

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 300 of 1990

Subu Roy & Anr.

-Versus-

The State of West Bengal

For the Appellant : **Mr. Prabir Majumder,
Mr. Snehansu Majumder,
Ms. Sangeeta Chakraborty.**

For the State : **Mr. Avishek Sinha.**

Hearing concluded on : **20.05.2025**

Judgment On : **23.05.2025**

Prasenjit Biswas, J:-

1. The judgment and order dated 18.05.1990 passed by the learned Judge, Special Court, E.C. Act, Murshidabad in connection with E.C. Case No. 31 of 1988 (T.R. 55/88) is assailed in this appeal.

2. By passing the impugned judgment and order the Special Court found this appellant guilty for commission of offence punishable under Section 7(i)(a)(ii) of the E.C. Act for violation of Para 3 of the West Bengal Rice and Paddy Licencing and Control Order read with Para 3 of the W.B. Rice and Paddy Storage by Consumer Control Order, 1967 and sentenced him to suffer rigorous imprisonment for 4 (four) months.

3. The case of the prosecution in nutshell is that:

“On 07.05.1988 the de-facto complainant, D.E.O., Sadar, Berhempore while on duty at Jalangi bus stand, Berhempore at about 14.45 hrs., he found one Truck being no. WGE 4044 loaded with rice was proceeding towards Jangipara side. The de-facto complainant intercepted the truck and on being asked the driver of the truck disclosed his name as Subu Roy and stated that there was rice in the truck. The driver further disclosed that the another accused namely, Chandi Adhikary being the owner of the rice was also seated in the said truck. But the said Chandi Adhikary (present appellant) failed to produce any licence and permit for carrying the rice. As the appellant along with other accused person violated the provision of Para 3(1) and 3(1)(b) of the W.B. Rice and Paddy or Licencing Control Order, 1967 and Para 3 of the W.B. Rice and Paddy Storage by Consumer Control Order, 1967 and Para 6 of the W.B. Essential Food Stuff Anti Hoarding Order, 1966, the D.E.O. took the accused persons and the rice therein to the godown cum rate shop of one Ratan Kr. Saha (PW1) at Nutan Bazar. The rice was

weighed there in the presence of the witnesses and the total quantity of rice was 23.41 quintals. The rice was seized by the de-facto complainant by preparing seizure list in presence of the witnesses and thereafter he lodged a written complaint at Berhempore Police Station against both the accused persons. On the basis of the written complaint a case was started against the accused persons and after completion of investigation charge-sheet was submitted against both the accused persons under Section 7(i)(a)(ii) of the E.C. Act for alleged violation of Para 3(i)(a) and 3(i)(b) of the W.B. Rice and Paddy or Licencing Control Order, 1967 and Para 3 of the W.B. Rice and Paddy Storage Consumer Control Order, 1967 and Para 6 of the W.B. Essential Food Stuff Anti Hoarding Order.”

4. In this case, three witnesses were examined by the side of the prosecution. Neither oral nor documentary evidence was adduced by the side of the defence.

5. Mr. Prabir Mujumder, learned Advocate for the appellant submitted that the learned Trial Court failed to appreciate the evidences on record and, therefore, the sentence passed by the learned Judge does not stand under the eye of law. It is said by the learned Advocate that in the present case investigation was not conducted by the prosecution in accordance with law and therefore, finding of the learned Trial Court is absolutely bad in law and cannot sustain in any way under the law. It is said by the learned Advocate that in the written complaint it is specifically stated that the de-facto complainant was accompanied by W/C 992 who was on duty at Gulabari B/S Traffic post and one

H.G, Balak Pal at the time of conducting raid but those two persons were not cited as a witness to the prosecution. It is said that there are several discrepancies in the depositions of the witnesses. PW3 stated that the present appellant told that witness that he was taking rice to Jangipur for sale and PW3 demanded licence from both the accused persons for carrying rice but this statement has not been mentioned in the FIR.

