IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 388 of 1986

M/s Jain Bhandar and Ors.
-Versus-
The State of West Bengal.

For the appellant : Ms. Monami Mukherjee, Amicus Curiae.

For the State : Ms. Faria Hossain, Adv.,
: Ms. Suparna Chatterjee, Adv.

Last Heard on : 05.08.2024
Judgment on : 12.08.2024

PARTHA SARATHI SEN, J. : –

1. In this appeal the judgement of conviction and order of sentence dated 28.08.1986 as passed by the learned Judge, Special Court (E.C Act) Purulia in Trial No.28/85 corresponding to D.E.B.G.R Case No.22/85 has been impugned. By the impugned judgement the said trial court found accused Hiralal Jain (appellant no.2 herein) and accused Bimal Jain (appellant no.3 herein) guilty under Section 7(1)(a)(ii) of the Essential Commodities Act , 1955 (hereinafter referred to as the said 'Act' in short) read with paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977 (hereinafter referred to as the said 'Order of 1977' in short) and paragraph 3(a) read with paragraph 2(c) of the West Bengal Sugar Dealers Licensing Order, 1980

(hereinafter referred to as the 'Order of 1980'). The said trial court thus sentenced the accused Hiralal Jain to suffer R.I for three months and to pay fine of Rs.1,000/- i.d to suffer R.I for 15 days more for the offence committed by him under Section 7(1)(a)(ii) of the said Act of 1955 read with paragraph 3(2) of the said Order of 1977. The convict Hiralal Jain is further sentenced to suffer R.I for three months and to pay a fine of Rs.1000/- i.d. to suffer R.I for 15 days more for the offence committed by him under Section 7(1)(a) (ii) of the said Act of 1955 read with paragraph 3 (a) and paragraph 2(c) of the said Order of 1980. The said trial court also sentenced convict Bimal Jain to suffer R.I for three months and to pay a fine of Rs.1000/- i.d to suffer further R.I for 15 days for the offence committed by him under Section 7(1)(a)(ii) of the said Act of 1955 read with paragraph 3(2) of the said Order of 1977. The convict Bimal Jain is further sentenced to suffer R.I for one year and to pay a fine of Rs.3000/- i.d. to suffer R.I for three months more under Section 7(1)(a) (ii) of the said Act of 1955 read with paragraph 3 (a) and paragraph 2(c) of the said Order of 1980.

2. Both the convicts felt aggrieved and thus preferred the instant appeal. It is pertinent to mention herein that during the pendency of the appeal the appellant no.2 Hiralal Jain died and thus the instant appeal stood abetted as far as the appellant no.2, Hiralal Jain is concerned.

3. It is equally pertinent to mention herein that since the appellant Bimal Jain and/or his learned advocate did not turn up at the time of call, administrative notice was issued to the appellant Bimal Jain and

despite service of such administrative notice, the said appellant had chosen not to appear and thus this Court by its order dated 14.06.2024 appointed Ms. Monami Mukherjee, learned amicus curiae to represent the appellant.

4. The way the present appellants came to be prosecuted before the trial court is required to be discussed in a nut shell for effective adjudication of the instant appeal.

5. One Jayanta Chakraborty, inspector of police, EB/WB lodged a written complaint dated 05.10.1985 with the Officer-in-Charge, Purulia (T)P.S, District Purulia to the effect that on the basis of a source information as received by him on 05.10.1985 he along with one A.K Pandey, S.I of EB/WB and other police personnel had been to the grocery shop, Shri Jain Bhander owned by appellant no.2, Hiralala Jain, since deceased at 13:15 hours on the same day where at that time the appellant no.3, Bimal Jain was looking after the business. It has been stated further in the said written complaint that at that time he called two local witnesses namely; Lakshmi Kanta Sen and Pathik Paul and thereafter served notice upon the appellant no.3, Bimal Jain and started inspecting the said shop in presence of the witnesses and the appellant no.3, Bimal Jain. In course of inspection he found that as per display of Stock-cum-rate Board the opening stock of sugar is 212 kgs as on 04.10.1985 and as per stock register of sugar the opening stock was shown as 800kg as on 05.08.1985. He however found no stock of sugar in the said shop. It has been stated further in the said written complaint

