

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

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 178 of 1985

**Sufal Paul
Vs.
The State of West Bengal**

For the appellant : Mr. Sekhar Kumar Basu, Sr. Adv.
Ms. Monami Mukherjee

For the State : Ms. Faria Hossain, APP
Ms. Suparna Chatterjee

Heard on : 19.02.2025

Judgment on : 19.02.2025

PARTHA SARATHI SEN, J.:

1. Challenge in this appeal is the judgment of conviction and order of sentence dated 19.04.1985 as passed in D.E.B.G.R. Case No. 1566/82, T.R. 19/84 by the learned Judge, Special Court, Asansol whereby and whereunder the said Court found accused Gopal Pathar, Sufal Paul and Habu Das guilty under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the 'said Act of 1955') and thus sentenced them to suffer R.I. for four

months each and to pay fine of Rs. 200/- each I.D. to suffer R.I. for one month each more.

2. The said three convicts felt aggrieved and thus preferred the instant appeal.
3. It is pertinent to mention herein that during the pendency of the instant appeal the appellant no. 1, Gopal Pathar and the appellant no. 3, Habu Das died and thus the instant appeal stood abated which was recorded by this Court vide order dated 26.07.2024.
4. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned case before the learned Trial Court is required to be dealt with in a nutshell.
5. One N. N. Mitra the then S.I. of Police lodged a written complaint dated 18.10.1982 with the Officer-in-Charge of the Barabani P.S. to the effect that on the self-same day at about 10.30 a.m. he along with other police personnel viz., S.I. K.P. Ghosh, S.I. P.C. Kundu, C/343, Amrita Kumar Paul and other DAP Force noticed the aforementioned three accused persons along with others who were cutting coal from Nawpara open land after digging the surface. It has been stated further in the said written complaint that some of the accused persons were found carrying coal in baskets and hoarding the same by the side and on seeing the police personnel they started fleeing from the P.O. and after a hot chase five numbers of accused persons have been detained. The said

detained persons could not give any satisfactory explanation in support of the cutting of coal as well as carrying of some incriminating materials like baskets, iron sabals, one cycle, etc. It was his further version that a total quantity of 25 M. tons of coal was seized from the different places which was seized by him by executing a proper seizure list. In his said written complaint he stated that thereafter he arrested the accused persons and produced them before the Barabani P.S.

6. On the basis of the said written complaint Barabani P.S. case No. 7 dated 19.10.1982 under Section 30(2) CMN Act and Section 7(1)(a)(ii) of the Act of 1955/Section 379 IPC was started. Investigation was taken up and on conclusion of the same charge-sheet was submitted against the three accused persons viz., Gopal Pathar, Sufal Paul and Habu Das under Section 7(1)(a)(ii) of the Act of 1955/Section 379 IPC.
7. Trial Court Record reveals that the Trial Court found that the said case is fit to be disposed by way of a summary trial and accordingly by an order dated 20.02.1985 the learned Trial Court at the time of plea made known to the accused persons with regard to the substance of accusations in contravention of para nos. 14 and 12E read with Clauses 9 and 12B of the Colliery Control Order, 1945. Since the aforementioned three accused persons pleaded their

innocence and claimed to be tried, the trial before the learned Trial Court proceeded.

8. Trial Court Record reveals further that in order to prove the accusations against the said three accused persons, three prosecution witnesses have been examined and some documents have also been exhibited before the learned Trial Court. On behalf of the defence no evidence was adduced. However, from the trend of cross-examination of the accused persons and the answers as given by the accused persons in their respective examinations under Section 313 Cr.P.C. it appears to this Court that the defence case is based on clear denial and false implication.
9. As discussed supra learned Trial Court after assessing the evidence of the prosecution witnesses, both oral and documentary passed the aforementioned judgment of conviction and order of sentence which is under challenge before this Court in this appeal.
10. In course of his submission Mr. Basu, learned Senior Advocate duly assisted by Ms. Mukherjee, learned Advocate appearing on behalf of the appellant no. 2, Sufal Paul at the very outset draws attention of this Court to the Colliery Control Order, 1945 (hereinafter referred to as the 'said Order of 1945' in short). Attention of this Court is also drawn to the Colliery Control Order, 2000 (hereinafter referred to as the 'said Order of 2000' in short). It is submitted by Mr. Basu that the enforcement of the said Order of 2000 was made effective

from 01.01.2000 when the previous Order of 1945 was repealed and superseded. It is further submitted by Mr. Basu that the said Order of 2000 was brought into the effect in exercise of the powers conferred by Section 3 read with Section 5 of the Essential Commodities Act, 1955 (hereinafter referred to as the 'said Act of 1955').