6. Mr. Majumder, learned Advocate further assailed that when a complainant is also the Investigating Officer, a conflict of interest would arise potentially jeopardise the fairness of the investigation and trial and in this case the Court may carefully scrutinize the situation to ensure that the accused's rights to a fair trial are not compromised. In support of his contention, he cited a decision rendered by the Hon'ble Apex Court in the case of **Mohanlal -vs- State of Punjab**¹. So, it is said by the learned Advocate that PW3 has not only given evidence at the trial who was the de-facto complainant as well as the Investigating Officer is really the main architect of the prosecution cases. It is said that everything has been done by PW3 right from the recording of evidence to the submission of charge-sheet and the like would be hit by the lurking suspicion that if he is the complainant in the cases he may not be acting impartially. It is precisely this underlying principle which effects the quality of the whole of the prosecution case because P.W.3 as the Investigating Officer is the architect of that edifice. So, it is said by the learned Advocate that the

¹ (2018) 17 SCC 627

impugned judgment and order passed by the learned Trial Court is not sustainable under the provision of law and it may be set aside.

7. Mr. Avishek Sinha, learned Advocate appearing for the State says that the prosecution witnesses supported the contention of the FIR. It is said by the learned Advocate that it would appear from the contentions of the written complaint that on being asked the driver of the truck gave out his name as Subu Roy and he also stated that there is rice in the truck and the owner of the rice is seated in the said truck. At the time of giving deposition PW3 narrated the incident as made in the written complaint. The driver said that the owner of the rice was in the truck and the present appellant Chandi Adhikary confessed that the rice belonged to him. It is further said by the learned Advocate on cross-examination that this PW3 stated that when he stopped the lorry he found that the present appellant was the only other occupant in the truck and the driver stated that there was rice in the lorry which was affirmed by the present appellant but the driver did not claim the rice of him and the said rice was carried as per direction of the present appellant. The other submission canvassed by the learned Additional Public Prosecutor was that a scrutiny of the present investigation will indicate that there is not the slightest hint of bias or partiality and therefore, the court should not bend over backwards and apply the principle in a vacuum and virtually shoot down the prosecution case.

8. To buttress his submission learned A.P.P. relied upon the decision rendered by the Hon'ble Apex Court in the case of **Mukesh Singh -vs- State**

(Narcotic Branch of Delhi)². It is said by the learned Advocate that the Hon'ble Apex Court hold in the report that all such offences under the penal code are to be investigated in accordance with provisions of Cr.PC. and consequently the informant can himself investigate the said offences under Section 157 of Cr.P.C. and as such, there would be no doubt about the credibility of the informant on the ground that the informant has investigated the case and solely on the basis of some appreciation of the doubts, the prosecution version cannot be discarded and the accused is not be straightaway acquitted unless and until the accused is able to establish and prove the bias and the prejudice.

9. The learned counsel for the appellant was very quick to point out to me that the spirit of the principle laid down by the Supreme court was not that the Court would have to be disregarded the evidence of the Investigating Officer but it is his submission that the principle is much wider in so far as where the complainant happens to be the Investigating Officer and where he proceeds with the investigation that according to him, the entire investigation would be vitiated in law.

10. I have considered the rival submissions advanced by both the parties and perused all the materials gathered in the record.

11. It is the case of the prosecution that PW3, D.E.O. intercepted the truck which carried rice. On being asked this appellant failed to provide any document for carrying rice in the said truck. The accused Subu Ray was a mere driver. On being asked the said driver said that the owner of the rice was in the truck and

² **(2020) 10 SCC 120**

this appellant Chandi Adhikary was identified to be the owner of the rice. PW3 stated that this appellant confessed that the rice belonged to him. Thereafter, the D.E.O. took the loaded lorry to the godown-cum-shop of PW1 at Netaji Subhas Road, Berhempore where the rice weighed and the said rice was kept in his zimma. PW2 is the witness to the seizure. PW3 stated in his cross-examination that the driver did not claim the rice of him and he carried the rice as per direction of the present appellant. PW3 further stated in his cross-examination that it was his experience that driver carried goods of other persons and they may carry rice of several persons at a time.

