

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 223 of 1989

Anil Kumar Mazumdar

-Vs-

The State of West Bengal

For the Appellant : Mr. Milon Mukherjee
Mr. S. Sarkar

For the State : Ms. Faria Hossain

Heard on : 18.04.2024, 13.06.2024, 08.07.2024

Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 26.04.89 passed by the Learned Judge, Special Court (E.C. Act), Nadia in E.C.2/89 (T.R. No.26/89) by the Learned Judge find the appellant guilty of the offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (as amended in 1981) and sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for 6 months.
2. The prosecution case precisely stated on 22.02.1989 one S.I. B. Bhadhuri, D.E.O. Nakashipara along with S.I. Sukomal Roy Chowdhury D.E.B., Nadia went to fertilizers cum grocery shop of the appellant at Birpur and found him dealing in fertilizers and diesel oil. On interrogation

the appellant could not produce any license, stock register, sale register, cash memo and stock cum rate board for sale of fertilizers and diesel oil. Therefore, the appellant was made liable for prosecution for violation of the Fertilizer Control Order, 1957 and H.S. Diesel Oil (Licensing Control and Maintenance of Supply) Order, 1980 and as such liable for punishment under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

3. After completion of investigation, the D.E.O., Nakashipara, the de facto complainant cum investigating officer of the case submitted charge-sheet being charge-sheet no.28 dated 14.03.89 against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 against the appellant to which he pleaded not guilty and claimed to be tried.
4. In order to prove its case, the prosecution examined as many as 5 witnesses and exhibited certain documents. The appellant adduced three defence witnesses.
5. The Learned Advocate representing the appellant submitted as follows:-
 - i. The appellant could not be convicted for contravention of an order which had been repealed in 1985 i.e., in the instant case the appellant had been charged for contravening the provisions of para 3(A), Para 4, Para 5 and Para 21 of Fertilizer Control Order, 1957 when in fact "Fertilizer (Control) Order, 1985 had come into effect from 25th September, 1985 and the order of 1957 had been repealed as per para 39 of the Order, 1985.
 - ii. "Continuity of Transaction" was a pre-requisite before it could be stated that the appellant was carrying on business in diesel oil. In the instant case no measuring can or weighing machine nor any

customer were seized or examined respectively to authenticate seizure.

- iii. DW-3 had proved the maintenance of records with regard to the fertilizer business and the same had not been rebutted in cross-examination.
- iv. The appellant had three grinding machines for which the diesel oil was required and Exbt.-‘A’ proved the contention of the appellant of personal usage.
- v. The evidence of PW-5, the de facto complainant and Investigating Officer, had specifically stated there was no measuring instrument and with the help of a stick he measured the quantity and such an act was hypothetical and impractical.
- vi. The appellant was in possession of a valid licence till 31.03.89 coupled with the maintenance of the register endorsed the fact that there was no contravention of any order.

7. Considered the submissions of the Learned Advocate representing the appellant as well as the Learned Advocate representing the State.

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

- i. Appellant had been charged for contravening the provisions of para 3(a), 4, 5 and para 21 of Fertilizer Control Order, 1957 when in fact Fertilizer Control Order, 1985 have come into effect from 25.7.1985. Therefore the provisions of Fertilizer Control Order, 1957 stands repealed as per para 39 of Fertilizer Control Order, 1985 whereas the instant case was started on 22.2.1989 which was long after the new control order had come into force therefore the Learned Judge

had failed to take into account that the appellant could not be convicted for contravention of an order which has been repealed in 1985.

- ii. Out of five prosecution witnesses, three witnesses i.e., PW-3, PW-4 and PW-5 were the police officers who conducted the inspection at the grocery-cum-fertilizer store of the appellant. PW-1 and PW-2 were the independent witnesses who were examined.
- iii. During examination of PW-1 and PW-2 were declared hostile by the prosecution having denied that the appellant carried on any business of diesel oil in the shop. Further cross-examination of PW-2 by the defence revealed the appellant had three machines one Chira-kal, a Ghani-kal and a Shallow machine for cultivation which required diesel oil for its operation which required diesel oil justifying the stock of diesel oil in his possession. The deposition of the two independent witnesses before the Court instilled confidence against the vague allegations of selling diesel by the appellant.
- iv. PW-5, the Inspection Officer from D.E.B., claimed that the appellant failed to produce any license permitting him to sell fertilizers in his shop but later on contradicted the same in his cross-examination that the appellant had produced a valid license to sell fertilizer at his shop which was valid till 31.03.1989. It was admitted in the cross-examination of PW-5 that at the time of inspection there were customers present in the shop but they were never examined or cited as a witness.

- v. The deposition of PW-5 who was the inspection officer from D.E.B., revealed during search and seizure, measuring instrument for diesel oil could not be found in the shop and the diesel oil found in two jars were measured with the help of a stick and concluded that both the jars contained 70 litres of Diesel oil. Therefore, absence of a weighing instrument for diesel oil ruled out the possibility of the appellant operating a business of diesel oil. The prosecution failed to establish clarity in evidence to connect the appellant to the illegal sale of diesel oil. Furthermore the statement of PW-5 of weighing the seized diesel oil with a stick was unpragmatic and vague to doubt the genuineness of the seizure.
- vi. The defence witnesses being DW-1 who was the Pradhan of the Gram-Panchayet of Birpur confirmed that the appellant had multiple businesses and DW-2 who was the collector of rent of Anchal was also a witness to the same. A list of businesses owned by individuals was maintained in the Anchal office. The list of businesses owned by the appellant according to the receipt issued by the collector (DW-2) included fertilizer business, cultivation and Chira-kal business but there was no mention of Diesel oil business.
- vii. The appellant was in possession of a valid Fertilizer license till 31.03.89 and coupled with the maintenance of the register by DW-3 indicated the fact that the stock book and sale register were verified and confirmed by the A.D.O. justifying his action and valid operation of businesses.

9. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 223 of 1989 is allowed.
10. Under such facts and circumstances, the judgment and order dated 26.04.89 passed by the Learned Judge, Special Court (E.C. Act), Nadia in E.C.2/89 (T.R. No.26/89) is set aside.
11. Accordingly, the instant criminal appeal being CRA 223 of 1989 stands disposed of.
12. There is no order as to costs.
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.)