

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 302 of 1991

Mahendra Prasad Shaw

-Vs-

The State of West Bengal

For the Appellant : Mr. Sujoy Sarkar

For the State : Ms. Faria Hossain

Heard on : 09.02.2024, 10.04.2024, 04.07.2024

Judgment on : 25.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 19.08.1991 passed by the Learned Judge, Special Court (E.C. Act), Barasat, North 24 Parganas in Special Case No.73 of 1989 arising out of Jagaddal police station Case No.285(6)89 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for alleged violation of paragraph 4 and 11(2) of West Bengal Kerosene Control Order, 1968 and paragraph 3 of West Bengal Pulses, Edible Oil Seeds and Edible Oils (Dealers Licensing) Order, 1978 and paragraph 3(1)(2) of West Bengal Imported Vegetable Oil (Prohibition of unauthorized sale) Order, 1982 and Paragraph 3(2) of West

Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and sentencing him to suffer rigorous imprisonment for 4 months and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment for 1 month more and seized articles of their sale proceed might be forfeited to the State.

2. The prosecution case precisely stated that one Inspector of the D.E.B., A.N. Ojha (now deceased) lodged a written complaint with the O.C. of Jagaddal P.S. on 04.06.89. On the relevant day he along with Inspector D.P. Roy, S.I., Sanatan Sarkar, A.S.I. Nirmal Biswas, W/C Shambhu Biswas held a surprise raid in the Grocery shop of the appellant in presence of local witnesses Paresh Nath Barma and Shyam Sundar Shaw. They found huge stock of refined rapeseed oil, Kerosene oil, Rice, Wheat, Pulses, Sugar and Babyfood. He issued a notice to the appellant for producing trade license, license for Pulses, Edible oils, license for dealing in Kerosene oil, license for dealing in Rice etc. He also asked the appellant to produce authority letter for storing and dealing in refined rapeseed oil and producing the stock-cum-rate board, purchase memo, cash memo, credit memo etc., for dealing in those commodities. But the appellant failed to produce any license for pulses and edible oil, dealing in Kerosene oil, Rice, Wheat, Rapeseed oil and books of accounts for those commodities. He checked the physical stock of baby food and found in order with the stock register and cash memo. As the appellant could not produce the books of accounts, license, permit etc., he seized – (i) 201 kg. of Refined Rapeseed oil, (ii) 55 liters of Kerosene Oil, (iii) 2 quintals Boiled Rice, (iv) 3 quintals 85 kg. Arahar Dal (v) 4 quintals 90 kg.

Gram Dal, (vi) 2 quintals 70 kg. Musur Dal, (vii) 1 quintal 15 kg., Gram Gota, (viii) 1 quintal 25 kg. Gota Matar, (ix) 3 quintals 10 kg., Sugar, (x) 25 quintals 20 kg., Wheat, (xi) one Rate Board, (xii) 1 big Iron Scale with weights and measures of different weights, (xiii) 40 kg., of Mug Dal, (xiv) 1 trade license no.1953, (xv) 1 quintal 15 kg., Mustard Oil etc., under a seizure list. The complainant prepared the true copy of the rate board and obtained sample of each item of Rapeseed oil, Kerosene oil etc. One sample of each item along with the copy of seizure list and weighment chart and copy of rate board were handed over to the appellant after obtaining proper seizure list. Seized stock of Rapeseed oil, Kerosene oil, Mustard oil and different types of Pulses and weights and measures and measuring scale were left in the jimma of one Jagadish Prasad Shaw after obtaining proper Jimmanama. Thereafter, the de facto complainant prayed to the O.C. to start a specific case against the appellant.

3. On the basis of the written complaint lodged by the de-facto complainant with the local Police Station, Jagaddal Police Station Case No.285 dated 04.06.1989 under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 was initiated against the appellant for investigation.
4. After completion of investigation, the investigating officer of the case submitted charge-sheet against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 to which 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. The appellant adduced 5 defence witnesses.
6. The Learned Advocate representing the appellant submitted as follows:-
 - i. It was the case of the prosecution that on the relevant date at the relevant point of time when the search and seizure was conducted then the appellant was in the shop room and running the shop.
 - ii. The witness was the Medical Officer who was duly attached with Bhatpara State General Hospital and on that relevant date i.e. on 04.06.1989 he examined one Mehendra Prasad Shaw being the appellant at emergency department and then referred to J.N. Hospital, Kalyani and also prescribed him to take rest for 2 days. And further the said fact was being corroborated by the DW-2. That witness was the father of the appellant. On that day DW-2 corroborated that due to illness his son/appellant was in hospital.
 - iii. It was further stated that PW-2 and PW-3 were the independent seizure witnesses and according to them the on that day the after arrival of the police, they asked the appellant to come to the shop and thereafter opened the shop room. Therefore, the fact of running the shop by appellant at the relevant point of time as stated by the raiding team was not being established beyond reasonable doubt and thereby vitiated the case of the prosecution.

