IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 152 of 1986

Ashoke Kumar Shaw
-Vs-
The State

For the Appellant	: Mr. Tapan Dutta Gupta Mr. Subrata Bhattaharyya Ms. Shipra Santra
For the State	: Ms. Faria Hossain Ms. Suparna Chatterjee
Heard on	: 30.04.2024, 12.07.2024, 16.01.2025
Judgment on	: 14.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 22nd March, 1986 passed by the Learned Judge, Special Court, Durgapur in T.R. No. 17 of 1985 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for the alleged violation of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices and Essential Commodities Order, 1977 and the provision of paragraph 12 of West Bengal Kerosene Control Order, 1968 and sentencing him to suffer rigorous

imprisonment for a period of 6 months and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a further period of 1 month.

2. The prosecution case precisely stated on receipt of secret information regarding the malpractice in dealing with kerosene oil by the dealer/appellant. The complainant/S.I. Subhas Ganguli, D.E.O., Andal along with other police personnel had been to the shop of the appellant, a big dealer of kerosene oil of South Bazar, Andal within Andal Police Station and held a raid in the shop-cum-godown of the appellant in presence of local witnesses. The complainant, thereafter, served a notice upon the appellant directing him to produce Licence, Stock Register, Purchase Memo, Cash Memo etc. for inspection. The appellant produced Stock Register of kerosene oil, written upto 25.02.1985 showing opening balance 100 litres of kerosene oil and Cash Memo Book written upon 16.03.1985. The appellant failed to produce any licence and stated that he submitted the said licence to the authority for renewal. On physical verification of the shop-cum-godown of the appellant, the complainant found 200 litres of kerosene oil in a barrel in the appellant's shop-cum-godown. The complainant also found a rate board displaying within the business place of appellant, showing opening balance nil dated 30.01.1985. On that day there ought to have been a stock of 100 litres of kerosene oil in the shop of appellant, however, 200 litres of kerosene oil was found in the stock. It was further alleged that the appellant did not maintain the current account and current stock register and also did not maintain current receipts. Thereafter, the complainant in presence of the

witnesses seized 200 litres of kerosene oil in a barrel, stock-cum-rate board, stock register and one cash memo book under proper seizure list.

3. The Learned Advocate representing the appellant argued as follows:-

    i. The appellant above-named had been directed to serve out sentence of rigorous imprisonment for 06 (six) months and a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for 01 (one) month under Section 7(i)(a)(ii) of the Essential Commodities Act for alleged violation of Paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and the provisions of Paragraph 12 of West Bengal Kerosene Control Order, 1968 by a judgment and order dated 22.03.1986 passed by the Learned Judge, Special Court, Durgapur in T.R. No.17 of 1985 arising out of Andal Police Station Case No.23 dated 20.03.1985.

    ii. The appellant being a kerosene dealer had not kept the stock-cum-rate board upto date when a raid was held on 20.03.1985 and on verification found 200 litres kerosene oil was in excess. The appellant preferred this appeal assailing the said judgment and order of conviction and sentence on the following grounds:-

        a) To attract those provisions under which the appellant had been arraigned and subsequently convicted, the prosecution must prove by adducing evidence that the alleged seizure was from the shop and not from any other place. Unless of which the prosecution case must fail.

b) Hence, in the instance case, it appeared from the evidence of PW-2, PW-3, PW-5, PW-6 and PW-8 that alleged seizure was made from go-down and not from the shop.

c) In his examination under Section 369 of the Code of Criminal Procedure, the appellant stated that the alleged raid and seizure was from go-down and he did not know the contents of the papers he seized.

d) PW-3, PW-4 and PW-5 were three independent witnesses out of PW-3 and PW-5 had been declared hostile and PW-4 though not declared hostile but did not support the prosecution case.

e) PW-2 Sub-Inspector of Police had not supported the prosecution case and deposed that kerosene oil allegedly seized measured with a measuring stick and thereby indicating that kerosene oil in the barrel was less than 300 litres.

f) Ironically, the complainant happened to be Investigating Officer of the instant case and examined as PW-9, this was against the provision of law and contrary to principle of natural justice.

g) One of the integral part of criminal jurisprudence was to see whether there was only mens rea on the part of the alleged offender and that important ingredient had not been dealt with by the Learned Trial Judge.

h) Conviction and sentence was for six months and as such the Learned Trial Judge ought to have dealt with either under Section 360 of the Code of Criminal Procedure or of under the provision of Probation of Offenders Act.

i) It was pertinent to mention that alleged incident was of 20.03.1985, i.e., more than 39 years back.

