

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 262 of 1986

Gopal Banik & Ors.

-Vs-

The State of West Bengal

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

For the State : Ms. Shreyashee Biswas
Ms. Puja Goswami

Heard on : 19.02.2024, 16.04.2024

Judgment on : 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 29.04.1986 passed by the Learned Judge, Special Court, E.C. Act, Howrah, in S.C.T. No. 109 of 1983 convicting the appellants under Section 7(i)(a)(ii) of Essential Commodities Act sentencing them to suffer rigorous imprisonment for 4 months also to pay a fine of Rs.300/- in default to suffer rigorous imprisonment for 1 month.
2. The prosecution case precisely stated on 09.10.1983 at about 12:30 hrs., PW-4 along with other staff raided Bamungachi Bhagar area and found the accused persons were with 28 bags of rice weighing 100 k.g., in each bag

and 15 bags of rice weighing 35 k.g. each. The accused persons failed to produce any permit license or authority for possessing and carrying rice in the statutory rationing area. Accordingly police seized those bags of rice after preparing a seizure list in presence of the accused persons. After the seizure, PW-4 lodged a complaint suo-moto with the Inspector-in-Charge, Golabari Police Station.

3. Based on the said complaint Golabari Police Station Case No.8 dated 09.10.1983 under Section 7(i)(a)(ii) of Act X/1955 was initiated for alleged violation of Para-4 of West Bengal Essential Food Staff and Anti-hoarding Order, 1966.
4. On completion of the investigation a charge-sheet was submitted under Section 7(i)(a)(ii) of Act X/1955 for alleged violation of Para-4 of West Bengal Essential Food Staff and Anti-hoarding Order, 1966 against the accused (i) Gopal Banik (ii) Kamal Kanta Saha (iii) Jagannath Burman and (iv) Suresh Chandra Das.
5. The prosecution examined in all 5 witnesses and exhibited certain documents to prove its case.
6. Heard the submissions of Learned Amicus Curiae as well as the Learned Advocate for the State.
7. A circumspection of evidence of the prosecution witnesses revealed as follows: –
 - a) PW-4, the informant, stated in examination-in-chief that certain persons were carrying certain bags of rice towards “Bamungachi Bridge” just behind “Railway Track” while PW-1 stated *“they found at about*

12:30 to 01:00 p.m., that some bags of rice were kept on the Railway Line by some persons” and PW-2 stated “came near Bhagar area and found that the 4 accused persons were in possession of 43 bags of Rice”.

- b) PW-4 stated “they chased the miscreants arresting 4 persons from Bamungachi Bhagar area beside Railway Track” while PW-1 stated in his cross-examination “they did not chase accused persons” and PW-2 did not even stated the story of chasing.
- c) PW-4 stated “they chased the miscreants and secured arresting 4 persons from Bamungachi Bhagar area beside Railway Track and seized 43 bags of Rice containing 35 k.g., from those 4 persons” while PW-1 stated “they arrested accused persons on Beneras Road and seized 43 bags of boiled Rice from the possession of the accused” and PW-2 stated “he along with them came near Bhagar area and found 4 accused persons were in possession of 43 bags of Rice” in as much as PW-1 stated in cross-examination “Beneras Road was at a distance from Railway Yard 4/5 minutes”.
- d) PW-1 and PW-4 stated that the raid and seizure was effected at 12:30 to 01:00 p.m. while PW-2 stated raid was effected at 12:00 noon.
- e) PW-1 stated that some bags of rice were kept on the Railway Line, PW-2 stated before the I.O. that bags of Rice were thrown away from running train while PW-4 stated that he saw the seized rice while being carried by some persons.
- f) PW-1 in his statement under Section 161 of the Code of Criminal Procedure, stated before the Investigating Officer “bags of rice were

being dropped from the running train” and “they chased the accused person” while in court he stated “did not find running train at that time”, “did not see any one dropping bags of rice from running train” and “they did not chase accused persons”.

g) PW-2 in his statement under Section 161 of the Code of Criminal Procedure before the Investigation Officer, stated *“bags of rice were being thrown from the running train”* while in Court stated *“he alongwith them came near Bhagar Elaka and found that four accused persons were in possession of 43 bags of rice”.*

h) PW-4, in his cross-examination stated *“he did not notice any R.P.F. personnel within Bamangachi Railway Yard and he did not call any R.P.F. personnel”,* but at the same time stated *“two R.P.F. personnel were found available at the time of seizure”.*

i)PW-4, stated in his cross-examination that Benaras Road was crowded place but not a single witness from the public has been cited in this case by the prosecution. Only 2 witnesses, one was from police force and another was from R.P.F. has been cited by prosecution.

8. Invariably the contradictions in evidence of the prosecution witnesses are conspicuous on record. Nonetheless, the appellants could not produce valid documents for possessing the bulk of rice in the bags seized by the police nor cited any evidence to the contrary.

9. 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.”*

10. In view of the observations as cited above, the appellants can be released on probation since the incident related to the year 1983. The appellants to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 41 years.

11. The appellants are directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.5,000/- each with two sureties to ensure that they will maintain peace and good behaviour for the remaining part of their sentence, failing of which they can be called upon to serve the sentence. Fine to be paid of Rs.5,000/- each within 60 days from the date of this order failing which they shall be called to serve out the sentence.

12. Accordingly, the instant criminal appeal being 262 of 1986 stands disposed of.

13. I record my appreciation for the able assistance of Learned Advocate Ms. Pallavi Priyadarshee as Amicus Curiae in disposing of this appeal.

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

15. 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.)