

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 783 of 1995

**Tapan Kumar Chakraborty
Vs
The State of West Bengal & Anr.**

For the Petitioner : Mr. Malay Bhattacharya
Mr. Subhrajyoti Ghosh
Mr. Sudipa Sengupta

For the State : Mr. Avishek Sinha

Heard on : 05.12.2023, 03.01.2024

Judgment on : 14.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is preferred against the judgment and order of conviction and sentence dated February 28, 1995 passed by the Learned Sessions Judge, Bankura in Criminal Appeal No. 24 of 1994 affirming those dated July 28, 1994 of Learned Sub-Divisional Judicial Magistrate, Bishnupur, 1st class, District – Bankura in Case No. 194C of 1992 convicting the accused petitioner under Sections 7/16 of the Prevention of Food Adulteration Act and sentencing him to suffer rigorous imprisonment for 6 months and to pay a fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for one month.

2. The prosecution case precisely stated that the Sub-Divisional Food Inspector Sri Iswar Chandra Jana and his Assistant Sri Ajit Chandra De had been to the grocery shop of the petitioner and his brother, who were the partners in business on 07.11.1992 at about 11:30 a.m. at village – Nafardanga, P.S. – Sonamukhi, District – Bankura and found 30 (thirty) kilograms of Coriander (Dhania) exposed for sale in a gunny bag which was allegedly insect infested, 450 gms., Dhania was purchased therefrom and after observing the formalities under the aforesaid Act, the same was found to be adulterated both by the Public Analyst as well as by the Central Food Laboratory Report and thereafter the complaint was filed upon obtaining the sanction order from the appropriate authority.
3. Learned Advocate for the petitioner stated that no independent witnesses were not examined in the case and only Food Inspector and his Assistant (PW-1 and PW-2) were examined and certain documents were exhibited on behalf of the prosecution and the consistent case of the prosecution was to the effect that the petitioner and his brother were the partners of the business postulating the existence of a firm and/or company within the meaning of explanation (a) to Section 17(4) of the Act.
4. It was further stated that the Learned Magistrate, without following the procedure laid down for trial of warrant cases, followed the procedure of trial of summons case and thereby without framing a charge in accordance with the provision of Section 211 of the Code of Criminal Procedure, examined the petitioner under Section 251 of the Code of Criminal Procedure and thereby

the petitioner's defence was totally prejudiced and the evidence of the witnesses was also recorded summarily causing prejudice to the petitioner.

5. It was further stated that the Central Food Laboratory Report had been stated to be the final opinion determining the case and the Learned Magistrate did not exhibit the same nor it was put to the petitioner during his examination under Section 313 of the Code of Criminal Procedure and that point having been taken before the Court of Appeal, the same was illegally ignored by the Learned Judge of the Appeal Court by exhibiting the said Central Food Laboratory Report as Exbt. 17, without examination of any witnesses and the petitioner was examined by the Appeal Court illegally under Section 313 of the Code of Criminal Procedure although the Appeal Court did not possess such power under Section 385 of the Code of Criminal Procedure and upon a proper consideration of the entire facts and circumstances of the case it would be evident that the petitioner was totally prejudiced in his defence.
6. It was further stated that the case of the prosecution postulated that there was a firm of which the petitioner and his brother Lokenath Chakraborty had been the partners and under Section 17 of the Act the firm was required to be impleaded and in absence thereof the entire case should have failed and the petitioner could not be convicted and sentenced as the person responsible for selling or storing the adulterated Dhania.
 - i. In the instant case, the sanction order not having been given by the appropriate authority in accordance with law and upon considering

the facts and circumstances of the case the impugned orders of conviction and sentence are liable to be set aside.

- ii. The prosecution witnesses having accepted the Dhania to be agricultural produce and primary food and it had failed below the prescribed standard of its constituents solely due to natural causes beyond the control of human agency the court below ought to have held that in view of the provision in proviso to Section 2 of the Act, the Dhania could not be found to be adulterated and as such the impugned orders of conviction and sentence are liable to be set aside.
- iii. One of the partners of the firm having been acquitted the petitioner being another partner cannot be convicted without impleading the firm and as such the order of conviction and sentence are liable to be set aside.

