

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 193 of 1987

**Sri Madan Kumar Nandy
-Vs-
The State of West Bengal**

For the Appellant : Mr. Soham Banerjee
(Amicus Curiae)

For the State : Ms. Faria Hossain
Ms. Kanchan Roy

Heard on : 28.11.2024

Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 10.04.1987 passed by the Learned Judge, Special Court, under the Essential Commodities Act, Hooghly in Special Court Case No.195/85 thereby convicting the appellant for the offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and sentenced him to suffer rigorous imprisonment for 3 months and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for 15 days and also passed the order of confiscation of the entire seized articles.
2. The prosecution case precisely stated on 09.11.1985 District Enforcement Officers of D.E.B., Hooghly visited and inspected the grocery shop of the appellant situated at Sripur village under Balagarh P.S., in the presence

of the appellant was dealing in Essential Commodities like Sugar, Wheat, Mustard Oil, Pulses etc. On demand the appellant failed to produce any stock and price board or any stock register, sale register, cash memo book etc. Hence, that case against him had been filed.

3. On the basis of the aforesaid complaint, the Police initiated Balagarh P.S. Case No.6/85 dated 09.11.1985 under Section 7(1)(a)(ii) of the Essential Commodities Act.
4. After completion of investigation, police submitted charge-sheet against the appellant to whom he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 7 witnesses and exhibited certain documents.
6. The Learned Amicus Curiae representing the appellant submitted that the shop of the appellant was closed at the time when the Enforcement Officers visited the same. PW-4 being a Home Guard attached to the police department adduced evidence at the relevant time the front door of the shop was partly closed. The Investigating Officer of the case being the police personnel himself deliberately withheld from being examined, as a witness in the case without any explanation before the Court causing serious prejudice to the appellant.
6. The Learned Advocate representing the State submitted that the appellant failed to produce relevant documents to evince his lawful action and rightly been convicted.
7. The evidence on record on assessment revealed, in his examination under Section 313 of the Criminal Procedure Code, the appellant had unequivocally asserted that his shop was closed on the relevant day. Such claim was corroborated through the evidence of search and seizure

witnesses, both of whom turned hostile. PW-3 recounted that the appellant was present at the shop and the room was being cleaned. He further stated the front door of the shop was “opened one palla and back door was opened completely”. PW-3 had also stated the back portion of the shop was open and the front portion was half closed. PW-4, the home guard tendered by the prosecution also stated that the front door was open in part and the back door was completely open. It was admitted that no customers were shown as witnesses by the raiding officer, rather he called for local witnesses who resided in the vicinity. It was also admitted that cash money was not seized from the grocery shop of the appellant. It evinced that business was not being operative in the shop on that day.

8. Investigating officer being the most vital witness in any criminal trial was not examined. Though the non-examination of the investigating officer is not fatal to the prosecution case where the edifice of the prosecution case is based on credible and trustworthy evidence, the presence of the I.O. was necessary in the instant case, to cater to material contradictions in the deposition of the witnesses. The presence of the investigating officer was essential, especially when the legality of the search and seizure was in question and there was a scope of subsequent seizures.
9. A receipt of renewal of Trade License was issued on behalf of the appellant by the Food Inspector being receipt no.182 dated 08.04.1985, for his Grocery Shop, which was seized by the raiding officer. Such document justified the fact that the appellant could stock and sell relevant items for the period of 1985 to 1986. It was alleged that the appellant could not produce any stock register. Stock register was an article which needed regular update to reflect the variation of the amount of stock. On a day

when the shop was not functioning and cleaning was going on, there was no need for such update and as such the stock register might not be there always in the shop, especially when it was admitted that the house of the appellant was just behind the said shop.

10. PW-2, the hostile seizure witness had stated that the shop was being cleaned at the relevant point of time, and the same had been the version of the defence throughout. Moreover, the PW-1, the raiding officer and PW-2 the hostile seizure witness, both had stated that the house of the appellant was situated at the backside of the case shop. So, the completely open backdoor and partially closed front-door actually indicated that the version of the defence regarding the cleaning of the shop to be true.
11. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 193 of 1987 is allowed.
12. Under such facts and circumstances, the judgment and order of conviction dated 10.04.1987 passed by the Learned Judge, Special Court, under the Essential Commodities Act, Hooghly in Special Court Case No.195/85 is set aside.
13. Accordingly, the instant criminal appeal being CRA 193 of 1987 stands disposed of.
14. There is no order as to costs.
15. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Soham Banerjee as Amicus Curiae representing the appellant in disposing this appeal.

16. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. 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.)