

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 12 of 2001

The State of West Bengal

-Vs-

Hafijur Rahaman & Anr.

For the Appellant	: Mr. Avishek Sinha
For the Respondents	: Mr. Chitta Ranjan Chakraborty Ms. Puspa Rani Jaiswara
Heard on	: 12.04.2024
Judgment on	: 12.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against a judgment and order of acquittal passed by the Learned Judge, Special Court under E.C. Act, Maldah on 12.04.2000 in connection with Kaliachak P.S. Case No.79/95 dated 13.03.1995 under Section 7(1)(a)(ii)/8 of the E.C. Act corresponding to D.G.R. whereby releasing the accused from the aforesaid charge.
2. The prosecution case, inter alia stated on 13.03.1995, Anutosh Basi, D.S.P., Maldah lodged a complaint to the O/C. Kaliachak P.S. narrating that on 12.03.1995 at about 11:00 p.m., he accompanied by Inspector D. K. Sarkar, O/C, T. K. Banerjee on their way from Indo-Bangladesh to Kaliachak noticed

two shops opened at Mojampur market. Being suspicious they interrogated one Md. Maju Sk. who disclosed his identity as employee of Hafijur Rahaman, the owner of the shop-cum-go down which was open at that point of time. Certain coolies were present. On enquiry as to why shop-cum-go down was open at that late hours of the night especially on a Sunday, they demanded the relevant papers but Maju Sk. failed to produce papers relating to purchase, sale, stock, cash memo and licence of the aforesaid shop-cum-go down. The stock-cum-price board was blank except the date 12.03.1995. 415 bags of boiled rice containing 1 quintal in each bag were recovered from two rooms as Maju failed to produce any document. S.I. T. K. Banerjee seized the rice under a seizure list which were taken to Kaliachak P.S. along with Maju Sk.

3. On the basis of this complaint, police initiated Kaliachak P.S. Case No. 79/95 dated 13.03.1995 and on completion of the investigation police submitted charge-sheet against both the accused.
4. Both the accused were examined under Section 251 of the Code of Criminal Procedure stating the substance of accusation punishable under Section 7(i)(a)(ii) of the Act, 1955 to which they pleaded not guilty, and claimed to be tried.
5. The prosecution had examined as many as 19 witnesses including the I.O. Defence adduced two witnesses.
6. The Learned Advocate for the appellant/State submitted despite sufficient materials and evidence on record to substantiate the charge against the accused persons, the Learned Trial Court failed to consider the provisions

under Section 14 of the Essential Commodities Act. The respondents failed to produce relevant documents and accounts. In contravention with Paragraph 18(1) and 18(2) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 as well as Para 3(1) of the West Bengal Stocks and Prices of Essential Commodities Order, 1977.

7. The Learned Advocate for the respondents submitted that the stock board was not required to be displayed on a holiday being a Sunday since there was no business transaction. The books and accounts and others relevant documents could not have been present in the shop at late hours of the night. The true accounts of his business transactions were to be maintained not necessarily to be stored in the shop on a holiday in the night.
8. A circumspection of evidence of the prosecution witnesses revealed as follows:-
 - i. PW-1 to have interrogated one Maju Sk. at the shop go-down on his return from the border areas towards Kaliachak. The said Maju failed to satisfactorily account for the possession of boiled rice of one bag in one go-down and 234 bags in another go-down. The said number of rice bags were subsequently seized.
 - ii. PW-2 was declared hostile by the prosecution.
 - iii. PW-3 accompanied PW-1 at the disputed shops at about 11:00 PM in night and concurred with the evidence of PW-1 in respect of 415 bags of rice. The shop owner Hafijur was absent at the relevant time at the shop.

- iv. PW-4, PW-5, PW-6, PW-7, PW-8, PW-11, PW-12, PW-14 and PW-17 reiterated the evidence of PW-1 and PW-3.
 - v. PW-10 and PW-13 deposed to have inspected shop-cum-godown at Mojampur on 12.03.1995 and recovered 415 bags of rice therefrom. They arrested accused Maju Sk. who failed to produce valid documents for the possession of the rice.
 - vi. PW-14 and PW-15 had been the seizure list witnesses.
 - vii. PW-18 completed the investigation and submitted the charge-sheet.
9. Clause 2(1) of the W.B. Rice and Paddy (Licensing and Control) Order, 1967 states as follows:-

“2. Definitions.

Explanation. - (1) *If any person not being a consumer or a producer or a dealer licensed or registered under this order moves from any place to any other place by any means whatsoever a quantity exceeding 15 kilograms, whether in paddy or in paddy equivalent of rice or in both taken together, at any time, except under and in accordance with a permit or an authority granted under any order issued under section 3 of the Essential Commodities Act, 1955 (Act 10 of 1955), and for the time being in force, such person shall be deemed to be a dealer, unless such person proves to the contrary.”*

10. Clause 3(1) and 3(3) of the W.B. Declaration of Stocks and Prices of Essential Commodities Order, 1977 states as follows:-

“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.*

....

(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.”

11. Section 14 of the Essential Commodities Act, 1955 states as follows:-

“14. Burden of proof in certain cases. – *Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.”*

12. Clause 18(1) and 18(2) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 states as follows:-

“18. Accounts and returns.

(1) Every licensee or registered dealer shall unless exempted by the licensing authority, maintain separately for each place of his business or godown correct and true accounts of purchase, sale and storage of rice or paddy or both to be written up at the end of each day, showing –

- (a) the opening stock of the day,*
- (b) the quantities received during the day,*
- (c) the quantities delivered or otherwise disposed of during the day,*
- (d) the closing stock of the day, and*
- (e) such other particulars as the licensing authority may, by order in writing, specify.*

(2) Every licensee shall submit to the licensing authority a return in Form C for every month so as to reach it within seven days of the close of each month.”

13. The complainant-Police Officer along with his companions raided the shop room-cum-godown of the respondents at 11:00 P.M in the night on suspicion

abruptly on their way to Kaliachak from the Indo-Bangladesh Border. The police did not act on a source information or any complaint lodged by any person stating violation for the alleged provisions of the aforesaid Acts by the shop owner as well as the co-accused/respondent.

14. On Sunday, it cannot be expected that the stock register and the stock rate board will be displayed for general public who at such odd hours will not come to the shop for purchasing the commodities beyond a certain time of conducting business.
15. The Learned Trial Court correctly observed that the respondents were not under any obligation to comply with the direction of the police to produce relevant documents for inspection. The Trial Court has rightly acquitted the respondents after consideration of evidence and through a reasoned order.
16. Under the facts and circumstances, the instant appeal being GA 12 of 2001 is dismissed.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. 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.)