

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 77 of 1988

Gopal Mondal

-Vs-

The State of West Bengal

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

For the State : Ms. Faria Hossain

Heard on : 20.05.2024, 30.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order delivered and passed by the Learned Judge, Special Court, Durgapur, in T.R. No.31 of 1986, arising out of Kanksha Police Station Case No.10 dated 26.06.1985, convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for alleged violation of Para 3(7) of the West Bengal Motor Spirit and High Speed Diesel Oil (Licencing, Control and Maintenance of Supplies) Order, 1980 and Para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and sentencing him to suffer rigorous imprisonment for 1 year and to pay a fine of

Rs.1,000/-, in default, to suffer further rigorous imprisonment for 3 (three) months.

2. The appellant was placed on a trial being T.R. No.31 of 1986 held by the Learned Judge, Special Court, Durgapur, to face a charge under Section 7(1)(a)(ii) of the Essential Commodities Act for alleged violation of Para 3(7) of the West Bengal Motor Spirit and High Speed Diesel Oil (Licencing, Control and Maintenance of Supplies) Order, 1980 and Para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977.
3. The prosecution case, inter alia, was that in pursuance of a secret information regarding storage and dealing of petrol and diesel without any licence in the hotel of Man Singh situated on the southern side of G.T. Road, opposite to Panagarh Air Base, Birudiha, one Binayananda Chakraborty, Sub-Inspector of D.E.O., Raniganj along with other police force inspected the hotel of said Man Singh on June 26, 1985 at 13:00 hrs. and found storage of 740 litres diesel in four barrels and 160 litres petrol in one barrel for sale behind the said hotel but within the hotel premise. Accused Gopal Mondal, appellant herein, was found to be present there and dealing in petrol and diesel. On enquiry said Gopal Mondal failed to produce any licence or authority in respect of the aforesaid commodities. No stock-cum-rate board was found displaying at the said place. The commodities were stored by the owner of the hotel namely Man Singh for sale and the accused Gopal Mondal was dealing with the commodities as the salesman in absence of the hotel owner. Sub-Inspector Binayananda Chakraborty accordingly

arrested the salesman Gopal Mondal and seized the entire stock of diesel and petrol and kept the diesel in the zimba of one Nattar Singh, Manager of M/s. Gobind Service Station and the petrol in the zimba of Sk. Rajib Ali, Manager of M/s. Kanksa Auto Fuels and Service after taking samples. The said Sub-Inspector thereafter reported the incident to the Officer-in-Charge, Kanksa Police Station whereupon Kanksa Police Station Case No.10 dated 26.06.1985 under Section 7(1)(a)(ii) of the Essential Commodities Act was registered against accused Man Singh and Gopal Mondal, appellant herein.

4. On completion of the investigation, the Investigating Agency submitted the charge-sheet against both the accuseds namely Man Singh and Gopal Mondal for alleged violation of the orders as mentioned hereinabove. The accuseds pleaded not guilty and claimed to be tried. The defence of the accuseds was that they were innocent and they had no connection with the seized commodities nor they ever carried any business and they had been falsely implicated in the alleged case.
5. In course of the trial the prosecution examined as many as seven witnesses while the defence examined none.
6. The Learned Amicus Curiae representing the appellant submitted as follows:-
 - i. The place of occurrence in this particular case was not properly established. PW-2 the seizure witness in his examination-in-chief said that articles were seized from a truck, from the backside of the hotel. There was no investigation regarding the ownership of the said truck. The version of the prosecution never mentions about

the truck from which the contraband articles were seized. It was pertinent to mention that PW-2 the only seizure witness who was examined had stated that he did not witness the search and seizure and also did not identify the appellant as the arrested person on dock during trial.

Role of the present appellant was not established by the prosecution beyond reasonable doubt. The version of the prosecution was that the present appellant was the employee of the principal accused Man Singh who was selling the contraband articles on the place of occurrence. However, PW-4 the raiding officer stated in his cross-examination that it was not specifically stated in the written complaint that the present appellant Gopal Mondal was found in dealing in diesel and petrol. He also stated that no customer was found at that place at that time. PW-7 the investigating officer stated in his cross-examination that the police personnel did not see Gopal Mondal to sell or transact the diesel and petrol. Also during the trial, the Learned Public Prosecutor submitted that allegation against the principal accused Man Singh had not been proved. Accordingly, principal accused Man Singh was acquitted and only the present appellant Gopal Mondal was convicted. The Learned Trial Judge erred in convicting the present appellant because the version of the prosecution was that he was an operative working under Man Singh though there was nothing in the materials on record to establish such relationship. It was

also submitted that the appellant was about 72 years old and it was never the case of the prosecution that he was a habitual offender.

7. Considered the rival submissions of the Learned Amicus Curiae representing the appellant as well as the Learned Advocate for the State.
8. 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)

(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*

¹2023 SCC OnLine SC 605

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."*

9. 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.

10. 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.5,000/- 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.5,000/- within 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.

11. Accordingly, the instant criminal appeal being CRA 77 of 1988 stands disposed of.

12. I record my appreciation for the able assistance rendered by the Learned Advocate Mr. Soham Banerjee as Amicus Curiae in disposing of this appeal.
13. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. 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.)