11. It is thus submitted by Mr. Basu that from the notification no. 2129 dated 29.12.1945 by which the said Order of 1945 was brought into effect it would reveal that the said Order of 1945 was brought into effect as per Rule 81(2) of Defence of India Rules and not under the said Act of 1955. It is thus submitted by Mr. Basu that the learned Trial Court proceeded with the said trial completely under a misconception having no jurisdiction to conduct the said trial. It is thus submitted by Mr. Basu that the entire trial is vitiated since the substance of acquisition which was made known to the accused persons was under a wrong Act.
12. It is thus contended on behalf of the appellant that on this score only the impugned judgment of conviction and order of sentence may be set aside.
13. In his next limb of submission, Mr. Basu, learned Senior Counsel submits further that on careful scrutiny of the evidence of the three prosecution witnesses, it would reveal that the said prosecution witnesses did not utter a single word against the present appellant

and thus, the learned Trial Court is not at all justified in holding that the present appellant is guilty of the accusation as made known to him vide order dated 20.02.1985.

14. *Per contra*, Ms. Faria Hossain, learned Additional Public Prosecutor submits before this Court that learned Trial Court is very much justified in passing the impugned judgment of conviction and order of sentence inasmuch as from the evidence of the prosecution witnesses, it would reveal that the present appellant was actively involved in the alleged crime.
15. On careful consideration of the entire materials as placed before this Court and after giving due thought over the submissions of the learned advocates for the respective parties, it reveals to this Court that admittedly, the said order of 1945 was brought into effect on December 29, 1945 in exercise of the power under Rule 81 (2) of the Defence of India Rules and, therefore, by no stretch of imagination it can be said that said order of 1945 was brought into effect in exercise of the powers conferred under the said Act of 1955.
16. As rightly pointed out by Mr. Basu, learned Senior Counsel for the appellant that the said order of 2000 was brought into effect on January 1, 2000 in terms of the powers conferred under Section 3(5) of the said Act of 1955. In view of such, commencement of summary trial before the learned Trial Court on 20.02.1985 on the

basis of the substance of accusation made known to the accused stands hereby vitiated solely on the point that as on the said date i.e., on 20.02.1985, the said order of 1945 was very much in force and has got no connection with the said Act of 1955 and, therefore, the punishment as awarded under Section 7(1)(a)(ii) of the said Act of 1955 cannot be allowed to be sustained.

17. This Court has also meticulously gone through the evidence of the three prosecution witnesses. As rightly pointed out by Mr. Basu that on perusal of the evidence as adduced by the said three prosecution witnesses, it reveals to this Court that the said three prosecution witnesses practically remained mum with regard to the alleged overtact and/or any illegal act by the present appellant. No evidence was also adduced by the said three prosecution witnesses with regard to alleged seizure of any incriminating materials from the possession of the present appellant.
18. This Court has also gone through the contents of the seizure list which has been marked as Exhibit – 1 before the learned Trial Court. It reveals to this Court that in the said seizure list there is no whisper that from whose possession the alleged stolen articles i.e., coal as well as the tools used for extracting coal was/were seized on the relevant day and hour. This Court thus finds no incriminating materials as against the present surviving appellant.

19. In view of the discussion made hereinabove, this Court thus find sufficient merit in the instant appeal and accordingly, the instant appeal is hereby allowed.
20. Consequently, the judgment of conviction and order of sentence dated 19.04.1985 as passed in D.E.B.G.R. Case No. 1566/82, T.R. 19/84 by the learned Judge, Special Court, Asansol is hereby set aside.
21. Consequently, the appellant, Sufal Paul is found 'not guilty' under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 in connection with D.E.B.G.R. Case No. 1566/82, T.R. 19/84 as disposed of by the learned Judge, Special Court, Asansol.
22. Consequently, the appellant, Sufal Paul is acquitted in connection with D.E.B.G.R. Case No. 1566/82. The appellant, Sufal Paul is thus discharged from his bail bond and be set at liberty at once, if not wanted in connection with any other case.
23. Trial Court Record along with a copy of this order be sent down at once.
24. Department is directed to forward a copy of this order to the Member Secretary, Calcutta High Court Legal Services Committee who on receipt of the same, shall disburse admissible amount of honorarium to Ms. Monami Mukherjee who has been appointed by this Court to represent the appellant for assisting Mr. Sekhar Kumar Basu, learned Senior Counsel. The admissible honorarium

is to be disbursed to Ms. Mukherjee, learned advocate preferably within one month from the date of communication of this order.

25. With the aforementioned observation, the instant appeal being CRA 178 of 1985 is disposed of.
26. Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(PARTHA SARATHI SEN, J.)