

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 107 of 1987

Basudeb Saha Fouzdar

-Versus-

The State of West Bengal

For the Appellants : **Mr. Soham Banerjee,
Mr. Debojit Kundu.**

For the State : **Ms. Faria Hossain, A.P.P.
Ms. Atulya Sinha.**

Hearing concluded on : **06.05.2025**

Judgment On : **19.05.2025**

Prasenjit Biswas, J:-

1. The judgment and order of conviction passed by the learned Judge, Special Court (E.C.) Act Coochbehar in connection with Special E.C.G.R. Case No. 34 of 1984 is assailed in this appeal at the behest of the appellant-convict.

2. By passing the impugned judgment and order of conviction, this appellant was found guilty for commission of offence punishable under Sections 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Para 3 of the West Bengal Rice and Paddy (Storage by Consumers) Control Order, 1967 and he sentenced to undergo simple imprisonment for three months along with a fine of Rs. 200/-, and in default to undergo further simple imprisonment for one month.

3. The story of the prosecution in short campus is delineated hereunder:

“A complaint was lodged by the de-facto complainant Nirod Baran Chakraborty, D.E.O., Dinhata Coochbehar stating, inter alia, that on 22.10.1984 at 10.00 hrs., he received information about storage of huge quantity of rice in the tobacco godown of the accused at Chowdhuryhat Bandar. This de-facto complainant under the supervision of B.D.O., Dinhata, Block-II along with force visited the place of godown and it was found that the godown was closed under lock and key. The accused Basudeb Saha Foujdar was found absent and his other brothers who live in the same house was also found absent. This de-facto complainant and B.D.O. requested the wife of the accused to open the lock of the godown but she was reluctant to open the lock and as such, they guarded the godown upto 4.00 hrs. on 23.10.1984. The hook of the lock of the godown was opened under order of the B.D.O. and after opening the lock he entered into the godown with B.D.O., Dinhata-II and other witnesses of the locality and found huge quantity of rice was stored therein. There

was no register or any document in respect of storage of rice and on enquiry they came to know that the accused is not a licensed rice dealer and he stored rice for purpose of smuggling the same to Bangladesh. During inspection they also found three bags of 'atta' in the said godown but no rate and stock board was displayed at the place of business. It is stated that the accused was dealing rice without any licence and kept rice to the extent of more than 1.87 quintals in the godown without any authority and as such, this accused violated the provisions of the West Bengal Rice and Paddy Licensing Control Order, 1967 and the West Bengal Rice and Paddy (Storage by Consumers) Order, 1967 as well as the West Bengal Declaration of Stocks and Prices of the Essential Commodities Order, 1977. The accused is liable for the prosecution under Section 7(1)(a)(ii) of the E.C. Act. It is further said that during raid the said bags containing rice and atta were seized after weighment and preparing seizure list, in the presence of the witnesses. The seized rice and atta including scale and weights have been kept in the zimma of Sri Narayan Chandra Saha Fouzdar under proper zimmanama."

4. Over the complaint instant case was started against this accused under Section 7(1)(a)(ii) of the E.C. Act.
5. In this case, six witnesses were examined by the side of the prosecution and documents were marked as exhibits on its behalf. The witnesses were

adduced on behalf of the defence/appellant and documents were marked as exhibits on behalf of the defence.

- 6.** Mr. Soham Banerjee, learned Advocate for the appellant submitted that there are apparent contradictions in the statements of the witnesses cited on behalf of the prosecution. It is said by the learned Advocate that PW1 and PW2 stated that this appellant and his three brothers lived in a joint mess and the joint family possessed about 30/32 bighas of agricultural land and the seized rice were the production from their lands and meant for consumption by their family. As per submission of the learned Advocate that since the 'paddy gola' (the place where paddy is kept) of the family was being repaired and as such, the rice was stored in the godown which is situated adjacent to the house of the appellant. These appellants are the cultivators of the land but they are not "consumer" within the meaning and effect of the West Bengal Rice and Paddy (Storage by Consumers) Order, 1967. The attention of this Court is drawn to the depositions of PW5 and PW6 wherein they stated that at the relevant point of time no harvesting was being done in the locality and these witnesses could not produce any document to show that the rice was actually bought by the appellant and no document was exhibited by the prosecution.
- 7.** It is further assailed by the learned Advocate that in the written complaint PW6 stated that the raid was started as 22.00 hrs. PW5 stated that he called for the local prominent people who came there and in their presence at about 2.00 A.M. in the night i.e. on 23.10.1984 he ordered for breaking

