IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 38 of 1988

Kamal Kanti Satpathy
-Vs-
The State of West Bengal

For the Appellant	: Mr. Soumyajit Das Mahapatra Mr. M. Sinha
For the State	: Mr. Pratick Bose
Heard on	: 09.01.2024, 20.02.2024, 01.05.2024
Judgment on	: 11.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23.12.1987 passed by the Learned Judge, Special Court (under the Essential Commodities Act), Midnapore, in D.E.B.G.R. Case No. 31 of 1984 arising out of Jamboni Police Station Case No. 1(8)84 dated 02.08.1984 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and sentencing him to simple imprisonment for one year and a fine of Rs.1000/- in default simple imprisonment for 1 month.

2. The prosecution case precisely stated on 02.08.1984, the complainant accompanied with raiding party inspected the shop-cum-godown of the

appellant at about 14:30 hours and noticed 87 bags of wheat containing 100 kgs each bag, 4 bags of "Ata" containing 100 kgs in each bag, 4 tins of Coconut oil containing 15 kgs each and 5 bags of Musur Dal containing 75 kgs each in the said shop-cum-godown of the appellant. A stock-cum-rate board displayed in the said shop-cum-godown did not depict the price and quantity of the essential commodities. The stock and register was filled up to 21.07.1984. Books of accounts in respect of edible oil and pulse were absent. The appellant committed an offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

3. Based on the aforesaid complaint, Jamboni Police Station Case No.1(8)84 was started under Section 7(1)(a)(ii) of the Essential Commodities Act. The case was also started in violation of para 3 of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 for not maintaining the stock and price therein at Essential Commodities in the stock-cum-rate board and also for violation of para 12 of West Bengal Wheat and Production Licencing Control and Prohibition of certain clauses of Commercial Transaction Order 1973.

4. The prosecution examined 4 witnesses and the defence examined 3 witnesses.

5. The Learned Advocate for the appellant submitted that:-

    i. About 69 years ago, while dealing with a case of corruption, a 3 Judges Bench of Hon'ble Apex Court in H.N. Rishbud v. State of Delhi (AIR 1955 SC 196) inter alia observed as follows:-

> *"Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."*

ii. In the instant case the present I.O., i.e. PW-4 was a part of the raiding team. The FIR and the depositions of the prosecution witnesses including the I.O./PW-4 reveal the I.O. had participated in the raid and subsequently he was entrusted to investigate the same who, on completion of investigation, submitted the charg-sheet.

iii. It was further submitted that if the investigation officer himself was a witness, there was every possibility that the investigation would be tainted since the positive outcome in favour of the prosecution would ensure his service benefit. The doctrine nemo judex causa sua was squarely applicable in the present case. The possibility of other witnesses, who are similarly government employees to be influenced was undeniable. PW-2, Sushil Mahata being the sole independent witness turned hostile and the other independent witness namely Birendranath Mahato was not produced before the Learned Trial Court.

iv. It was further argued that a Division Bench of this Hon'ble Court in Ishdan Seikh vs Union of India (2022 SCC OnLine Cal 1545) has already held that a raiding team member could not be termed as an independent person. This Hon'ble Court on an earlier occasion in Balaram Ghosh v. State of West Bengal (2013 SCC OnLine Cal 9281), while dealing with a case under section 25/27 of the Arms Act, predominantly of the nature of search and seizure proceeding, had held that a police officer who was part of raiding team, could not be the investigation officer.

v. In Suresh Kumar Mittal and ors. vs The State of West Bengal(2001) 1 CHN 494) in an appeal from conviction arising out of Essential Commodities Act observed the similar situation to be unacceptable.

vi. The prosecution story was not supported by any public witness: Sushil Mahata was produced as PW-2 but he turned hostile. The other witness namely Birendranath Mahato was never produced. Citing witness and not producing the same at the time of trial certainly raised an adverse presumption under Section 114 (g) of the Indian Evidence Act, that the witness was either sham one or someone, who would have deposed, contrary to the prosecution case.

vii. It was further contended that the Essential Commodities Act, 1955, under Section 12A provides the power to try summarily which was not complied with the Sub-section (2) of the said section goes as follows:-

> *"[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all, offences relating to-*
>
> *(a) respect to- the contravention of an order made under Section 3 with respect to –*
>
> *5 * * * **
>
> *(ii) foodstuffs, including edible oilseeds and oil; or*
>
> *(iii) drugs; and*
>
> *(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order,*
>
> *shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:*
>
> *Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year.*

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code.]"

viii. It was cardinal rule of interpretation that where a statute provided that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It was also settled rule of interpretation that where a statute was penal in character, it must be strictly construed and followed. Since the requirement, in the present case was (i) investigation by an independent officer and (ii) adherence of summery procedure enunciated in Essential Commodities Act, non-compliance with the same must result in acquittal of the appellant.