- iv. The prosecution case was that the raiding team members found kerosene oil, rapeseed oil and other articles from the shop room of the appellant. It was very astonishing and significant to mention that PW-2 and PW-3 being the independent seizure witnesses categorically stated that some hawker used to sell kerosene oil, rapeseed oil and other commodities on the footpath near railway station and seeing the police party, the hawkers ran. It might not be out of place to be mentioned that it was the case of the prosecution that after seizure the articles were taken into possession by PW-4. PW-4 took the "Jimma" of the seized articles as per direction of the A.N. Ojha by executing Jimmanama being Exhibit-6 and all such articles were recovered from the possession of the accused. It was needless to mention that during cross examination the witness admitted he took possession of the kerosene oil from footpath and the rice, pulses were taken in possession from the room where the father of the accused used to reside.
- v. Therefore it could be said that seizure of articles from the shop room as alleged by the prosecution had miserably failed as there were huge contradiction which raised doubt in the prosecution story and hence in the instant case the prosecution failed to prove the involvement of the appellant beyond any reasonable doubt.

- vi. PW-1 none of the prosecution witnesses had deposed the exact quantity of the articles seized and PW-5 also failed to depose the actual quantity seized. PW-7 being a member of the raiding team failed to state the quantity of all the articles seized and more particularly that witness stated that 56 liters of kerosene oil was seized which was absolutely a contradictory statement and in the light of the aforementioned facts and circumstances the prosecution had failed to establish allegation brought against the accused/appellant. It might a reparation of the fact that PW-4 who took the Jimma of the said articles were all from the outside of the shop room thereby a clear inference could be drawn which led to the conclusion of false implication.
- vii. PW-2 and PW-3 were the independent seizure witnesses. PW-2 in his evidence stated that he could not read and write and read English and he signed in Hindi. It was further stated that the content of the seizure list was not read over and explained to that witness and further stated that seized articles were not weighed in his presence. Besides PW-2 and PW-3 brought another seizure witness stated that he signed on half written papers and same was not read by him. Therefore if those two evidences were read taken side by side then it would lead to the conclusion that they merely signed some papers but without knowing the content of the same and further the seizure of articles and the measurement of the

same was not in presence of those witnesses which led to the conclusion that process of seizure was being vitiated which was against the law of the land. Hence, the prosecution had failed to essential part of the instant case i.e. seizure and failure to the same, it led to the false implication.

viii. It was apparent from the face of record that the prosecution had failed to prove the seizure of articles, place of seizure and further the independent witnesses supported the defense case and the appellant had been able to rebut the allegation, statutory presumption the order of conviction was bad in law and liable to be set aside.

7. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses and the appeal shall be dismissed.

8. A circumspection of the prosecution witnesses revealed as follows:-

i. PW-1 deposed that he was a member of the raiding team. On that day during visit he found the shop was open and the appellant was running the shop. It was further stated that during search the appellant was asked to produce the documents, license and on being asked the appellant produced the trade license of the shop and during search 201 Kg. refine rapeseed oil, 55 Liters of Kerosene oil, 14.25 quintals of varieties of pulses, 2 quintals of Rice and other commodities. All such commodities were sized and a

seizure list was prepared by S.I. Sanatan Sarkar and which was signed by the A.N.Ojha and on the basis of the same the seizure list was marked as Exhibit - 2, weighment chart as Exhibit-3, Copy of the rate board was exhibited as Exhibit - 4.

- ii. During cross-examination PW-1 stated that they found the appellant was in the shop and after serving notice the seizure took place. They don't find any go-down of the appellant person but in the FIR it was written that seized articles were found in the shop-cum-godown of the appellant and thereafter that witness denies all the suggestion put to PW-1.
- iii. PW-2 deposed that he was an independent seizure witness. On 04.06.1989 at about 5:30/6:00 p.m., while he was passing by the side of the shop of the appellant he found a police jeep and seeing the same some persons began to run but police stop PW-2 and asked who was the owner of the shop. Then he told the name of the appellant, then the police called the appellant and entered the shop room and only found some bags of pulses and could not say what were the other articles. His signature was taken in Exhibit 2, 3 & 4 and only proved his signature being Exhibits- 2/3, 3/3, 4/3 respectively.
- iv. During cross examination PW-3 stated that he could not read and write "English" and he signed in "Hindi" and he also further admitted that the content of the same were not read over and

explained to him and further admitted that seized commodities were not weighed in his presence. He further deposed that some hawkers used to sell kerosene oil, rapeseed oil and other commodities on the footpath near railway station and some hawkers began to run seeing the police jeep. He further stated that they called the appellant from the residence and the shop was closed. He also stated that father of the appellant used reside back side of the shop room and the police party also visited the said room and during visit PW-2 also noticed two stock-cum-rate board and it was written by "chalk-pencil". PW-2 also admitted that all the family members were ration card holders.