7. The Learned Advocate for the State submitted that the prosecution has proved its case beyond reasonable doubt based on oral evidence as well as documentary evidence. The seizure of adulterated coriander was proved and its subsequent examination through the public analyst as well as Central Food Laboratory unambiguously proved that the coriander was infected with insects which was accumulated in the grocery shop of the petitioner for sale to the public at large for its consumption. The sanction order obtained from the concerned authority was valid. The licence issued to the petitioner for conducting the business in the grocery shop was proved by the prosecution and accordingly the Trial Court was justified in passing the impugned order.

8. The prosecution adduced the oral evidence of the witnesses viz. SDFI Iswar Chandra Jana (PW-1) and GDA Adhir Chandra De (PW-2) and exhibited certain documents viz. Exts. 1 to 17 to prove the prosecution case of selling, exposing for sale and storing for sale adulterated coriander (Dhania) whole for human consumption by the petitioner along with his brother Lokenath Chakraborti, one of the partner of the shop, on 07.11.1992 at about 11:30 a.m. in their grocery shop situated at village Nafardanga, Anchal Radhamohanpur, P.S.- Sonamukhi, Dist.- Bankura. Both the accused persons pleaded not guilty to the charges framed under Sections 7/16 of P.F.A. Act and claimed to be tried.
9. PW-1 Iswar Chandra Jana deposed that on 07.11.1992 at about 11:30 a.m., he as SDFI Bishnupur along with his GDA Adhir Chandra De (PW-2) visited the grocery shop of accused Lokenath Chakraborti and Tapan Kumar Chakraborti situated at village Nafardanga (bus road side on plot no. 507) within anchal Radhamohanpur, P.S.- Sonamukhi,. He further deposed that about 30 kgs. of coriander (Dhania) in a gunny bag was accumulated for sale in said shop which was insect infested and suspecting the same to be adulterated, samples of said Dhania were collected as per rule after observing necessary formalities. He thereafter called the persons present in said shop to be witness, which was declined. In this connection he proved the notice in form No. VI (Ext. 2), the endorsement of accused Tapan Kumar Chakraborti with his signature thereupon (Ext. 2/1), the sale receipt (Ext. 3). His deposition was aptly corroborated by PW-2 on this point. Sale receipt duly filled up by accused Tapan Kumar Chakraborti and also signed by him

was marked as Ext. 3. In said sale receipt accused Tapan Kumar Chakraborti specifically wrote that the quantity of stored coriander (Dhania) was 30 kgs. He failed to produce any purchase receipt for the said dhania to have been purchased from the open market of Bankura and that he sold it for human consumption. There was no denial as to the writings and signatures were not the handwriting of accused Tapan Kumar Chakraborti. The accused persons also did not state anything about the said endorsement and signatures of Ext. 3 though they were specifically asked on those points during their examination under Section 313 Cr.P.C.

10. The evidence of PW-1 revealed that on receipt of the report of public analyst (Ext. 10) the sample was found to be adulterated as it did not conform to the specification of coriander (whole) and as it was entirely infected with insect and considered unfit for human consumption he placed all relevant papers before L.H.A. and after necessary sanction (Ext. 11) from him he lodged the complaint marked Ext. 12 against both the accused persons under Sections 7/16 of P.F.A. Act.
11. The deposition of PW-1 coupled with Exts. 11, 11/1 and 11/2 and the endorsement of L.H.A. over public analyst report (Ext. 10/1) elucidated that sanctioning authority applied its mind and accorded sanction vide Ext. 11 which was valid.
12. Moreover at the prayer of the accused persons another sample phial was sent to Central Food Laboratory for analysis and report under Section 13(2B) of P.F.A. Act. Ext. 17 was the report of Central Food Laboratory wherein it was opined that the sample of coriander (Dhania) whole did not conform to

the standards of coriander (Dhania) whole as per P.F.A. Rules, 1955. Admittedly said report of Central Food Laboratory (Ext. 17) was final and conclusive evidence of the facts stated in the report. As such it was proved beyond reasonable doubt that the said sample of coriander (Dhania) whole was adulterated as it did not conform to the prescribed standards thereof mentioned in the P.F.A. Rules, 1955.

13. The petitioner Tapan Kumar Chakraborti was seller-cum-owner and accused Lokenath Chakraborti was alleged to be a partner of the grocery shop wherein said adulterated coriander (Dhania) whole were stored and exposed for sale for human consumption. The evidence of PW-1 further found corroboration on this point from Ext. 1. Ext. 1 was a token of licence seized by PW-1 being produced by accused persons. Ext. 1 revealed that there was a prayer for renewal of licence of said grocery shop in the name of both the accused persons. Under the facts and circumstances accused Tapan Kumar Chakraborti had liability as seller-cum-owner one of the partners of said grocery shop which was undeniable.

