

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 173 of 1986

Jagabandhu Mondal

-Vs-

The State of West Bengal

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

For the State : Ms. Faria Hossain

Heard on : 16.04.2024

Judgment on : 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 27th February, 1986 passed by the Learned Judge, Special Court (Essential Commodities Act), Howrah, in Special Case No. 46 of 1984, convicting the appellant under Section 7(2)(a)(ii) of the Essential Commodities Act, 1955 for the alleged violation of Paragraph 15(a) of the West Bengal Kerosene Control Order, 1968 and sentenced him to suffer rigorous imprisonment for 4 months and also to pay a fine of Rs.300/- in default to suffer rigorous imprisonment of one month more and forfeiting the seized goods.

2. The appellant was shown as an accused in Jagatballavpur Police Station Case No. 7 dated 29th May, 1984 which was subsequently registered as Special Case No. 46 of 1986 and the same was summarily tried by the Learned Judge, Special Court (Essential Commodities Act), Howrah for committing an offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for the alleged violation of Paragraph 15(a) of the West Bengal Kerosene Control Order, 1968.
3. The prosecution case precisely stated that on 29.05.1984 at about 12 hrs. PW-4/Sisir K. Chakrabarty, S.I. of police D.E.O, Jagatballavpur, Howrah along with police officials visited the licensed kerosene oil shop of the appellant at Baragachia Bazar within Jagatballavpur Police Station. The police officials on there, wanted to inspect the registers from the appellant. The appellant only produced the stock register but he could not produce any sale register, cash memo for sale of kerosene oil. On physical verification the police officials found that according to stock register and receipt of kerosene oil there was 500 litres of kerosene oil. On physical verification he found only 212 litres of kerosene oil. The appellant could not produce any register of accounts or other papers for shortage of 88 litres of kerosene oil. The police officer prepared a seizure list and ultimately lodged a complaint before the Jagatballavpur Police Station.
4. On the basis of the aforesaid complaint Jagatballavpur P.S. Case No. 7 dated 29.05.1984 was initiated. After completion of the investigation PW-4 submitted charge-sheet against the appellant to which the appellant pleaded not guilty and claimed to be tried.

5. In order to establish its case, the prosecution examined 4 witnesses and exhibited certain documents.

6. The Learned Amicus Curiae for the appellant submitted as follows:-

- i. The stock register was not proved in accordance with the provisions of Evidence Act.
- ii. The prosecution witnesses were police officials and public witnesses were not even examined to prove seizure in accordance with the provisions of the Code of Criminal Procedure.
- iii. The de-facto complainant and the investigating officer viz., PW-4 were the same person, probabalized bias.
- iv. The stock register was illegally marked as Ext.3/1 although the contents of the said document was in accordance with the Chapter V of Indian Evidence Act, 1972.
- v. The licence of the appellant was not admitted in evidence and as such no question of violation of any condition thereof arose.
- vi. PW-2, Nani Bhusan Sinha stated in his cross-examination, neither the police people nor did he measure the kerosene oil and as such the prosecution case could not be taken to have been proved beyond reasonable doubt.
- vii. PW-4, complainant and investigating officer stated in his cross-examination there was direction from the Director of Consumer Goods not to insist upon the issue of cash memo to the retailer of the statutory rationing area and the accused had told him that he had

sold 88 litres of kerosene oil in the morning which evidence alone nullified the prosecution case.

viii. The seizure of the remaining quantity of kerosene oil was wholly illegal in as much as Paragraph 15(a) of the West Bengal Kerosene Control Order, 1968 did not provide for seizure of any stock of kerosene oil which was not either offending or tending to be offending.

7. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.

8. The impugned order dated 27.02.1986, passed by the Learned Judge, Special Court (Essential Commodities Act), Howrah states as follows:-

“Incidentally it may be mentioned that the accd. did not produce any daily amount of sale register in this case. Para 12(1) of the W.B. Kerosene Control Order, 1968 enjoins that every dealer shall comply with such conditions as may be specified in the license granted. Form B of the said Control Order prescribed the conditions of license and the Para 3 of the said condition shows that the licensee shall maintain daily accounts of receipt and sales of kerosene oil in registers prescribed by the Director and allow of such accounts to be inspected at all times by officers authorized under paragraph 15 of the W.B. Kerosene Control Order, 1968. Para 4 of the conditions for license also shows that the licenses must grant a proper cash memo for every sale. The accd. however, stated in his examination u/sec. 313 Cr.P.C. that there was no written order for granting cash memo instantly after sale. But no such order of the Authority has been produced before this Court to show such maintain any daily accounts of sales of kerosene oil in registers prescribed by the Authority concerned and he also failed to give any satisfactory

explanation for the disposal of 88 litres of kerosene oil on 29.5.84. Clearly, therefore, the accused has violated the provision of para 12(1) of the W.B. K. Oil Control Order, 1968 and accordingly he is liable to be convicted of the offence u/sec. 7(1)(a)(ii) of the E.C. Act, 1955 and I hold accordingly.”

9. The Learned Trial Court, after reasonable assessment of evidence both oral and documentary, rightly passed the impugned judgment and this Court is not inclined to interfere with the same.
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;”

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*

¹2023 SCC OnLine SC 605

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 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 six (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 173 of 1986 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.)