

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 221 of 1989

**Smt. Sumitra Kundu
-Vs-
The State of West Bengal**

For the Appellant : Mr. Subhrajit Dey
(Amicus Curiae)

For the State : Ms. Faria Hossain
Ms. Janaki Saha

Heard on : 10.05.2024, 06.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 10.05.1989 passed by the Learned Judge, Special Court, Burdwan in T.R. Case No.53 of 1988 convicting the appellant under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 for an alleged violation of para 3(i)(b) of the West Bengal Rice and Paddy Control Order, 1967 and sentencing her to suffer simple imprisonment for 2 years and directing confiscation of seized rice.
2. The prosecution case precisely stated on 04.05.1988 at about 10:00 a.m., the first informant along with others were on raid duty against Rice smugglers at Burdwan railway station at platform no.4, the raiding party

found the appellant loading 3 bags of rice in a 2nd class compartment of 34 Down Mughalsarai – Sealdah Express. The appellant was unable to produce any documents authorizing her to carry rice on being challenged. The appellant had thus violated the provisions of para 3 of the West Bengal Rice and Paddy Storage by Consumer Control Order, 1967 as amended on 10.11.1967. The rice was seized from the possession of the appellant and was arrested by the first informant.

3. After completion of investigation, the Police submitted charge- sheet against the appellant.
4. The appellant was examined under Section 251 of the Code of Criminal Procedure when she pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 6 witnesses and exhibited certain documents.
6. The Learned Advocate for the appellant submitted that:-
 - i. The prosecution case was inherently improbable inasmuch as the appellant was not physically capable of handling and/or loading a bag of rice containing One Hundred Kilogram of rice from a platform into a 2nd class coach all by herself and the Learned Special Judge did not consider the same.
 - ii. The prosecution was inconclusive as to whether the seizure was made on platform no.2 or platform no.4 or the 2nd class coach of 34/Down Mughalsarai – Sealdah Express the number of which no prosecution witness could provide.

- iii. The evidence of PW-2 being that the seizure list was written afterwards at the G.R.P.S., Burdwan the said fact granted credibility to the defence version that the appellant was apprehended on mere suspicion when a number of people including herself were rushing about in a bewildered manner.
 - iv. The evidence of the prosecution witness being there were a number of people present at the Burdwan Railway Station including vendors and porters, the non-examination of any independent witness threw a cloud over the veracity of the prosecution case.
 - v. The Learned Special Judge should not have disbelieved the DW-1.
7. The Learned Advocate representing the State in utter fairness submitted that the prosecution case was devoid of merits.
8. A circumspection of evidence of the prosecution witnesses revealed PW-1 the Sub-Inspector of Police admitting 3 quintals of boiled rice to have been recovered from the appellant. However, the said quantity of seized rice was not produced before the Court. PW-2 stated to have found some rice in one second class compartment of the train claiming the appellant to be the owner of the rice. The evidence of PW-1 and PW-3 was corroborated by PW-3, PW-4, PW-5 and PW-6.
9. None of the prosecution witness could cite an independent witness to have seen the rice being transported through the train by the appellant being the owner of the same. The ownership of the rice apart from suspicion and apprehension could not be proved by the prosecution.

10. The prosecution miserably failed to prove its case in entirety apart from suspicion. The prosecution case was not based on any reliable and trustworthy evidence.

11. 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*

¹2023 SCC OnLine SC 605

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. 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."*

12. In view of the above discussions, the judgment and order dated 10.05.1989 passed by the Learned Judge, Special Court, Burdwan in T.R. Case No.53 of 1988, under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955 is set aside.

13. Accordingly, the instant Criminal Appeal being CRA 221 of 1989 is allowed.

14. There is no order as to costs.

15. I appreciate the able assistance rendered by Learned Advocate Mr. Subhrajit Dey as Amicus Curiae representing the appellant in disposing of this appeal.

16. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

17. 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.)