14. The exposed gunny bag containing 30 kgs of insect infected coriander (Dhania) whole was for sale to the public. The sale receipt was also issued in the name of the petitioner Tapan Kumar Chakraborty. The notice by the Local Health Authority under Rule 9(a) was also given to Tapan Kumar Chakraborty. So, in fact, all the formalities prescribed in the P.F.A. Act and Rules have been complied with in respect of petitioner Tapan Kumar Chakraborty.

15. In the decision of **Lachhi Ram Vs. State**¹, it was observed as follows:

“8. The offence under Section 7 of the Essential Commodities Act is punishable as follows:

7. Penalties. [(1) If any person contravenes any order made under section 3,—

(a) he shall be punishable,—

(i) 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 : 10 * * * **

(b) any property in respect of which the order has been contravened shall be forfeited to the Government; (c) any packing, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable 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

9. *Learned APP opposing the prayer has cited a judgment delivered by the Hon'ble Supreme Court in the case of K. Krishna Iyer v. State of Kerala, (1993) 3 SCC 226 which of course has been given in a case pertaining to the case of Prevention of Food Adulteration Act, where also a similar plea was taken that in view of the occurrence having taken place more than a decade ago sympathetic view be taken, the Hon'ble Supreme Court has been pleased to observe as follows:*

11. The argument of the learned counsel for the appellant that since the appellant has been on bail in this Court and the occurrence took place more than a decade ago, a sympathetic view be taken and his appeal be accepted and he be acquitted, is to say the least, a rather

¹2009 SCC OnLine Del 3017

ambitious submission and we cannot agree. Indeed, there has been some lapse of time since the offence was committed in 1981 but that lapse of time alone cannot come to the aid of the appellant because having found the appellant guilty of an offence under Section 16(1)(a)(i) read with Section 7(1) of the Act, this Court is obliged to convict the appellant and not let the crime go unpunished. The appellant has been prosecuting the case in appeal and revision and the High Court dismissed his revision petition in 1985. The appeal has remained pending in this Court ever since and as the appellant had obtained an order of bail, he, obviously was not interested in an early disposal of the appeal and took no steps in that behalf. The pendency of the appeal in this Court for about six years does not by itself render the conviction bad or raise any other equity in his favour. We can take even a judicial notice of the fact that the type of adulterated article sold by the appellant is the one generally consumed by children and it is not only illegal but even immoral to serve them with articles containing artificial sweeteners use whereof has been prohibited by the statute. Just because the appeal has remained pending here since 1985 the society cannot be made to suffer for this delay by letting the criminal go unpunished as a crime of this nature, being a crime against the society at large, cannot be ignored. Sympathy in such cases is totally misplaced.

10. *A case under the Essential Commodities Act is not different than the case under the Prevention of Food Adulteration Act. Both the enactments are meant for prevention of public goods. In either of the case violator affects the common man. In this case premises of the petitioner was inspected on 12.05.1989. Insofar as the pendency of appeal is concerned, appellant is also blameworthy inasmuch as, on few hearings he did not appear and, therefore, non-bailable warrants were issued against him which is also a reason for delay in this case.*

11. Thus, taking into consideration his own conduct in trying to delay the matter by not appearing and for which this Court was compelled to issue non-bailable warrants against him, I find it a fit case not to release the petitioner on probation as pleaded by the learned counsel. I am, however, of the considered view that no purpose will be served in sending the appellant to jail at this juncture. The proper course would be to direct the appellant to deposit the additional fine of Rs. 50,000/- within one week from today before the Learned Trial Court and if such deposit is made, then he will not be required to go into the jail and his sentence will come to an end. However, if payment is not made then he will have to undergo R.I. for a period of 3 months instead of R.I. for 6 months.”

16. In the decision of **Tarak Nath Keshari Vs. State of West Bengal**², 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;”

²2023 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*."*

17. In view of the observations as cited above, the petitioner can be released on probation since the incident related to the year 1992. The Learned Advocate for the petitioner had submitted documents stating the age-old ailments being suffered by the petitioner with restricted movement. The petitioner to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 32 years.

18. The instant criminal revisional application is accordingly disposed of. The petitioner is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.10,000/- 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.10,000/- within 45 days from the date of this order failing which he shall be called to serve out the sentence.
19. There is no order as to costs.
20. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
21. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)