

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 253 of 1987

**Abhoypada Naskar
-Vs-
The State of West Bengal**

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

For the State : Ms. Faria Hossain
Mr. Atulya Sinha

Heard on : 19.04.2024

Judgment on : 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23rd May, 1987 passed by the Learned Judge, Special Court (E.C. Act), Alipore in Spl. Case No. 7(2)86 arising out of Baruipore P.S. Case No. 20 dated 15.02.1986 convicted the appellant under Section 7(1)(a)(ii) of Act X/55 and sentenced him to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.300/- in default to suffer rigorous imprisonment for one month more.
2. The prosecution case precisely stated on 15th February, 1986 at about 16.45 hours, S.I. Balaram Sarkar, DEO, Baruipore being accompanied by other police officers raided the shop of the appellant and did not find stock-cum-

rate board of Kerosene Oil displayed in the shop and the appellant failed to produce sale cash memo on demand and it was further found that the stock register was written up to 4.2.1986 showing closing balance of 128 litres of Kerosene Oil and thereafter no entry was made.

3. Based on the complaint, Baruipur Police Station Case No.20 dated 15.02.1986 was registered under Section 7(1)(a)(ii) of Act X/55.
4. On completion of investigation, charge-sheet was filed. The appellant pleaded not guilty to the charges framed and claimed to be tried.
5. The appellant was arrested and subsequently he was tried by the Special Court (E.C.Act) for offences inter alia for the violation of the provisions of Para 12 of West Bengal Kerosene Control Order, 1968.
6. The prosecution cited 5 witnesses and exhibited certain documents. The defence cited 2 witnesses.
7. The Learned Amicus Curiae for the appellant submitted as follows:-
 - i. The prosecution case had been vitiated by not complying with the provisions of Para 15 of the West Bengal Kerosene Control Order, 1968 hereinafter referred to as the said Order.
 - ii. The Learned Special Judge acted illegally in relying upon evidence inadmissible in law in convicting the appellant.
 - iii. The provisions of Section 34 of the Indian Evidence Act, in convicting the appellant on the basis of the account books which were material exhibits in the case, were disregarded.

iv. In as much as there was no stock of any Kerosene at all for a longtime, the question of maintaining the daily account of receipt and sale did not arise.

8. Considered the submissions of the Learned Advocates for both the parties.

9. The Learned Trial Court in the impugned judgment, inter alia, observed as follows:-

“Now we are to consider the other charge i.e. violation of para 12 of W.B. Kerosene Control Order, 1968.

Admittedly, the accused is a dealer of kerosene oil. It is also admitted that the accused has got a licence for dealing in kerosene oil. The conditions as laid down in the licence appears from form B of schedule 2 of the Kerosene Control Order, 1968. Condition No.3 of the license provides that licensee shall maintain daily accounts of receipts and sells of kerosene in registered prescribed by the Director and allow such account to be inspected at all times by officers authorised under paragraph 15 of the W.B. Kerosene Control Order, 1968.

Now, it is the specific allegation of the prosecution that the accused did not maintain account with regard to stock in the stock register and similarly the sale register was also not written up to date.

The stock register has been seized by the prosecution and the same has been marked material exhibit I.

The complainant P.W. 5 has stated that on 10.1.86 the accused received 200 litres of kerosene oil but the same was not entered in the stock register. It appears from the cash memo no.6604 dt. 10.1.86 that the accused purchased 200 litres of kerosene oil. From the said stock register it does not appear that the accused made entries in the stock register about the receipt of 200 litres of kerosene oil. That apart, the raid was held on 15.2.86 and the stock register was written up to 4.2.86 and thereafter no entry was made.

Similarly the sale register which was seized by police has been marked material exhibit in this case and it appears from the said sale register that the same was written up to 4.1.86 and not thereafter. The D.W. 1 and 2 have proved the two cash memos in order to prove that they purchased kerosene oil from the shop of the accused and got memo form for the same. It appears that those 2 cash memos were issued on 6.2.86. Thereafter, it can be said without any hesitation that the accused sold kerosene oil after 4.1.86 and as such he ought to have made necessary entries in the sale register as well as in the stock register showing the opening stock and sale for the day etc.

Ld. lawyer for the accd. has submitted before me that the stock register and the sale register have been marked material exhibit in this case but those being not duly proved pursuant to the provisions of Indian Evidence Act the court cannot look into it and it cannot be said as to whether the accused maintained the stock register and the sale register up to date or not.

I am reluctant to accept the argument of the ld. lawyer on the ground that the documents being seized from the custody of the accused and the seizure of those documents being not challenged. I think the documents being marked material exhibit the court has authority to look into it since it cannot be possible for the prosecution to prove the writings in details. That apart the complainant has stated in evidence upto what date it was maintained.

Accordingly, considering the testimonies on record and the documents marked exhibit in this case I hold that the accused failed to maintain accounts in terms of the condition no.3 of the license granted to him by the authority and thereby he violated the provisions of the para 12 of the W.B. Kerosene Control Order, 1968 and accordingly I find him guilty of the said charge.”

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

11. 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 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*

¹2023 SCC OnLine SC 605

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.”*

12. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1986. 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 38 years.

13. 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 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.

14. Accordingly, the criminal appeal being CRA 253 of 1987 stands disposed of.

15. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned Advocate as Amicus Curiae in disposing of the appeal.

16. Trial 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.)