop with his brother while the raid was held. On demand by the D.E.B. officer he wanted to produce all the documents as was asked for. However, he was asked to appear at the police station with all documents which he had.
4. In order to establish its case, the prosecution examined four witnesses and exhibited certain documents.
5. The Learned Amicus Curiae for the appellants submitted as follows:-
 - i. The evidence of PWs-1, 2 and 4 who were admittedly police personnel, should not have been relied upon.
 - ii. The list of documents submitted by the appellant on 27.11.86, i.e. Panchayet Tax receipt, counterpart showing food licence which was sent for renewal and a stock board, were not considered.
 - iii. The brother of the appellant Narul Jaman Chowdhury who was a witness to the seizure, was not examined to unfold the truth.
 - iv. There was no direct evidence that the seizure list was prepared after preparing the weightment chart of the goods seized inasmuch as the PW-1 in his cross-examination deposed that he did not prepare any

weighment chart of the goods seized and the seizure list prepared therefrom appeared to be faulty.

6. The Learned Advocate for the State submitted that the prosecution had been able to prove its case and the appeal shall be dismissed.
7. The defence of the appellant to have been present at the shop at the relevant time of raid cannot be accepted. The appellant therefore could have produced the necessary documents demanded by the police officers for their satisfaction. Moreover, the appellant had ample opportunity to adduce defence evidence to bring on record the valid documents pertaining to the functioning of the said shop to justify his claim of refusal on the part of the police officers to accept the same at a later stage.
8. The Learned Trial Court, after reasonable assessment of evidence borth oral and documentary, rightly passed the impugned judgment.
9. In the decision of **Tarak Nath Keshari Vs. State of West Bengal**¹, the Hon'ble Apex Court held as follows:-

“7. Heard learned counsel for the parties and perused the paper book. The fact that inspection of the shop of the appellant was carried out on 20.8.1985, hence the incident had taken place more than 37 years back. As was pointed out at the time of hearing, the appellant throughout remained on bail. Section 7(1)(a)(ii) of the EC Act under which the appellant has been convicted, provides as under:—

“7. Penalties - (1) If any person contravenes any order made under Section 3,-

(a) he shall be punishable,-

(i)

¹2023 SCC OnLine SC 605

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

8. A perusal of the aforesaid Section shows that the Court may, for adequate and special reasons, impose punishment less than the minimum prescribed in the Section. However, the fact remains that the offence in the case in hand was committed on 20.8.1985 and in terms of the Essential Commodities (Special Provisions) Amendment Act, 1981, the proviso was not in force on that date.

9. As far as the case of the appellant on merits is concerned, we do not find that any case is made out for interference in the concurrent findings of the facts recorded by all the courts below. It was found that the stock of mustard oil and vegetable oil found at the shop of the appellant was more than the permissible limit, hence, this was violative of para 3(1) of the West Bengal Pulses, Edible Oil (Dealers Licensing) Order, 1978.

10. However, still we find that a case is made out for grant of benefit of probation to the appellant for the reason that the offence was committed more than 37 years back and it was not pointed out at the time of hearing that the appellant was involved in any other offence. Before all the courts below, the appellant remained on bail. While entertaining his appeal, even this Court had granted him exemption from surrendering. Section 4 of the Probation of Offenders Act, 1958 has a non obstante clause. The same is extracted below:

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under subsection (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under subsection (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

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*."*

10. Considerable time has lapsed and in view of the decisions in aforesaid judgment, the appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of

Rs.10,000/- with two sureties each to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.10,000/- within 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.

11. Accordingly, the criminal appeal being CRA 31 of 1987 stands disposed of.
12. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned Advocate as Amicus Curiae in disposing of the appeal.
13. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)