6. Heard the rival contentions of the Learned Advocate of the State.

7. A circumspection of evidence of the prosecution witnesses revealed as follows:-

   i. PW-1 deposed that on 02.08.1984 from 12:30 hrs. to 14:30 hrs, he along with S.I. B. K. Nath the then D.E.O. Jhargram, ASI Ashis

Kumar Bhowmick and force inspected the shop go-down of the accused Kamal Kanti Sarpati at Jambani in his presence they noticed physical stock of wheat, wheat products, coconut oil, mustard oil and masoor dal inside the shop go-down. PW-1 also found a stock rate board displayed at the place of business with the names of essential commodities noted therein but the stock of each item of essential commodities and their prices were not noted. The accused produced one stock sale register of wheat and wheat products for his inspection. It was written up to 21.07.84 showing opening stock on that date as 140 quintals of wheat. No books of account with respect to edible oil and pulses etc. were produced. Licence bearing No.309/W/FT/D issued in his favour of the accused person to deal in wheat and wheat products was produced. Books of accounts were not maintained for edible oil and pulses. PW-1 seized the entire stock of the essential commodities through a seizure list in presence of the witnesses. The accused was arrested. PW-1 lodged a written ejahar. The written ejahar, seizure list, zimmanama and formal F.I.R were marked Exbt-1, 2, 3 and 4 respectively.

ii. During cross-examination, PW-1 stated he weighed the articles and seized the same on inspection as he had stated earlier. He seized the stock rate board but he did not prepare any copy of the same. It was not sealed either. PW-1 knew that books of accounts were to be written for the edible oil. He found masoor dal in 5 bags each containing 75 kgs. He could not state if licence was required for such dal. He did not seize any cash memo in connection with the case. He did not check the stock in connection with cash memo books.

iii. PW-2 was declared hostile by the prosecution.

iv. PW-3 stated in his examination-in-chief that on 02.08.84 at 12:30 PM, he accompanied D.B. Inspector Barman Babu, Sub-Inspector B. K. Nath and others to the grocery shop of Kamal Kanti Satpati at Jambani Chak. Kamal Satpati was not there. The registers and other documents were not found in proper form. The stock and price of the articles were not written on the rate board. Thereafter, wheat, dal, oil etc. were seized and kept in zimma probably of the elder brother of the accused. The complainant seized one register in connection with stock and sale of wheat. He identified the register. Two public witnesses were also present at the time of seizure.

v. During cross-examination, PW-3 stated that Kamal Satpati and Amal Satpati were brothers of full blood. On the date of occurrence, their raiding party searched the go-down of the accused and thereafter that of his brother Amal. He could not state in detail the names of all the articles seized from the shop of the accused. In the stock rate board, the names of articles were found to be written in colour. However, stock and price of those articles were not written on that board.

vi. PW-4 deposed in his evidence that he was the I.O. of the instant case. PW-4 accompanied the raiding party. He examined and recorded the statements of the witnesses. During investigation he examined the seized documents. After completion of investigation he submitted charge-sheet against Kamal Kanti Satpati under Section 7 (1) (a) (ii) of E.C. Act. He knew Kamal Kanti Satpati. PW-4 signed the stock –cum – sale register which was seized. He identified the same which was marked Ext. 5. His signature with date on the register was marked Ext.5/1 and the signature along with date of the accused was marked Ext.5/2. Witness also signed on register in his presence. The signature of witness Sushil Mahata was marked Ext. 5/3. PW-4 signed the seizure list. He identified his signature on the seizure list marked Ext.2/1. The stock-cum-rate board was marked Ext.1. The stock and price of any commodity was not written on that board. During investigation the accused could not produce any register or books of accounts for dealing in edible oil and pulses for inspection.

