

CRA 238 of 1990

**Basudeb Jana & Anr.
Vs.
The State of West Bengal**

Mr. Subhrajit Dey

... ... for the petitioner

Mr. Debashish Roy, Ld. P.P.

Ms. Faria Hossain

Ms. Suparna Chatterjee

... ... for the State

1. Mr. De, learned counsel has submitted that the appellant no.1 Basudeb Jana has expired on 15.02.2023. The appellant no.2 is still alive. According to him by judgment and order dated 20.04.1990 the learned Judge, Special Court, Essential Commodities Act, 1955, Midnapore in DEBGR Case No.28 of 1987 convicted the appellants including the appellant no.1 since deceased under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 5 and 3 of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 and sentencing them to suffer rigorous imprisonment for three months each and to pay a fine of Rs.1000/- in default to suffer further rigorous imprisonment for one month more.
2. The learned counsel has submitted that more than 34 years have passed since the pronouncement of judgment. Now the appellant no.2 is aged about 65 years. However, the relevant ordinance in connection with the Essential Commodities Act, 1955 has been repealed.

3. The learned Public Prosecutor has drawn the attention of this Court to the pronouncement of the Hon'ble Supreme Court which has been reported in (2021) 2 Supreme Court Cases 763 and 2023 SCC Online SC 605.
4. The learned Public Prosecutor has left the matter to the discretion of this Court.
5. I have gone through the materials-on-record. It appears that only three month's rigorous imprisonment has been imposed upon the appellants. However, as the appellant no.1 has already expired, such punishment is required to be undergone by the appellant no.2. As the appellant no.2 has been directed to undergo three months rigorous imprisonment, I find that the matter will come squarely within Section 4 of the Probation of Offenders Act. However, the instant appeal is of the year 1990 and one of the appellants being appellant no.1 has already expired and the appellant no.2 is now aged about 65 years. In view of long pendency of the matter I think that the appellant no.2 should be given benefit of provisions of the Probation of Offenders Act, 1958 for the best interest of justice.
6. In view of the above, the sentence imposed upon the appellant no. 2 is hereby suspended. The appellant no. 2 Purna Samanta @ Purna Chandra Samanta who is a resident of the district of Purba Medinipur be released under Section 4(1) of the Probation of Offenders Act, 1958, and instead of sentencing him I direct that he be

released on entering into a personal bond of Rs. 2000/- without surety subject to the satisfaction of the Learned Chief Judicial Magistrate, Purba Medinipur on condition to appear and receive sentence when called upon during the period of one year from execution of such bond before the Learned Chief Judicial Magistrate, Purba Medinipur and in the meantime to keep the peace and be of good behaviour. In addition I pass an order that the probation officer of the office of the District Magistrate, Purba Medinipur shall have supervision over the offender being appellant no. 2 for a period of one year from execution of such bond and the probation officer shall make report once every three months to the Learned Chief Judicial Magistrate, Purba Medinipur about the conduct of the offender. If the appellant no. 2 faithfully complies with the conditions, he shall be discharged from his bond after completion of one year from the date of bond and shall also be set at liberty as if the sentence imposed is fully served out.

7. The Learned Chief Judicial Magistrate, Purba Medinipur is to open up a skeleton file in this regard as the Special Court under (E.C. Act), Midnapore has become non-functional due to repeal of the relevant ordinance/order.
8. Let a copy of this order along with the copy of the judgment and order dated 20.04.1990 in connection with DEBGR Case No. 28 of 1987 of Special Court (E.C. Act) Medinipore, arising out of Dashpur Police Station

Case No. 5 dated 27.07.1987 be sent to the Learned Chief Judicial Magistrate, Purba Medinipur and the District Magistrate Purba Medinipur through the Learned Registrar General of this court, and on the receipt of the order, the District Magistrate, Purba Medinipur shall apprise the concerned probation officer.

9. Let the appeal is hereby disposed of after confirming the conviction and sentence.
10. The Learned Registrar General is requested to send the copy of the order along with annexures to the concerned court and the District Magistrate, Purba Medinipur immediately.
11. With the above direction CRA 238 of 1990 is thus disposed of.
12. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Apurba Sinha Ray, J.)