that thereafter the appellant no.3 took him to his second godown opposite to his shop where he found 25 bags of sugar and in the said godown he found no stock-cum-rate board separately. The informant thereafter weighed entire sugar with the help of two employees of the appellant no.3 by measuring scale. After weighment he found total 25 quintals 400 grms sugar was kept in stock in 25 bags. The informant therefore asked for production of licence from the appellant no.3 for dealing with the sugar which he could not produce and it was found by him that the appellants herein were dealing with sugar without licence which is required as per provision of para 3(a) read with para 2(c) of the said Order of 1980. The informant thus found that the appellant no.1 firm i.e. Shri Jain Bhander and its owners i.e. appellant no.2 and appellant no.3 herein have violated the aforementioned provisions of law and they are found liable for prosecution under Section 7(1)(a)(ii) of the said Act.

6. It has been stated further in the said written complaint that after seizure of the said articles he took the appellant no.3, Bimal Jain in custody, brought him to P.S and lodged the said complaint to start a case against the appellants herein for the alleged violation of provision of Section 7(1)(a)(ii) of the said Act read with para 3(a) and 2 (c) of the said Order of 1980 and also under the aforesaid Sections read with paragraph 3(2) of the said Order of 1977.

7. On the basis of such written complaint Purulia (T) P.S case no.4 dated 05.10.1998 was started. Investigation was taken up and on completion of the same charge sheet was submitted under Section

7(1)(a)(ii) of the said Act read with para 3(a) read with para 2(c) of the said Order of 1980 and also under the aforesaid Sections of the said Act read with para 3(2) of the said Order of 1977 against the accused person.

8. On 03.03.1986 learned trial court examined the accused persons under Section 251 CrPC. At the time of plea the substance of accusation was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried and thereafter the trial proceeded.

9. Trial court record reveals that in order to bring home the accusations the prosecution has examined 5 witnesses in all and in course of such examination some documents as well as some materials have been exhibited. After examination of the accused persons under Section 313 CrPC the defence has also examined 6 witnesses in all. From the trend of cross-examination of the prosecution witnesses, the answers as given by the accused persons in course of their examination under Section 313 CrPC and from the mode of evidence as adduced by the defence witnesses it appears to this Court that the defence case is based on clear denial and false implication.

10. Learned trial court while passing the impugned judgement duly considered the evidence as adduced by the prosecution and defence witnesses, both oral and documentary and thus passed the impugned judgement of conviction and order of sentence which is impugned before this Court.

11. In course of her argument Ms. Monami Mukherjee, learned Amicus Curiae as appointed by this Court draws attention of this Court to page nos.47, 48 and 49 of the paper book. Attention of this Court is also drawn to Section 3 of the said Order of 1977. It is submitted by Ms. Monami Mukherjee that from the evidence of the prosecution witnesses it would reveal that at the time of alleged inspection, all the prosecution witnesses have found display of stock and price list in the appellant no.1 shop and thus the learned trial court is not justified in holding the appellant no.3 guilty under Section 7(1)(a)(ii) of the said Act read with para 3(2) of the said Order of 1977. It is further submitted that while passing the impugned judgement learned trial court has wrongly observed that non-display of stock and price list in the godown of the present appellant no.3 attracts the penal provision of Section 3(2) of the said Order of 1977 especially when such stock and price list was displayed in the appellant no.1 shop room. While questioning the finding of the learned trial court with regard to the sentence as passed against the present appellant no.3 under Section 7(1)(a)(ii) of the said Act read with para 3(a) and 2 (c) of the Order of 1980, Ms. Mukherjee, learned Amicus Curiae draws attention of this Court to the examination of the appellant no.3 under Section 313 CrPC. It is submitted that in course of such examination the present appellant no.3 categorically stated that on the fateful day and hour there was stock of sugar in his godown within permissible limit and that the police personnel brought the excess amount of sugar to his godown from

outside which were kept on a thela (hand cart) and thus falsely implicated him.

12. It is further submitted by Ms. Mukherjee , learned Amicus Curiae that from the evidence of the defence witnesses, both oral and documentary it would reveal that there was no discrepancy in respect of the stock of sugar in the godown of the appellants. It is thus submitted that while passing the impugned judgement learned trial court had practically assigned no reason as to what prompted him to disbelieve such evidence of the defence witnesses and thus a serious miscarriage of justice has been occurred resulting in conviction of the appellants. It is further submitted by Ms. Mukherjee that learned trial court had unnecessarily placed its reliance upon the prosecution witnesses overlooking the evidence of the defence witnesses and in doing so learned trial court did not consider the doubts with regard to the genuineness of the prosecution case. It is further submitted by Ms. Mukherjee that since various doubts arose with regard to the genuineness of the prosecution witnesses learned trial court ought to have been given benefit of doubt in favour of the accused.