4. The Learned Advocate representing the State submitted that the Learned Trial Court after perusing oral and documentary evidence rightly passed the impugned order of conviction and the appeal shall be dismissed.

5. The order dated 22.03.1986 passed by the Learned Trial Court in Special Court Trial No. 17 of 1985 is replicated as follows:-

> *"It is seen that during raid the complainant S.I. Subhas Ganguli seized one stock-cum-rate board, cash memo book and stock register from the kerosene go-down of accused Ashoke Kumar Shou. The stock-cum-rate board, cash memo book and the stock register have been marked material Exbts.I, II & III respectively in this case. Let me at first consider the stock register which has been marked Mat. Exbt. III. The stock register shows that it was forwarded and written upto 25.02.85 showing 100 litres kerosene oil as opening balance on that date. After 25.2.85 the stock register was not forwarded. Subsequent to 25.2.85, 3600 litres of kerosene oil were allotted to dealer. Accordingly on 11.3.85 the stock became 3700 litres as closing balance as seen from the Exbt.3. After that 3600 litres of kerosene oil were sold and the stock became again 100 litres. But nothing was written and forwarded in the stock register. This very instance shows*

that the accused did not maintain any up-to-date stock register. Again, the cash memo book, material Exbt.II shows that the cash memo book was written upto 16.3.85. Subsequent to that no cash memo was written. Similarly, stock cum rate board which was displayingin the business place of the accused shows the opening balance as nil dated 30.1.85. But the stock register, material Exbt.III shows that on 30.1.85 the opening stock of kerosene oil was 100 litres and the closing stock was also 100 litres. So it is palpable that the accused person did not display any proper stock-cum-rate board in his business place. There are the materials which go to show that the accused person has violated the mandatory order. The Ld. Advocate for the accused submitted that all these materials i.e. Exbt. I, II, III were old and rejected. These are lying on the go-down of the accused. In the statement under Section 313 Cr.P.C. the accused person also stated that the material Exbt. I, II & III were all rejected and old but it is not understood why the accused did not supply the current one though asked by the complainant at the time of raid. The stock-cum-rate board, material Exbt-I was found displaying in the business place of accused person. No other stock-cum-rate board was found displaying. Therefore this very act proves that the accused person did not display any other stock-cum-rate board and did not maintain any other stock register or cash memo. The Ld. Advocate for the accused person submitted by referring a case reported in 1977 C.R.L.J. page 1653 that the go-down is not a shop or showroom. So, the accused person is under no obligation to display any stock and price in the go-down and the complaint did not visit the shop of the accused person. But the case law reported in 1977Crl. L.J. page 1653 is not applicable in the instant case. This case law is relating to the provision of para 3 of West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1971. Subsequently, the order has been amended and we are now dealing with the offence for violation of para 3 of West Bengal Declaration of E.C. Order, 1977, para 3(2) of W.B. Declaration of Stocks and Prices of E.C. Order, 1977 enjoins that every wholesellerand 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. The place of business means a place where the books of accounts of a dealer's business are kept and where orders of offers involving purchase or sale of any essential commodity are received and includes place or places where the dealer stores any essential commodity. So the place of business here includes the go-down where the dealer stores the essential commodity. If that be so, the go-down is a place of business which comes within the purview of para

3(2) of the said order. In view of the facts the argument advanced by the Defence lawyer to the effect that material Exbt. I to IIIwere seized from the go-down and not from the shop of the accused is of no avail. As per Form B the accused person did not display the opening stock and the price of each day in his business place. Therefore, the accused person clearly violates the said mandatory order.

I have already said that the accused person did not maintain current account and current stock register. The licence to dealer is granted in Form B under the provision of Para 6(1) of West Bengal kerosene Control Order, 1968 and that licence was granted subject to conditions as mentioned in Form B. Here the condition No.3 of Form B shows that the licensee shall maintain daily accounts of receipt and sales of kerosene in registers. But here the accused person did not maintain such accounts of receipts and sales in registers.

In view of the facts and circumstances of the case I am clearly of opinion that the accused person has violated the para 3(2) of West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and also the provision of Para 12 of the West Bengal Kerosene Control Order, 1968. Accordingly, he has committed the offence under Section 7(1)(a)(ii) of Act X/55. So, the accused person namely Ashoke Kumar Shou must be found guilty of the offence for violating the order."

6. 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) ….

[1] 2023 SCC OnLine SC 605

(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 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."*

7. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1985. The appellant to be

taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 40 years.

8. The appellant 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 one surety 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 90 days from the date of this order failing which he shall be called to serve out the sentence.
9. Accordingly, CRA 152 of 1986 is dismissed.
10. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
11. 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.)