

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 90 of 1990

**Gobinda Pada Paul
-Vs-
The State of West Bengal**

For the Appellant : Mr. Aritra Bhattacharjee
(Amicus Curiae)

For the State : Ms. Faria Hossain

Heard on : 19.01.2024, 21.03.2024, 27.08.2024,

Judgment on : 25.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 30.01.1990 passed by the Learned Judge, Special Court (Essential Commodities Act), Hooghly in Special Court Case No.201 of 1987, convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Para 12(2) of West Bengal Kerosene Control Order, 1968 and sentencing him to undergo rigorous imprisonment for six months and also to pay fine of Rs.500/- in default to suffer further rigorous imprisonment for two months.
2. The prosecution case precisely stated on 15.10.1987 between 09:15 to 10:45 an officer of District Enforcement Branch, S.I. Debabrata Das along with S.I.

K.C. Banerjee, W.C. 535 Panchdeo Kumar visited the shop of the appellant for inspecting the same, situated at 192. G.T. Road, Chatra under Serampore P.S. and found the appellant present at the shop and dealing with Kerosene Oil without issuing cash memo to the customers. On demand the appellant produced one licence no.12./S.R.P./80 valid upto 31.12.1987 and a daily Stock Register but he failed to produce Sale Register and cash memo. The appellant produced one Stock Board of Kerosene Oil maintained in a slate written upto 06.10.1987. It was found that appellant drew 179 litres of Kerosene Oil on 03.10.1987 and 179 litres Kerosene Oil on 06.10.1987 but on physical verification it was found by the complainant only 118 litres of Kerosene Oil was there in the shop kept in 4 polythene jars. The appellant failed to account for 240 litres of Kerosene Oil for which the case was initiated.

3. On completion of investigation, charge-sheet was submitted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for an alleged violation of Para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential commodities Order, 1977 and Para 12 of the West Bengal Kerosene Control Order, 1968.
4. The prosecution cited 6 witnesses and exhibited certain documents.
5. The defence cited one witness.
6. Learned Advocate for the appellant submitted as follows:-
 - i. The corroborative portion of the testimony of the disinterested witness like PW-4 with regard to the production of one Cash Memo Book and Khata by the appellant on demand, no measurement of any

oil by the police in the said shop and closing of the same for about 10 days for illness of the appellant had not been taken into consideration.

- ii. No written notice was issued either by the complainant or by the Investigating Officer for production of the documents, e.g., sale register, cash memo book at any material point of time and as such the prosecution case of non-production of documents on demand was nothing but a make believe story.
- iii. The reason assigned for disbelieving the documents Exbt.-A and Exbt.-B produced on behalf the defence was untenable in law and facts.
- iv. The documents Exbt.-A and Exbt.-B disbelieved only on presumption that those were manufactured.
- v. The prosecution miserably failed to prove that the documents Exbt.-A and Exbt.-B were not genuine and those were manufactured.
- vi. The testimonies of PWs were contradictory to each other.
- vii. Non-recording of quantity of sold out Kerosene Oil in the Stock Register was a minor discrepancy inasmuch as from the sale register and the cash memo book the account of the total stock was clear.
- viii. Under clause 15 of West Bengal Kerosene Control Order, 1968 an officer duly authorized in writing by the District Magistrate can exercise the powers under clause 15, the complainant being not authorized as such entire search and seizure and the prosecution was ultra-vires the West Bengal Kerosene Control Order, 1968.

8. Considered the submissions of the Learned Advocates for both the parties.
9. The appellant at the relevant time failed to produce the cash memo being present at the shop conducting daily business, dealing with the customers serially. Absence of cash memo and non-accountability of 240 L. of kerosene oil at the time of inspection did not absolve him of his guilty. The Learned Trial Court rightly held the documents marked as Exhibit- A, B etc. to have been manufactured subsequent.
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;”

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*."*

12. 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.

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.25,000/- to

ensure that he will maintain peace and good behaviour for the remaining part of their sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.25,000/- within 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.

14. Accordingly, the instant criminal appeal being CRA 90 of 1990 stands disposed of.

15. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Aritra Bhattacharjee as Amicus Curiae in disposing of this 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.)