13. It is lastly submitted by Ms. Mukherjee that for the sake of argument, in the event the present appellant no.3 is found guilty by this Court while disposing the instant appeal, the benefit of Section 4 of The Probation of Offenders Act, 1958 (hereinafter referred to as the said 'Act of 1958' in short) may be extended in favour of the appellant no.3 in view of the fact that the alleged incident occurred on 05.10.1985, the impugned

judgement was passed on 28.08.1986 and the instant appeal is pending since 16.09.1986. While placing her reliance upon a judgement as passed in ***CRA 1444/23 (Taraknath Kesari vs. State of West Bengal)*** as disposed of on 10.05.2023 it is argued by Ms. Mukherjee that the lenient view taken by the Hon'ble Apex Court in the unreported decision of ***Taraknath Keshari (supra)*** may also be extended in favour of the appellant no.3 keeping in mind that the alleged offence was committed almost 39 years back.

14. Per contra, Ms. Faria Hossain, learned APP in course of her submission draws attention of this Court to the evidence of the prosecution witnesses. It is submitted that the evidence of PW3 (the informant) is in consonance with the written complaint as lodged by him and such evidence gets due corroboration from the evidence of PW1 and PW2 who are the independent seizure list witnesses and who have witnessed the entire incident as mentioned in the written complaint. It is further submitted that evidence of PW5 is equally trustworthy since he also supports the testimony of PW3 to the fullest extent. In course of her argument Ms. Faria Hossain, learned APP further submits that the learned trial court in its impugned judgement has rightly noticed that the veracity of the evidence of the defence witnesses are not at all trustworthy since they have been set up by the appellant to make out a false defence case. It is further submitted by her that the documents relied upon while examining the defence witnesses are all new and those are outcome of afterthought and as such learned trial court had rightly noticed that no

reliance should be placed upon those defence witnesses. It is thus submitted that it is a fit case for dismissal of the instant appeal.

15. Since in the impugned judgment as well as in the trial court record the evidence of all the prosecution witnesses and defence witnesses have been dealt with in detail this Court considers that the discussion over the evidence of those witnesses are not at all necessary except to the extent those are required for effective disposal of the instant appeal.

16. As discussed earlier PW3 is the informant. PW1 and PW2 are the co-shop owners of the accused persons. PW4 is a local porter, while PW5 is a SI of police who was a member of the raiding team and also the I.O. On close scrutiny of the evidence of PW3 it appears to this Court that his examination-in-chief is the replica of his written complaint. He testified that on the relevant day and hour the present appellant no.3 was running the shop. He found no stock of sugar in the shop room though the stock-cum-rate board was displayed in the said shop room showing stock of sugar of 212 kgs as on 04.10.1985. However, as per stock register as seized by him the opening balance as on 05.10.1985 regarding stock of sugar was 800 kgs. He further testified that in the godown of the accused persons he found 25 bags of sugar weighing 25 quintals 400 grms. He further testified that that sugar was seized by him by executing a seizure list in presence of PW1, PW2 and PW5. He noticed no stock-cum-rate board in the godown of the accused. The accused produced one licence for dealing in pulses and edible oil and some cash memos regarding the purchase of sugar. This Court finds that he remained absolutely

consistent in his cross-examination and he denied the suggestion that at the time of inspection he found only 7 bags of sugar in the godown and he brought 18 bags of sugar from outside into the godown which were kept in a thela (hand cart).

17. At this juncture if I look to the evidence of PW1 it reveals that he is a co-shop owner and his shop is situated by the side of the shop of the accused persons. He testified that on the relevant day and hour the police officials approached him for becoming a witness and in his presence the police officers entered into the godown of the accused wherefrom 25 bags of sugar were seized by the police officials in his presence as well as in the presence of PW2. He further testified that seizure of other articles also took place in his presence on the relevant day and hour. He too remained very much consistent in his cross-examination.