8. The circumspection of evidence of the defence witnesses revealed as:-

i. DW-1 in his deposition stated that he knew Kamal Kanti Satpati who had one grocery shop. Wheat was also sold from that shop. On 26.7.1984 he purchased 2 quintals of wheat from the shop of the accused against cash memo. Kamal Kanti Satpati was present at that time in his shop.

ii. DW-2 stated in his deposition that he knew Kamal Kanti Satpati who was then present. On 29.7.1984 he purchased 5 quintals of wheat from the grocery shop of the accused against cash memo.

iii. DW-3 in his deposition stated he was an employee of the accused in his shop. He would maintain the registers of his shop mainly. He would also take part in weighment of the articles in the shop. On 02.08.1984 he was not present in the shop of the accused as he was ill. He came in the shop of the accused in the morning on 21.7.1984 but left the shop due to illness and again joined the shop on 05.08.1984. He wrote in the relevant registers up to 21.07.1984. Thereafter he could not write those registers due to his illness. After 02.08.1984 all the relevant registers and cash memo books had been reopened and written. He would write in the relevant registers and books of accounts some times in the shop of the accused and some times in his house.

9. Section 3 of the Essential Commodities Act, 1955 states as follows:-

"3. Powers to control production, supply, distribution, etc., of essential commodities.— *(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.*

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops.

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

[(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,—

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him or,

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1.—An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2.—For the purpose of this clause, "production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;]

*(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs 1 *** which, in the opinion of the*

authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

[(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefore, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;]

[(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,—

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed and any packages, coverings or receptacles in which such articles are found; (ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

[(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts

therefrom in the presence of an officer having the custody of such books of accounts or documents.]]

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefore as hereinafter provided:—

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

[(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any food-stuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor—

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.]

[(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to—

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

[(3C) Where any producer is required by an order made with reference to clause (f) of subsection (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (3A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) a reasonable return on the capital employed in the business of manufacturing of sugar:

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation 1 [I].— For the purposes of this sub-section,—

(a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;

(b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;

(c) "producer" means a person carrying on the business of manufacturing sugar;

(d) “reasonable return on the capital employed” means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.]

[Explanation II.—For the removal of doubts, it is hereby declared that the expressions “fair and remunerative price” referred to in clause (a), “manufacturing cost of sugar” referred to in clause (b) and “reasonable return on the capital employed” referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers' co-operative society.]

[(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded go downs of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such hank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognized dealer or any class of producers or recognized dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing,

marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation.—For the purposes of sub-section (3D) and this sub-section,—

(a) “producer” means a person carrying on the business of manufacturing sugar;

(b) “recognised dealer'' means a person carrying on the business of purchasing, selling or distributing sugar;

(c) “sugar” includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorize any person (hereinafter referred to as an authorized controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,—

(a) the authorized controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,—

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual—

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report there of shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made."

10. To justify the essence of the provision stipulated in the aforesaid Section W.B. Declaration of Stocks and Prices of Essential Commodities Order, 1977 and W.B. Wheat & Wheat Products (Licensing Control & Prohibition of Certain Classes of Commercial Transactions) Orders, 1973 were promulgated which came into order on and from 15th June, 1977 and 11th April, 1973 respectively.

11. Clause 2(a), 2(e), 2(g) and 2(h) of the W.B. Declaration of Stocks and Prices of Essential Commodities Order, 1977 state as follows:-

"2. Definitions.

(a) "dealer" means any person carrying on the business of selling any essential commodity and includes a producer, an importer, a wholesaler, or a retailer, and also a broker, commission agent, distributor or any other agent having authority to sell any essen- tial commodity belonging to his principal;

....

(e) "place of business" means a place where the books of accounts of a dealer's business are kept and where orders or offers involving purchase

or sale of any essential commodity are received and includes place or places where the dealer stores any essential commodity;

…

(g) "retailer" means a person who sells any essential commodity to a consumer;

…

(h) "wholesaler" means a person who sells any essential commodity to any other dealer or to a bulk consumer."

12. Clause 3 of the W.B. Declaration of Stocks and Prices of Essential Commodities Order, 1977 states as follows:-

"***3. Display of stock and price lists.***

(1) Every producer and importer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form A indicating the opening stock of each essential commodity held by him on each day.

(2) Every wholesaler and every retailer shall display conspicuously at a place as near to the entrance of his place of business as possible a list in Form B indicating the opening stock and the wholesale or retail price, as the case may be of each essential commodity held by him on each day.

(3) The wholesale price and the retail price to be displayed under sub-paragraph (2) shall respectively be exclusive and inclusive of all local taxes."

13. Clause 4 of the W.B. Declaration of Stocks and Prices of Essential Commodities Order, 1977 states as follows:-

"***4.Wholesaler and retailer not to a withhold from sale.***

No wholesaler or retailer shall withhold from sale any essential commodity held in stock by him or charge from any customer a price higher than that displayed under sub-paragraph (2) of paragraph 3."