open the lock of the godown of the appellant. Whereas PW6 stated that they waited and guarded the godown upto 4.00 hrs. of 23.10.1984 and finding no other alternative they opened the lock of the godown. So, there is apparent contradiction about the time of opening the lock of the godown in the statements made by PW5 and PW6. The attention of this Court is drawn to the deposition of PW1 wherein this witness stated that this appellant and his brothers were not found in the house on the relevant date at night and only the female members of the house like wife of these appellants and others were present. It is said by the learned Advocate that the conduct of the raiding team of breaking open the lock of the godown in the presence of the female members after sunset and before sunrise and without any written order from the appropriate authority is grossly illegal and violative of the rights of the citizen as enshrined in the Code. No order of conviction can be passed on such illegal actions of this authority. As per submission by the learned Advocate order of conviction and sentence passed by the learned Trial Court is vitiated by non-consideration of material facts elicited in cross-examination of the witnesses. There is illegality and material irregularity in the impugned judgment and order of conviction and as such, the same is not sustainable under the provision of law and the same may be set aside outright.

8. Ms. Faria Hossain, learned Advocate for the State submits that there is nothing in the record for which the judgment and order of conviction passed by the learned Trial Court may be interfered with. It is said by the learned Advocate that in the written complaint it is specifically stated that

this appellant stored huge quantity of rice for the purpose of smuggling the same to Bangladesh. At the time of conducting raid no document was submitted on behalf of appellant to support for kipping the seized rice in the godown. It is said by the learned Advocate that PW2 stated in his evidence that after opening the godown of this appellant it was found that there were 70 bags Amon rice stored inside the godown. PW2 also supported the contentions of the written complaint stating that in the night of 22.10.1984 he was called by the B.D.O. and enforcement officials to go to the house of the appellant and he went to the house at that night and found the godown of this appellant was under lock and key. PW2 further said that the B.D.O. and the enforcement officials asked the wife of the appellant to give the key of the godown which they wanted to search and they waited till 4 A.M. for the return of the appellant and his brothers. It is said by this witness that as the appellant did not come back, so, the officials broke open the hook of the godown and after entering into the godown he found 70 bags of rice were stocked inside the godown along with three bags of 'atta'.

9. It is assailed by the learned Advocate for the State that the learned Trial Court in its impugned judgment and order of conviction hold that this appellant had not stored 70 bags of rice in his godown as a producer and the accused was not a producer of such a huge quantity of rice as found inside his godown in the fateful night then irresistible conclusion is that this appellant must have purchased the huge quantity of rice and stored in his godown. As such, storing of huge quantity of rice cannot be termed

other than that of a consumer within a meaning of the West Bengal Rice and Paddy (Storage by Consumers) Order, 1967. So, as per submission of the learned Advocate that this appellant was found in storing of more than 1.87 quintals of rice on the relevant date of and time contravening provision of para 3 of the West Bengal Rice and Paddy (Storage by Consumers) Order, 1967. So, the order of conviction passed by the learned Trial Court may not be interfered. There is nothing illegality in the impugned judgement and order of conviction and as such, the same may be affirmed.

- 10.** I have considered the rival submissions advanced by both the parties. Perused all the materials in the case record.
- 11.** In the written complaint lodged by PW6 it is stated that on 22.10.1984 at 10.00 hrs. after receiving an information of storage of huge quantity of rice in the tobacco godown of this appellant at Chowdhury Hut Bazaar, he along with raiding team under the supervision of the B.D.O., Dinhata, Block-II visited the place of godown. In examination-in-chief, this witness stated that on 22.10.1984 at about 24.00 hrs. he was called by the B.D.O., Dinhata, Block-II which was contrary to the time mentioned in the written complaint. It is stated in the written complaint by the de-facto complainant (PW6) that he and PW5 requested the wife of the accused to open the lock of the godown and as she was reluctant to open the lock of the godown they waited and guarded the godown upto 4.00 hrs. on 23.10.1984 and finding no other alternative he opened the lock of the godown of this appellant under the order of B.D.O., Dinhata, Block-II

(PW5). On the contrary, PW5, B.D.O., Dinhata-II stated that he and PW6 requested the wife of this appellant to handover the key of the godown which was under lock and key but she refused to give the key and then he called the local prominent people i.e. PW1 and PW2 and their presence at about 2.00 A.M. in the night i.e. on 23.10.1984 he ordered for breaking open the lock of the godown. So, there is apparent contradictions in the statements of PW5 and PW6 in respect of time of breaking open the lock of the godown. Moreover, PW6, D.E.O. stated in his cross-examination that the lock of the godown was broken at the order of the B.D.O. and the B.D.O. (PW5) stated that he contacted the S.D.O. over telephone and S.D.O. directed to D.E.O. (PW6) to go to the spot along with force. In cross-examination this witness (PW5) stated that he obtained verbal orders from the Sub-Divisional Magistrate, Dinhata over phone to break open the lock of the godown. But the breaking open the lock should not be done on verbal instruction of the S.D.O. and there must be some written order/instruction from the authority concerned.

