

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 227 of 1989

**Md. Samsuddin Khan
-Vs-
The State of West Bengal**

For the Appellant : Ms. Debanwita Pramanik
Mr. Sajid Hussain

For the State : Ms. Faria Hossain

Heard on : 22.05.2024, 15.07.2025

Judgment on : 01.08.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 25.05.1989 passed by the Learned Judge, Special Court (Essential Commodities Act), Durgapur in T.R. Case No.50 of 1988, thereby convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of Paragraph 3(i) of the West Bengal Rice and Paddy (Licencing and Control) Order, 1967, para II(2) of West Bengal Kerosene Control Order, 1968 and para 3(2) of West Bengal Declaration of Stock and Prices of Essential

Commodities Order, 1977 and sentencing him to suffer rigorous imprisonment of 2 years for each violation/provision of three aforesaid control orders, directing the sentences to run concurrently and seized articles to be confiscated, if not already done.

2. The prosecution case precisely stated on 30.10.1988 at the noon hours, the D.E.O., along with other forces had been at the grocery shop of the appellant and found the same open. Certain customers were present at that relevant time but at the sight of the police personnel, they fled. The D.E.O., served a notice upon the appellant to produce relevant documents i.e., stock register, cash memo, sale register, license etc., for dealing in rice and other essential commodities in shop. The D.E.O., also did not find any stock-cum-rate board, displayed at the shop. The appellant failed to produce any such document as asked for. The officers recovered 7 bags of Rice, containing 520 kgs each and 1½ tins of Kerosene Oil, containing 20 litres in total from the shop. A seizure list was prepared in respect of the commodities, the appellant was brought to police station under arrest.
3. On the basis of the aforesaid complaint, the Police initiated Pandabeswar P.S. Case No.10 dated 30.10.1988 under Section 7(1)(a)(ii) of the Essential Commodities Act against the appellant and proceeded with the investigation of the case.
4. Charges were framed against the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act to which he pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined as many as 3 witnesses and exhibited certain documents while the defence examined 2 witnesses.
6. Considered the rival contentions of the Learned Advocate representing the appellant as well as the State.
7. The evidence adduced by the prosecution witnesses revealed the D.E.O. had been specifically authorized to conduct the investigation in the instant case based on the complaint filed by the A.S.I. of Police. The appellant could not produce the stock-cum-rate board to be displayed in the grocery shop. The stock register, sale register, cash memo, licence etc. concerning the transaction in rice and other essential commodities could not be produced by the appellant on service of notice upon him by the D.E.O. to produce the same. The recovery of 7 bags of rice containing 420 kgs. and 1½ tins of kerosene oil containing 20 litres of the same were seized under a seizure list.
8. The appellant could not prove the presence of his wife and children in an adjacent portion of the grocery shop on rent occupied as a resident for consuming the aforesaid amount of rice by the family. The impugned judgment and order had, with valid reasons, explained the violation of the provisions of Para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977, Para 2 of Section 11 of the West Bengal Kerosene (Control Order) 1968 and Clause (a) of Para 1 of Section 3 of the West Bengal Rice and Paddy (Licence and Control Order) 1967.

9. 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. Before all the courts*

¹2023 SCC OnLine SC 605

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.”*

10. In view of the observations as cited above, the appellant can be released on probation since the incident related to 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 a lapse of nearly 37 years.

11. 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.10,000/- to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing of which he can be called upon to serve the sentence. Fine to be paid of Rs.10,000/- within 3 (three) months from the date of this order failing which he shall be called to serve out the sentence.

12. Accordingly, the instant criminal appeal being CRA 227 of 1989 is disposed of.

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.)