12. Undoubtedly, the accused Subu Roy was the driver in which rice was carried. It is also admitted position that the present appellant Chandi Adhikary was in the truck. PW3 in his deposition specifically stated that subu Roy told him that he is not the owner of the rice and the owner of the said rice is the present appellant. PW2 stated in cross-examination that the present accused told the police officer that the rice does not belong to him and it belonged to another person who had produced it and was coming with papers but he failed to tell the name of such person. PW3 stated that the present appellant was in the truck and the driver said that this appellant is the owner of the rice but at the time of examination of this appellant under Section 313 Cr.P.C. he said that he was the farmer of Baidyanath Mondal and Baidyanath Mondal and Upen Mondal and some others told him to deliver their rice to Beherampore but they were not examined. So, it is evident that both the accused persons were carrying rice with full knowledge and the rice was in huge quantity. Para 3 of the W.B. Rice and Paddy Licencing and Control Order, 1967 says that no person shall act as a

dealer or as a bulk consumer, rice miller or a whole seller without a licence or registration certificate as the case may be. The learned Trial Court quoted the provision of Para 3 of the West Bengal Rice and Paddy (Licencing and Control) Order, 1967 in the impugned judgement which deals with regulation of business in rice and paddy. Para 3(1) of the said order says that no person shall act as a dealer (i) as bulk consumer (ii) rice miller or (iii) a whole seller as also under para 3 (1) (b) (ii) as a retailer without a licence or registration certificate as the case may be. Admittedly, in this case 23.41 quintals rice was carried with the truck. Save an except the driver Subu Roy this appellant was found in the said vehicle and on asking by the raiding team, he failed to give any document or licence for carrying that huge quantity of rice from one place to another. So, in view of the above quoted provision of order it is evident that the present appellant carried that quantity of rice violating the provision of Para 3 of the W.B. Rice and Paddy Storage by Consumer Control Order, 1967.

13. The learned Advocate for the appellant has tried to salvage the position by contending that the Court should totally disregard the evidence of the Investigating Officer (PW3) and examine the question as to whether the prosecution case is established on the basis of remaining evidence.

14. In the case of **Mukesh Singh (supra)** the Hon'ble Apex Court hold that in cases where informant officer is the Investigator by that itself it cannot be said that the investigation is vitiated on the ground of bias or the like factor and the question of bias or prejudice would depend upon facts and circumstances of each case and on the sole ground that informant himself is the Investigating Officer in that case accused is not entitled to acquittal. So, there is no reason to

doubt the credibility of the informant and due to the entire case of the prosecution solely on the ground that the informant has investigated the case and merely on the basis of some appreciation of the doubts the entire prosecution case cannot be discarded and the accused is not be straightaway acquitted unless and until the accused is established and proved the bias and prejudice.

15. Para 11.3 of the said report is quoted herein below for better understanding of law on this point-

“11.3. Now so far as the observations made by this Court in para 13 in Mohan Lal [Mohan Lal v. State of Punjab, (2018) 17 SCC 627 : (2019) 4 SCC (Cri) 215] that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the Act is against the accused as per Sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. At this stage, it is required to be noted that the reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention of Corruption Act, but is also a part of the IPC — Section 304-B and all such offences under the Penal Code are to be investigated in accordance with the provisions of CrPC and consequently the informant can himself investigate the said offences under Section 157 CrPC.”

16. The dissatisfaction with **Mohan Lal** is evident in Para 8.1 of the said report which says that-

"On considering the entire decision of this Court in the case of Mohan Lal (supra), it appears that in this case also the Court did not consider in detail the relevant provisions of the Cr.P.C. under which the investigation can be undertaken by the investigating officer, more particularly Sections 154, 156 and 157 and the other provisions, namely, Section 465 Cr.P.C. and Section 114 of the Indian Evidence Act. Even in the said decision, this Court did not consider the aspect of prejudice to be established and proved by the accused in case the investigation has been carried out by the informant/complainant, who will be 35 one of the witnesses to be examined on behalf of the prosecution to prove the case against the accused. This Court also did not consider in detail and/or misconstrued both the scheme of the NDPS Act and the principle of reverse burden."

