

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 2 of 2001

**The State of West Bengal
-Vs-
Amar Chand Gupta & Anr.**

For the State	: Ms. Faria Hossain Mr. Anand Keshari
For the Respondent No.2	: Mr. Amit Bhusan Bagchi
Heard on	: 18.01.2024, 21.03.2024, 21.06.2024
Judgment on	: 13.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 06.03.1997 passed by the Learned Judge, Special Court, E.C. Act & Additional District Judge, Alipore, South 24 Parganas in Special Case No.3(5)96 and acquitting the accused persons of the charge under Sections 7(1)(a)(ii) of the Essential Commodities Act.
2. The prosecution case inter alia narrated on 16.05.96 in between 21:05 hrs. to 21:35 hrs. the appellant had been arrested for possessing 8 gunny bags of sugar, each containing 100 kilograms, on a hand cart, suspected to be obtained fraudulently from the A.R. Shop No.3686 at 26/2A, Deodar Street, Calcutta – 19 being abetted by Shew Kumar Dutta, owner of the said A.R. Shop.

Witness Suresh Kumar Agarwal disclosed that he sold 8 bags of sugar each containing 100 kg., to Shibu on 16.05.95 at about 22:00 hrs., delivered by an unknown tempo. Shew Kumar Gupta fled from the vicinity of the Ration shop while Amar Chand Gupta was arrested.

The hand writing expert in his report confirmed the entries in the Stock Register were interpolated and were written at a different sittings. The seizure witness was the hand cart puller who carried the bags from the A.R. Shop to the cart for transportation elsewhere at Rs.30/- engaged by Amar Chand Gupta. The destination was not spelt out but the area was mentioned as Garcha.

S.G.T., S.K. Roy of Ballygunge P.S. was a vital witness who caught the accused red handed while he was commissioning the crime. Moreover absconsion of another accused Shew Kumar Gupta, in order to evade arrest was a concrete ground for his complicity in the case.

3. On 06.03.1997 charges were framed against the accused persons who pleaded not guilty and claimed to be tried.
4. The prosecution claimed the accused persons were found in possession of 8 bags of Sugar each containing 100 kg. without valid document as permit and thereby violated the West Bengal Rationing Order, 1964 and committed the offence under Section 7(1)(a)(ii) of the Essential Commodities Act.
5. Considered the rival contentions of the Learned Advocate for the State as well as the Learned Advocate for the opposite party.
6. Learned Advocate for the State submitted that –

- i. The Learned Court below was wrong in discharging the accused persons inspite of the fact that the paper made available indicate that the relevant entries in the Stock Register had been interpolated and written in a different sitting. Report of the Hand-writing Expert supports the contention of the prosecuting authorities. The defence did not make out a case that the accused persons were otherwise dealing with Sugar. In such circumstances seizure of such a large quantum of Sugar from the vicinage of the particular Ration Shop of which accused persons were the dealer was bound to raise logical suspicion that sugar was being surreptitiously removed. In such a back ground, discharge of accused persons without considering the prosecution case was not proper.

7. Section 7(1)(a)(ii) of the Essential Commodities Act states as follows:-

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

(a) he shall be punishable,—

(i)

(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. The West Bengal Rationing Order, 1964 was a regulatory framework established by the Government of West Bengal to manage the rationing

and distribution of essential commodities in the State. Some key points about this order are as follows:-

- i. The order granted the State Government the power to appoint dealers and fair price shop owners to distribute rationed goods like food, fuel, and other essential items.
- ii. These appointed dealers and fair price shop owners were required to obtain licenses under the West Bengal Rationing Order, 1964 to operate.
- iii. The order also gave the State Government the authority to suspend or revoke the licenses of these appointed dealers and shop owners in certain circumstances.
- iv. Disputes related to the allotment of lands or the distribution of produce between the Gram Parishad (village council) and the allottees could be tried by a Gram Adalat (village court) established under the order.
- v. The Gram Parishad was granted various powers under the order, including arranging for the cultivation of lands, granting loans to allottees, and undertaking agricultural or non-agricultural enterprises.
- vi. Overall, the West Bengal Rationing Order, 1964 was a comprehensive regulatory framework that empowered the State Government to manage the distribution of essential commodities and resources at the village level through appointed dealers and village councils.

9. The accused-opposite party no.1 was not the owner of the ration shop in question to be legally bound to obtain necessary permit or licence with regard to operation of the ration shop for conducting transactions in accordance to statutory orders. The bags of sugar as aforesaid were seized from the accused-opposite party no.1 on a cart to be transported to an unidentified destination which could not be ascertained prior to the submission of the charge-sheet.
10. The prosecution reposed trust on the authenticity of the crime to have been committed by opposite party no.2 due to his absconsion based on suspicion fortifying the ground of his abetment or complicity conspiring the commission of the alleged offence. The prosecution could not prove that the stock of sugar was removed from the ration shop itself with ulterior motive violating the provisions of the West Bengal Rationing Order, 1964 since the physical stock tallied with the books of accounts.
11. The prosecution cannot implicate a person based on suspicion devoid of oral and documentary evidence to justify their criminality. Moreover, the provisions under Section 7(1)(a)(ii) of the Essential Commodities Act as well as West Bengal Rationing Order, 1964 could not be attracted to the facts and circumstances of the instant case since the materials on record failed to establish the fraudulent act on the part of the appellants.
12. In the impugned order the Learned Trial Court opined as follows:-

“After scrutiny of the materials on record it appears that the books of the account and the physical stock tally with each other. So it can’t be said that the accused persons took the stock clandestinely from the Ration Shop. In order words the accused person had not violated West Bengal

Rationing Order, 1964. Thus the accused persons could not be said to have committed any offence under Section 7(1)(a)(ii) of the Essential Commodities Act.”

13. Under the facts and circumstances, the impugned order is accordingly not interfered with.
14. In view of the above discussions, the instant appeal being GA 2 of 2001 is dismissed.
15. There is no order as to costs.
16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. 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.)