18. PW2 is another co-shop owner and his shop is situated near the shop of the accused persons. He also testified that on the relevant day and hour on being approached by the police officials he agreed to become witness and in his presence, from the godown of the accused persons 25 bags of sugar were seized. From his cross-examination nothing could be elicited which may suggest that his presence is doubtful at the time of alleged seizure at the P.O. It is pertinent to mention herein that neither PW1 nor PW2 was given any suggestion that immediately before the alleged seizure 18 bags of sugar were brought into the godown by PW3.

19. PW4 being a porter became hostile to the prosecution since he testified that at about 12:30 p.m he carried a good number of sugar bags

into the godown of the accused persons as per instruction of the police personnel.

20. PW5 is the SI of police and was a member of the raiding team. His evidence is found to be in tune with the evidence of PW3, PW1 and PW2. He stated that at the time of inspection he found no stock-cum-rate board in the godown of the accused persons. Since he was the I.O he took up the investigation, examined the available witnesses and on completion of the investigation he submitted the charge sheet.

He too, in considered view of this Court cannot be shaken in course of cross-examination. It is pertinent to mention herein that in course of his cross-examination no suggestion was given to him that on the relevant day and hour at the instruction of PW3 (informant) a good number of sugar bags were taken inside the godown of the accused persons.

21. At this stage if I look to the evidence of defence witnesses it appears to me that DW1 is a grocery shop owner in village Hatmura, DW2 is also a grocery shop owner of village Santra, DW3 is the manager of the shop of the accused persons, DW4 is another employee of the accused and DW5 is a resident of Baraurma and DW7 is another son of accused Hiralal Jain, since deceased.

22. The sum and substance of evidence of DW1 is that on 05.10.1985 he purchased one quintal of sugar from the shop of the accused and similarly one Rabindranth Chowdhury, one Madhav Gorai and one Gautam Gorai who are his co-villagers also purchased sugar from the appellant no.1 shop and they kept those sugar bags in the custody of a

thelawala (hand cart puller). On being cross-examined he stated that he purchased the said sugar bag by way of credit and received the credit memo but he never produced the same before the police. DW2 according to the defence is also a purchaser of sugar on credit. He too in his cross-examination stated that he did not produce the credit memo with the police. He also made no claim with the police regarding the seized sugar bag. DW3 being the manager of the accused persons in his examination-in-chief gave a vivid description about the quantities of sugar which have been sold to different purchasers on the relevant day and in course of his examination-in-chief he produced the credit memo book containing duplicate carbon copies of the said credit memos. From his cross-examination it reveals that in the backside of the copies of the said credit memo he did not obtain the signature of the purchasers. DW4 being an employee of the accused person in course of his deposition testified in detail to whom the sugar bags were sold on the relevant day and he had also mentioned about those quantities. DW5 is also a purchaser of sugar bag from the shop of the accused persons. He deposed in the same tune as deposed by DW2. He produced the credit memo showing purchase of sugar on credit on the relevant day however, in his cross-examination he stated that he did not submit such credit memo. He neither submitted such cash memo with the police nor lodged any claim with regard to the sugar bag as has been purchased by him on credit from the accused persons.

23. In order to arrive at a just decision as to whether the learned trial court while passing the impugned judgement is at all justified in placing reliance upon the prosecution witnesses and at the same time ignoring the evidence of the defence witnesses I propose to look to the relevant provisions of law in respect of which the accused persons were charged and on completion of trial were found guilty and thus convicted.

24. Para 2 of the West Bengal Sugar Dealers Licensing Order,1980 deals with the definitions and its 2(c) is as under:-

> *"2.c. "dealer" means a person who is engaged in any business or undertaking involving sale, purchase for sale or storage for sale of sugar in quantities exceeding 10 quintals at any one time,either on his own behalf or on behalf of any other person or as a commission agent but does not include a producer as defined in clause (c) of the paragraph 2 of the Sugar (Control) Order, 1966;"*

25. Para 3 of the said Order of 1980 is as under:-

> *"3. **Regulation of business in sugar**. (a) No person shall carry on business as a dealer or purchase and store sugar as a bulk consumer except under and in accordance with the terms and conditions of a licence issued by the licensing authority.*
>
> *(b) A dealer or a bulk consumer shall obtain a separate licence for each place of his business.*
>
> *(c) Dealers or bulk consumers holding licences under the West Bengal Sugar Dealers Licensing Order, 1963, shall be deemed to have licences on the terms and conditions as set out in this Order for the unexpired period of this licence or till the express surrender thereof whichever is earlier.*
>
> *(d) Except with the permission of the licensing authority in writing-*
>
> *(i) no bulk consumer shall sell sugar to any person; and*

(ii) no dealer shall sell sugar to any person unless such sale is simultaneously accompanied by physical transfer of stock from his godown;

(iii) no wholesaler after purchasing a stock of sugar from another wholesaler shall sell the same or any part thereof to any other wholesaler.

