

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 302 of 1990

Md. Saiful Sk.

-Vs-

The State of West Bengal

For the Appellant : Ms. Pallavi Priyadarshee
(Amicus Curiae)

For the State : Ms. Faria Hossain
Ms. Mamta Jana

Heard on : 10.05.2024, 09.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against an order passed by the Learned Judge, Special Court, E.C. Act, Murshidabad on 31st May, 1990 in E.C. Case No.73 of 1988 (T.R. No.87/88), convicting the appellant on a charge under Section 7(i)(a)(ii) of the Essential Commodities Act and sentencing him to suffer rigorous imprisonment for 6 (six) months.
2. The appellant was placed in the proceeding being E.C. Case No.73 of 1988 (T.R. No.87/88) to answer the allegations under Section 7(i)(a)(ii) of the Essential Commodities Act for alleged violation of para 4 and para 2 of West Bengal Rice and Paddy Control Order, 1967 and paras 5(3)(a) and 8A of the West Bengal Declaration of Stock and Prices E.C. Order, 1977 as also

Section 6(2)(a) of Act XXIV of 1958 and para 3(7) of the West Bengal Motor Spirit and High Speed Diesel Oil (Licencing Control and Maintenance of Supply) Order, 1980.

3. The relevant portion of the judgment in E.C. Case No.73 of 1988 passed by the Learned Judge, Special Court reflected as follows:-

“The then D.E.O., Murshidabad Zone, since retired, raided the grocery shop of the accused at Kaharpara Bazar along with other Police Officers and seizure list witnesses, PW-1 & 2. Accused was present and had exposed essential commodities for sale in the shop. On demand accused could not produce any book or khata. The D.E.O. found one Declaration Board which was written up to 28.7.88. It was also noticed that accused had stored 5 tins of rapeseed, 2 barrels of dissel for which he could not show any licence or permit. Accused has stored one barrel of kerosene oil having no licence or permit thereby violating para 4 & 11(2) of the West Bengal Kerosene Control Order, 1968. Further he stored rice 2 quintals in violation of provisions of West Bengal Rice & Paddy (Licensing and Control) Order, 1967. The D.E.O. seized the articles in the shop by preparing a seizure list in presence of witnesses (Ext.1/2) copy of which was made over to the accused who acknowledged. He left the seized good including the board in zimma of the accused. Thereafter he arrested the accused and produced him at Raninagar PS where he lodged written complaint which was treated as FIR (Ext.2). On the basis of such written complaint, Raninagar PS recorded formal FIR (Ext.3) and O/C

endorsed the case to Sri P.P. Ghosh, the de facto complainant for investigation who upon investigation submitted charge-sheet against accused u/S. 7(i)(a)(ii) E.C. Act for alleged violation of para 4 and para 2 of II of W.B. Kerosene Control Order, 1963 and paras 5(3)(a) of Act 8A of the W.B. Rice and Paddy Control Order, 1967 and para 3 of the West Bengal Declaration of Stock and Prices E.C. Order, 1977 as also Sec. 6(2)(a)(b) of Act XXIV of 1958.”

4. The prosecution examined 3 witnesses in all and appellant examined one defence witness.
5. The Learned Amicus Curiae representing the appellant submitted as follows:-
 - i. PW-1 stated in his evidence *“I cannot state if there was rapeseed but accused had stored salt, mustard oil etc. Accused does not sell kerosene oil and diesel but he keeps rice for his own consumption.”*
 - PW-2 stated in his evidence *“I cannot state if accused stored kerosene, diesel or rice in his shop.* PWs 1 and 2 did not support the prosecution case and were not declared hostile by the prosecution.
 - ii. The description of go-down was indefinite. In the F.I.R. it was described that it was an open go-down. PW-3 who was the author of the F.I.R. described in his evidence that the go-down was attached to the shop.
6. The Learned Advocate representing the State submitted that the prosecution was able to prove its case and the appeal should be dismissed.

7. 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 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.*

¹2023 SCC OnLine SC 605

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."*

8. Recovery of disputed article could not be proved. Mere non-production of title deeds will not ascribe criminality to the appellant.
9. The prosecution failed to prove its case beyond reasonable doubt and the order passed by the Learned Judge, Special Court, E.C. Act Murshidabad on 31st May, 1990 in E.C. Case No.73 of 1988 (T.R. No.87/88) is set aside.
10. Accordingly, the instant Criminal Appeal being CRA 302 of 1990 is allowed.
11. There is no order as to costs.
12. I record my appreciation for the able assistance rendered by the Learned Advocate Ms. Pallavi Priyadarshee 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.)