14. Clause 12 of the W.B. Wheat & Wheat Products (Licensing, Control & Prohibition of Certain Classes of Commercial Transactions) Orders, 1973 states as follows:-

*"**12. Accounts.***

Every licensee shall maintain separately for each place of his business and godown correct and true accounts of purchase, sale and storage of wheat or wheat products or both, to be written up at the end of each day, showing-

(a) the opening stock of the day,

(b) the quantities 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, from time to time by order in writing, specify."

15. Section 7 of the Essential Commodities Act, 1955 states as follows:-

"7. Penalties.—

[(1) If any person contravenes any order made under Section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(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;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable 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.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six 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 six months.

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be.

[(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any

penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the Order.]"

16. Learned Advocate for the appellant submitted vehemently that the Investigating Officer was a member of the raiding party and his process of investigation was biased with a premeditated effort to inculpate the appellant. Out of the two independent witnesses one turned hostile and the other was not produced before the Court. The testimony of the complainant was unreliable. The summary procedure was not followed in disposing of the instant case.

17. The contention of the Learned Advocate for the appellant with regard to the disposal of the case before the Trial Court to be initiated, tried and conclusively determined by the same Trial Court Judge cannot be sustained since the Court itself under the relevant provisions of Criminal Procedure Code is a creation of statutory mandate and not a persona designate.

18. The Trial Court Judge is amenable to transfer under the order of the High Court concerned and cannot be attached to the Court identifying his or her personal capacity to the Court itself. The Court functions with its territorial jurisdiction presided over by a concerned Trial Court Judge who exercises or discharges the functions of the Court under the Order of the High Court in its supervisory and administrative capacity. Therefore, the same Trial Court Judge will be bound to record the evidence, conclude the trial and pronounce the judgment in each and every case is unpragmatic and against the law of the land.

19. In the instant case, admittedly, PW-4 was a member of the raiding party and had conducted the investigation. The allegations against the appellant were that the stock rate board with the stock and prices of the essential commodities were not mentioned. The seizure of oil was within the prescribed limit as provided under Para – 3 of the West Bengal Pulses, Edible Oil Seeds and Edible Oil (Dealers Licensing) Order, 1978.

20. The total quantity of Masoor pulses was too within the prescribed limit provided under Paragraph – 3 of the aforesaid order. The license produced by the appellant enabling him to deal with such commodity is not disputed. The only allegation against the appellant was the display of stock rate board at the place of business with the names of the essential commodities reflected thereon without the specific mention of the stock of each of the essential commodities and its contemporaneous price.

21. The appellant admittedly dealt in wheat and wheat products comprising the essential commodities as defined under Section 2 (v) of the Essential Commodities Act, 1955.

22. The testimony of PW-1, PW-3 and PW-4 revealed that the stock rate board did not portray the respective category of the essential commodities along with their weight and corresponding prices. The defence did not agitate the prosecution to be acrimonious to it to falsely implicate the appellant. Only by virtue of being Police Officers the evidence of the same cannot be discarded. The defence witness could not fortify its case just by emphasizing the absence of Dipak Das who was entrusted to fill in the book of accounts.

23. It was incumbent upon the appellant to be the owner of the shop go-down to maintain the stock register, books of accounts and of course, the display of the articles on the stock board as mandatory provisions under the aforesaid Section 3 of the aforesaid Act as well as the Orders as enumerated above.

24. The allegations of excess quantity to have been stocked in the shop go-down had not been foisted against the appellant. However, the appellant was liable to maintain the stock register, books of accounts and display on the stock rate board as mentioned above.

25. The prosecution case was not of hoarding or import or export of the essential commodities without any license, piling of stocks of the essential commodities beyond the prescribed limits under the said Act and the subsequent orders issued from time to time pursuant thereto.

26. Nonetheless, it was a conspicuous fact that the appellant failed to maintain the stock register, stock rate board and books of accounts as he was liable to maintain the same under the provisions of the law as stated above. Negligence, ignorance or lapses on the part of the appellant, evasive in nature had been evidently projected on the basis of documents produced by the prosecution.

27. The prosecution has been able to establish the lapses on the part of the appellant in terms of Section 3, 7 and 14 of the said Act.

28. In the decision of ***Tarak Nath Keshari Vs. State of West Bengal***[1], the Hon'ble Apex Court held as follows:

[1] 2023 SCC OnLine SC 605

*"**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;"

***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."*

29. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1988. 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 36 years.

30. 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.15,000/- 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.15,000/- within 60 days from the date of this order failing which he shall be called to serve out the sentence.

31. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal being CRA 38 of 1988 is disposed of.

32. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

33. 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.)