(e) A licensee or any person employed by him or acting on his behalf shall comply with such general directions as may be issued by the Government and such special directions as may be issued in writing by the licensing authority for carrying on the purposes of this Order.

(f) Any contravention of the direction referred to in sub-paragraph (e) or any contravention of any term or condition of the licence shall be deemed to be a contravention of this Order."

26. This Court also feels it necessary to look into the notification no. 3424-FS/FS/14R-2/80 dated 23rd June ,1980 which is as under:-

"*Notification No. 3424-FS/FS/14R-2/80, dated 23rd June, 1980.-In exercise of the power conferred by paragraph 11 of the West Bengal Sugar Dealers Licensing Order, 1980, the Governor is pleased hereby to authorise each of the officers of the Government of West Bengal mentioned in the Schedule below, for the purposes of the said paragraph within his respective jurisdiction:*

THE SCHEDULE

(1) The Director of District Distribution, Procurement and Supply

(2) All Deputy Directors of District Distribution, Procurement and Supply

(3) All Assistant Directors of District Distribution, Procurement and Supply

(4) All District Controllers of Food and Supplies

(5) All Deputy Controllers of Rationing

(6) All Assistant Controllers of Rationing

(7) All Rationing Officers

(8) All Assistant District Controllers of Food and Supplies

(9) All Chief Inspectors, Inspectors and Sub-Inspectors of the Food and Supplies Department, Government of West Bengal, and

(10) A Police Officer not below the rank of Assistant Sub-Inspector."

27. Similarly para 2 of West Bengal Declaration of Stock and Prices of Essential Commodities Order, 1977 deals with the definition and para 2(e) defines place of business in the following manner:-

> *"2.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"*

28. Para 3 of the said Order of 1977 is as under:-

> *"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."*

29. Section 3 of the Essential Commodities Act, 1955 is as under:-

> *"1.......*
>
> *(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 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.

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30. Section 7 of the said Act is as under:-

7. Penalties. - (1) If any person contravenes any order made under section 3,-
(a) he shall be punishable,-
(1) 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;”

31. Keeping in mind the aforementioned legislative provisions as quoted supra it appears to this Court that the PW3 is an inspector of police and therefore by virtue of the aforementioned notification dated 23.06.1980 he had power of entry, search and seizure and calling for information, etc. under Section 11 of the said Order of 1980. As rightly noticed by the

learned trial court that so far as alleged violation of para 2 (e) read with para 3(2) of the said Order of 1977 by the accused persons this Court finds that the learned trial court is justified in holding that the prosecution is successful in proving the aforementioned violation at the instance of the accused persons since it reveals from the prosecution witnesses that there was no display of opening stock of each essential commodity in the godown of the accused persons which comes under the purview of place of business as para 2 (e) of the said Order. Learned trial court further noticed that practically no suggestion was given to the prosecution witnesses that such display board was there in the godown of the accused persons on the relevant day and hour and the defence witness have also adduced no evidence to that effect.

32. So far as the alleged violation of para 2 (c) read with 3(b) of the said Order of 1980 is concerned it appears to this Court that learned trial court is very much justified in holding that the accused persons failed to produce any licence for dealing with sugar as required in para 3 of the said Order of 1980. Learned trial court is equally justified in holding that on the alleged day and hour the prosecution has proved beyond doubt that there was unaccounted stock of 25 quintals 400 grms of sugar in the godown of the accused persons which is much beyond the stock limit as per para 2(c) of 1980 Order. This Court has also noticed that learned trial court has rightly found that the evidence of the prosecution witnesses are consistent and trustworthy and reliance can be placed upon their evidence. This Court has also noticed that the prosecution has

