

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 196 of 1987

Nantu Dutta

-Vs-

The State of West Bengal

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

For the State : Ms. Faria Hossain
Ms. Kanchana Ray

Heard on : 19.04.2024

Judgment on : 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against a judgment and order of conviction to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.50/-, in default, to suffer rigorous imprisonment for 7 days more and also passed an order for confiscation passed on 19.03.1987 by the Learned Judge, Special Court (Essential Commodities Act) at Alipore, 24-Parganas (South) in Special Case No.5(2)86, arising out of Sealdah G.R.P.S. Case No.8 dated 04.02.1986 under Section 7(i)(a)(ii) of Act X/55 for violation of provision of Paragraph 3 of West Bengal Rice (Restriction and Movement) Order, 1977.

2. The prosecution case precisely stated on 04.02.1986 at about 16:30 hours, while the complainant along with other police forces were on special duty near D.S. Building, Sealdah, they noticed the convict/appellant drop 3 (three) bags of rice from a down local train, while it reached near D.S. Building at a slow motion. It was also alleged that the convict himself got down from the train and as he tried to remove the rice from the side of the railway track, he was surrounded by police force and arrested along with bags of rice. On demand, the appellant could not produce any licence or authority and also failed to provide satisfactory explanation of possessing the rice. Hence, the case was started against the appellant.
3. Based on the complaint Sealdah G.R.P.S. Case No.8 dated 04.02.86 was initiated.
4. On completion of investigation charge-sheet was submitted. Subsequently the appellant pleaded not guilty and claimed to be tried.
5. The prosecution had examined five witnesses whereas defence had examined two witnesses including the appellant himself.
6. The Learned Amicus Curiae for the appellant submitted as follows:-
 - i. The prosecution witness No.5, M. S. Roy, the complainant-cum-Investigating Officer, had investigated the alleged offence without proper authority.
 - ii. There was no corroborative and substantive evidence against the appellant and as such the Learned Judge ought to have held that the appellant was not guilty of the offence punishable under Section 7(i)(a)(ii) of the Essential Commodities Act.

- iii. The prosecution failed to prove its case based on evident irregularities and the appeal shall be allowed.
- 7. Considered the submissions of the Learned Advocate for both the parties.
- 8. The Learned Trial Court in the impugned judgment, inter alia, observed as follows:-

“Admittedly the D.S. Building is situated at a distance of 100 yards from the railway station, sealdah and it also transpires from the evidence of PW-2 that there being some railway quarters public walk through the pathway along with the railway line in front of the D.S. Building.

Now this being a case of February, 1986 it is quite normal that there would be some discrepancy in the testimony of the witness but there being overwhelming testimonies that while the down local train bound for sealdah was moving in slow motion near the D.S. Building 2/3 bags of rice were dropped from the train and a person jumped I am reluctant to accept the defence version that the accused was apprehended at the railway platform gate by the police without any reason and more so when there were 2 other person (sister and sister’s husband) along with the accused. The normal conduct would be that the persons who accompanied the accused would raise the hue and cry if they found that one of there associate was apprehended by police for no reason what so ever and definitely there would be commotion.

DW-1 Dulal Goswami has stated in his examination in chief that while they were going out of the gate police apprehended the accused and he wanted to know why the police apprehended him since they were

bonafide passengers having valid tickets but the police refused to hear him and put the accused in the lock up and he then went back to his home. This conduct of the DW-1 is very much unbelievable. It is true that Exbt.-A reveals that the accused runs a grocery shop at his village but it is not pointed out since when he is running the business.

Be that as it may considering the testimonies on record and in view of my aforesaid discussion I hold the accused guilty of the charge levelled against him.”

9. The Learned Trial Court, after reasonable assessment of evidence both oral and documentary, rightly passed the impugned judgment.
10. 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)

(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;”

¹2023 SCC OnLine SC 605

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*.”*

11. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1987. 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 37 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.1,000/- 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.1,000/- within 6 months from the date of this order failing which he shall be called to serve out the sentence.

13. Accordingly, the instant criminal appeal being CRA 196 of 1987 stands disposed of.
14. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned Advocate as Amicus Curiae in disposing of the 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.)