17. The learned Special Judge after considering the oral as well as documentary evidence convicted the appellant as aforesaid. The appellant was possessing rice without authority and failed to produce any licence or documents of possessing/carrying the same from one place to another. Having heard the learned Advocate for the parties, I do not find any ground to interfere with the judgment passed by the learned Trial Court.

18. As such, the order of conviction passed by the learned Trial Court was justified.

19. At the time of conclusion of hearing Mr. Majumder, learned counsel for the appellant submitted that the present appellant is the first offender and the incident took place in the year 1988. Therefore, the appellant may be dealt with under Section 360 of the Code of Criminal Procedure.

20. It is profitable to quote the observation of the Hon'ble Apex Court in the case of **Tarak Nath Keshari -vs- State of West Bengal**³ wherein Hon'ble Apex Court held as follows:

“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. Criminal Appeal No. 1444 of 2023 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:

³ **2023 SCC OnLine SC 605**

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 sub-section (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 sub-section (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 & Ors.”

21. The attention of this Court is drawn by the learned Advocate of the Appellant to the decision rendered by the Hon’ble Apex Court in the case of **Dhurukumar & Ors. -vs- State of Maharashtra**⁴ wherein Hon’ble Apex Court held, inter alia at paragraph 2 as follows:

“2. Having heard learned counsel for the parties, we do not find any ground to interfere with the judgment of the High Court. At this stage, learned counsel for the appellants submitted that the appellants are the first offenders. Therefore, the appellants may be dealt with under Section 360 of the Code of Criminal Procedure, 1908 (sic 1973). It is true that the appellants do not have antecedents of offender. Both of them are the first offenders. Having regard to the facts and circumstances of the case, we are of the view that the appellants should have been dealt with under Section 360 Cr.P.C. The ends of justice would be met by granting the benefit of Probation of Offenders Act, 1958 to the appellants.

⁴ (2017) 9 SCC 411

We order accordingly. Hence, the appeal is allowed in part and while upholding the conviction and sentence of fine awarded to the appellants, sentence of imprisonment awarded against them is set aside and the trial court is directed to deal with them under the provisions of Section 360 of the Code of Criminal Procedure, 1908 (sic 1973)."

22. It is observed by the Hon'ble Apex Court in case of **Sitaram Paswan and Anr vs State of Bihar**⁵ inter alia that-

"For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any

⁵ **AIR 2005 SC Page 3534**

person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.”

23. I have given due consideration to the submissions put forth before me, as also the documents on record. I have also taken note of the social background of the appellant, the gravity and impact of the offence and the fact that he is a first offender with no criminal antecedents. The conduct of the appellant who remained on bail during the course of trial and post the trial is also noted. After his conviction, he was enlarged on bail but he made no attempts to flee. There were no adverse reports against him from any quarter post the conviction. Perusal of the Learned Trial Court records also reveals no such antecedents. In view of the observations as cited above I am of the opinion that the appellant convict is entitled to benefit of probation and can be released on probation since the incident related to in the year 1988. The appellant to be taken into custody to serve out the sentence would not be expedient in the interest of justice after lapse of 37 years.

24. 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. 5000/- (Rupees

Five Thousand) with two sureties to the satisfaction of the learned Chief Judicial Magistrate, Murshidabad. He has to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, and shall not repeat the offence. Should he fail to maintain the peace or not be of good behaviour or repeat the offence, he shall serve out the sentence imposed by the Learned Trial Court.

25. The Appellant is released from his bail bonds.

26. Accordingly, the Criminal Appeal being CRA 300 of 1990 stands **disposed of.**

27. Hence, the appeal is allowed in part upholding the conviction and sentence awarded to the appellant.

28. The Trial Court Records along with the copies of the judgment be sent down to the Trial Court for necessary action.

29. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)