- 12.** It is said by the witnesses cited by the prosecution that at the time of the breaking open the godown, situated adjacent to the house of the appellant, this appellant and his three brothers were not present therein and only the female members were present there. So, breaking open the lock of the godown after sunset and before sunrise when only female members of the appellant were present and particularly without written order by a proper authority and without recording of ample reasons is grossly illegal and violative of the rights of the citizen as enshrined in the code.

- 13.** In cross-examination, PW1 stated that this appellant and his brothers have 30/32 bighas of agricultural land and they live in joint mess. This witness further said that there are 25/30 heads of this appellant including wives and as the 'paddy gola' was being repaired for which the seized rice was stored inside the godown. PW2 echoed the same voice of PW1 and in cross-examination, this witness stated that this appellant and his brothers possessed about 30/32 bighas of agricultural land. At the time of giving deposition DW2 (Nalini Ranjan Chakraborty) stated that this appellant and his three brothers have 33/34 bighas of land which corroborates the statement of PW1 and PW2. This witness (DW2) further said that at the material point of time the 'paddy gola' of this appellant was under repair for which the rice was stored in the tobacco godown which also supports the statement of PW1. At the time of the examination of this appellant-convict under Section 313 of Cr.P.C. he replied to the question put by the court stating that the rice was produced on the land which he had cultivated and they are the four brothers.
- 14.** I have already stated hereinabove that there is a contradictory statements in respect of time of opening the lock of the godown. In the written complaint it is stated that the lock was opened at 4.00 hrs. on 23.10.1984. Whereas PW2 stated that he waited till 4 A.M. for the return of the appellant and his brothers and as they did not come, they broke open the hook of the godown and entered inside the godown. Whereas PW5 stated that in presence of the local prominent people at about 2 A.M. in the night i.e. on 23.10.1984 he ordered to break open the lock of the godown. It is

stated in the written complaint that this appellant stored the rice in his godown for the purpose of smuggling the same to Bangladesh. PW5 stated in his examination-in-chief that he had secret information that this appellant used to store huge quantity of rice in his house godown for the purpose of smuggling it to Bangladesh but no evidence was brought into the record regarding the alleged smuggling committed by the appellant.

- 15.** PW5 denied that he did not contact the S.D.M. over telephone for obtaining permission to break open the lock of the godown. He rang up from the P.C.O. at Chowdhury hut and he paid charges for the telephone call and got receipt from the said P.C.O. It is said by the witness that he could not remember whether the said receipt was handed over to the police but the receipt is lying in his office but the said receipt was not produced by this witness showing truthfulness of his statement made in cross-examination. PW5 and PW6 could not produce any documents in supporting of their statements that the rice was bought by this appellant and no such documents were seized and produced by the side of the prosecution. PW5 in his cross-examination stated that at the relevant point of time when raid was conducted at that time the harvesting of paddy was not done in the locality. PW6 also stated in the same line that no paddy was harvested in the month of Kartick in that locality and only harvesting was stated in the month of Aghayan and he said that the seized rice was stored in the bags which contain Dagpatti. It is the common practice in rural area that the usufructs of land is generally stored in a used bags but PW6 stated that he did not keep such bags with dag pattis

or seize the same for exhibiting it in the case. As per statement of PW1, PW2 and DW2 that this appellant and his families have 30/34 bighas of land and there is nothing in the evidences brought by the prosecution denying the same So, they are the cultivator of the said land and cannot said to be a consumer within a meaning of the West Bengal Rice and Paddy (Storage by Consumers) Control Order, 1967. Moreover, PW1 admitted in his cross-examination that the granary was being repaired at the relevant point of time and accordingly, the rice was stored inside the tobacco godown which supports the case of this appellant.

16. There are several discrepancies between the evidences of principal witnesses of the prosecution and for that reason the impugned judgment and order of conviction against this appellant is not sustainable under the provision of law.
17. Under such circumstances and discussion made above I am of the opinion that the impugned judgment and order of conviction passed by the learned Trial Court is not tenable under the law and it is liable to be set aside.
18. Thus, the Criminal Appeal being CRA 107 of 1987 is hereby **allowed**.
19. The judgment and order of conviction passed by the learned Trial Court for committing offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Para 3 of the West Bengal Rice and Paddy (Storage by Consumers) Control Order, 1967 is hereby set aside.
20. The appellant is on bail. He is discharged from the bail bonds and be set at liberty if not wanted in connection with any other case.

- 21.** Let a copy of this order along with T.C.R. be sent down to the Trial Court immediately.
- 22.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)