rightly declared PW4 hostile since he did not support the case of the prosecution and that there is material contradiction with regard to the time when he was allegedly asked by PW3 to carry sugar bags from his hand cart into the godown of the accused persons. From the impugned judgement it reveals further that learned trial court further noticed that after conclusion of evidence of the prosecution witnesses and examination of the accused under Section 313 CrPC the defence at the time of examination of the defence witnesses made an attempt to introduce some new documents to justify that on the relevant day and hour excess bags of sugar were brought by the informant into the godown by the accused to implicate him falsely in connection with the said case. This Court also noticed that the learned trial court in its impugned judgement has rightly observed that the documents which have been exhibited on behalf of the defence ought not to be taken into consideration in view of the fact that the prosecution witnesses were not tendered with those documents at the time of their respective cross-examination to justify the veracity of those documents and in the event the said documents are taken into consideration it would cause tremendous prejudice to the prosecution especially when the existence of such documents were brought before the court at the time of adducing evidence by the defence witnesses only. Learned trial court has also noticed that though on behalf of the defence some witnesses claimed themselves to be the customers of the accused persons and on the relevant day they purchased a good number of sugar bags from the accused on credit but neither such credit memo nor copies of such credit memo were produced before the I.O nor any of the said defence witnesses made their claim either to the I.O or before the court over the seized sugar bags over which they have rightful claim on the basis of such credit memo. It is also pertinent to mention herein that with regard to such alleged purchase of the said sugar bags by the said defence witnesses no suggestion was even given to any of the prosecution witnesses which the learned trial court has also noticed.

33. This Court has also noticed that though it is also the defence case that on the relevant day and hour excess bags of sugar was brought into the godown of the accused persons at the instance of PW3 this Court finds that no suggestion to that effect was given to the PW1 and PW2 in course of their cross examination who are the independent witnesses having no inimical relationship with the accused persons.

34. In view of such discussion, this Court thus holds that there cannot be any justification for interfering with the judgement impugned.

35. As pointed out in the earlier part of this judgment that Ms. Monami Mukherjee, learned Amicus Curiae requested this Court to extend the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958 considering the fact that the alleged incident took place almost 39 years back. In order to decide as to whether the present appellant no.3 is at all entitled to any relaxation under the said Act of 1958 this Court considers that the object of the said Act of 1955 is required to be looked into and the same is as under:-

"An Act provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities."

36. On perusal of the aforementioned object of the said Act of 1955 it appears to this Court that the said Act of 1955 was enacted in the interest of the general public for control of the production, supply and distribution of, and trade and commerce in certain commodities which are essential for the livelihood of the citizens of the Country. With the enactment of the said Act of 1955 the legislatures duly considered that there is necessity to secure availability of essential commodities to the public which must not be encumbered by dishonest business dealers of the said commodities and for the said reason the said Act aims at safeguarding the interest of the general public of the Country by way of control, production, supply and distribution of, and trade and commerce in certain commodities to meet the exigencies.

37. From the facts and circumstances as discussed supra this Court has reason to believe that appellant no.2, Hiralal Jain, since deceased and appellant no.3, Bimal Jain are found to be dishonest unlicensed dealers who are not hesitant to flout the provision of the said Act as well as the different Orders made under the said Act with a sole intention to make unlawful profit depriving citizens from getting benefit of proper distribution of the essential commodities as per the provision of the said Act of 1955.

38. This Court thus considers that the present appellant no.3, Bimal Kumar Jain @ Bimal Jain is thus not entitled to any leniency and therefore he is not entitled to the benefit of Sections 3 and 4 of the said Act of 1955.

39. In view of the discussion made hereinabove, the instant appeal fails and is hereby dismissed. The appellant no.3 Bimal Kumar Jain @ Bimal Jain is directed to surrender before the learned trial court within 13th September, 2024 to serve the sentence as awarded by the learned trial court in Trial no.28/85 arising out of D.E.B.G.R Case No.22/85 failing which learned Judge, Special Court (E.C Act) Purulia is directed to issue non-bailable warrant of arrest for the apprehension of the appellant no.3, Bimal Jain.

40. Before parting with, this Court must not forget to extend its thanks to Ms. Monami Mukherjee, learned amicus curiae appointed on behalf of the appellant by this Court for her endless effort in arguing on behalf of the appellant *pro bono* with utmost satisfaction.

41. Department is directed to forward a copy of this judgement to the learned trial court along with the LCR positively within a week from today by special messenger.

42. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)