- v. PW-3 deposed that he was another seizure witness. He stated that on the day the police officer asked to call the appellant from home. Then appellant came and opened the shop room. During search 2/3 bags of rice, pulses, mustered oil etc., in the front side of the shop and further 2/3 bags of rice and 8/9 bags of pulses inside of the shop room were seized. PW-3 being one of the seizure witness proves his signature being exhibit 2/4, 3/4, 4/4 respectively.
- vi. During cross-examination PW-3 stated that on a half written paper he signed and he did not aware of the content of the seizure list. He further deposed that some hawker used to sell kerosene oil, rapeseed oil and other commodities on the footpath near railway station and some hawkers began to run seeing the police jeep. He

also stated that father of the appellant used reside back side of the shop room and the police party also visited the said room and during visit PW-3 also noticed that father of the appellant also showed some papers but same were not seized.

- vii. PW-4 deposed that he took the “Jimma” of the seized articles as per direction of the A.N. Ojha by executing Jimmanama being Exhibit - 6 and all such articles were recovered from the possession of the accused.
- viii. During cross examination PW-4 stated that he took possession of the Kerosene oil from footpath and the rice, pulses were taken in possession from the room where the father of the appellant used to reside.
- ix. PW-5 deposed that he was a member of the raiding team and on that day a raid was conducted and notice being Exhibit -1 was duly served upon the appellant and during search and seizure the appellant only produce one baby food license and during search 201 Kg. refine rapeseed oil, 55 Liters of Kerosene oil, more than 14 quintals of verities of pulses, more than 2 quintals of Rice were seized. The appellant also produced trade license being Exhibit-7. During cross examination PW-5 denied all the suggestion put to him.

- x. PW-6 deposed that he examined the samples of the seized articles in the laboratory and after examination he passed the opinion and prepared the report being Exhibit - 9. During cross-examination PW-6 stated that he did not find the samples in the court.
- xi. PW-7 deposed that he was the member of the raiding team. On that day he also accompanied the others in conducting the raid 2 witnesses were also accompanied them. During search huge quantity of rapeseed oil, pulses and other commodities were recovered. It was further stated that 56 litre of Kerosene oil were found in the shop room. During cross examination PW-7 stated that the go-down was attached with the shop room.
- xii. DW-1 deposed that he was the Medical Officer who was duly attached with Bhatpara State General Hospital and on that relevant date i.e. on 04.06.1989 he examined one Mahendra Prasad Shaw being the appellant at emergency department and then referred to J.N. Hospital, Kalyani and also prescribed him to take rest for 2 days. During cross-examination by the prosecution DW-1 stated that time of examination was not mentioned in the said prescription.
- xiii. DW-2 deposed that he was the father of the appellant. On that day DW-2 corroborate that due to illness his son/appellant was in hospital and after getting information he also went to the house and found that the article which were kept in his room were seized

by the police and DW-2 also had the purchased memo of those articles. During cross-examination by the prosecution DW-2 stated that the shop room was 6 cubits 4 cubites and thereafter denied suggestion of giving false evidence.

- xiv. DW-3 deposed that he proves the trade license of the Municipality being Ext-B which was issued in the name of Sitaram Shaw. During cross-examination by the prosecution the witness failed to say the exact measurement of the shop room.
- xv. DW-4 deposed that he was an employee of the firm of Sambhu Nath Agarwal. Further stated that Sitaram Shaw had purchased Mug Dal, Chhola Chhati, Musur Chhati, Chana Chati from their firm on 15.05.1989 and 02.06.1989 being Challan no. 361 and 577 respectively which was marked as Exhibit - C.
- xvi. DW-5 deposed that he was the writer of the accounts of the different shop room along with Sitaram Shaw and further proves the registered book being Exhibit-D. During cross examination by the prosecution DW-5 categorically denied the suggestion of making posted dated entries of the books of account after 04.06.1989.

9. The Trial Court after reasonable assessment of the evidence both oral and documentary rightly passed the impugned judgment.

10. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1989. 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 36 years.
11. 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.
12. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
13. 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.)