IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 169 of 1986

Monoranjan Banik
-Vs-
The State of West Bengal

For the Appellant (Amicus Curiae)	: Ms. Pallavi Priyadarshee
For the State	: Ms. Shreyashee Biswas Ms. Puja Goswami
Heard on	: 19.02.2024, 16.04.2024
Judgment on	: 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 14.03.1986 passed by the Learned Judge Special Court (Essential Commodities Act) Barasat in Special Case No.74 of 1984 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for alleged violation of paragraph 18(1) of the West Bengal Rice and Paddy (Licensing & Control) Order, 1967 and sentencing him thereunder to suffer rigorous imprisonment for 4 months and also to pay a fine of Rs.300/- in default to suffer 1 month rigorous imprisonment more and also forfeiting the seized quantity of Rice.
2. The Learned Amicus Curiae representing he appellant submitted as follows:-

i. The so-called stock register was not proved in accordance with the provisions of the Indian Evidence Act.

ii. The prosecution could not prove the mens rea on the part of the appellant. Mens rea was excluded by necessary implication from West Bengal Rice and Paddy (Licensing & Control) Order, 1967 and as such the impugned order was liable to be set aside.

iii. The appellant ought not to have been convicted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 inasmuch as the alleged violation of paragraph 18(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 could at best come within the mischief Section 9 of the Essential Commodities Act, 1955.

iv. The implication of Section 10 of the Essential Commodities Act, 1955 was not considered.

v. The allegation for violation of West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1967 the prosecution was unfounded.

3. The prosecution had examined thirteen witnesses and the defence had examined one.

4. Considered the submissions of the Learned Amicus Curiae representing the appellant as well as the Learned Advocate for the State.

5. The allegation against the accused was that he has violated the provisions of Para 18(1) of West Bengal Rice and Paddy (Licensing and Control) Order, 1967. The order runs as follows:-

> *"Every licensee or registered dealer shall unless exampted by the licensing authority, maintain separately for such place of his business*

of godown correct and true accounts of purchase, sale and storage of rice or paddy or both to be written up at the end of each day, showing-

(a) the opening stock of the day,

(b) thequantities received during the day,

(c) the quantities delivered or otherwise disposed of during the day,

(d) the closing stock of the day, and

(e) such other particulars as the licensing authority may, by order in writing, specify."

6. The prosecution's case was that PW 12 being SK Komar, SI of police attached to Barasat PS along with PW-11 being Sub-Inspector and Inspector of D.E.B. Mr. R.C. Poddar raided the Gowdownof Bainik and Co. which was located at Barasaton 2.10.84 at about 4 p.mafter receiving a verbal complaint that the accused Manoranjan Banik being the owner of Banik & Co. had sold rationed commodities at a premium. P.W.12 had found discrepancies between the actual stock and stock shown in the stock register, sales register, stock board, etc. The accused was unable to give a satisfactory explanation and the rationed commodities, books of accounts, registers and cash memos were seizedand a seizure list marked as Ext. 4/3 was prepared. The rationed commodities were kept in the custody of the accused who executed a bond marked at Ext 6.A weighment chart marked as Ext 7 and true copy of stock-cum-rate board marked as Ext. 8 was prepared.

7. The accused was arrested and brought to Barasat P.S. An FIR was lodged against him which was marked at Ext. 9 and Barasat PS Case No. 3 dated 2.10.84 was started against him. By the order of the Addl. S.P. D.E.B., the case was transferred to the D.E.B. and P.W. 13, being Dinobandhu Das, S.I, took charge of the case on 25.10.84. On scrutinizing the books of accounts

and the registers, PW.13 found a shortage of 105 quintals of rice. He also found that there were no notes in the stock register with regards to the cash memos that were cancelled. Despite the sale registers showing that the cash memo goods had been delivered, they were not recorded in the sales register. The charge sheet against the accused was submitted on 30.01.85.

8. 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:—*
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> *"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.** 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.*
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> ***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*

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[1] 2023 SCC OnLine SC 605

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."*

9. The Learned Trial Court after considering the oral as well as documentary evidence convicted the appellant as aforesaid. The appellant failed to produce the documents at the time of raid with regard to the discrepancies found in the actual stock and the stock shown in the stock register, sales register, stock board etc. The shortage of 105 quintals of rice could not be accounted legally.

10. The order of conviction passed by the Learned Trial Court was justified.

11. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1984. The appellant to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 40 years.

12. 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.5,000/- 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.5,000/- within 6 months from the date of this order failing which he shall be called to serve out the sentence.
13. Accordingly, the criminal appeal being CRA 169 of 1986 stands disposed of.
14. I record my appreciation for the able assistance of Learned Advocate Ms. Pallavi Priyadarshee as Amicus Curiae in disposing of this appeal.
15. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)