

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 245 of 1989

**Sri Dilip Kumar Jana
-Vs-
The State of West Bengal**

For the Appellant : Mr. Srinjon Ghosh
(Amicus Curiae)

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

Heard on : 10.05.2024, 12.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of conviction dated 18.05.1989 passed by the Learned Judge, Special Court (E.C. Act), Midnapore in D.E.B. G.R. Case No.58 of 1988, thereby convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of para 3(1)(a) of the West Bengal Rice and Paddy (Licensing and Control) Order 1967 and para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977 and sentenced to suffer simple imprisonment for one year and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 1 month.

2. The prosecution case precisely stated on 10.12.1988 one Shri H.G. Dutta, D.E.O.(1), Midnapore lodged complaint against Dilip Kr. Jana, S/o – Sri Nakfuri of Kultikri, Sankrail P.S., Midnapore district in between 12:45 - 13:45 hours he along with S.I. N.G. Pal, A.S.I. Arun Kr. Choudhury, W.C. 1093 Nantu Das and Driver of police Naba Hari Ghosh while working and secret information at Kultikri bazar raid the shop cum go-down of Dilip Kr. Jana at Kultikri bazar. Dilip Kr. Jana was conducting the business with rice there at that time. While they approached there 5/6 poors who were either purchasing rice from Dilip Kr. Jana or selling rice to Dilip Kr. Jana, fled away noting the police jeep arrived there. Amongst them one person who disclosed his name as Nepal Soren of Keyar chand, P.S. Keshriy was interrogated by him and known that he was there for purchasing rice from Dilip Kr. Jana. Then he went away.

The aforesaid D.E.O. demanded licence and stock, sale registers, cash memo, purchased challan or any other paper by dint of which he was dealing with rice orally and then served notice upon him demanding his authority for operating such business but Dilip Kr. Jana could not produce any such licence or papers. After interrogating him and from local enquiry it was learnt that Dilip Kr. Jana was dealing in rice without any licence and he did not maintain any account. The rice was weighted by the help of above noted staff with scale, balance and measure, writing weight, 10 quintals rice were found in that shop. No stock cum rate board was found anywhere in the shop cum go-down of Dilip Kr. Jana. It appeared that Dilip Kr. Jana was acting as a dealer of rice without having any Registered Certificate as per

para 3(1)(b) of West Bengal Rice and Paddy (Licencing and Control) Order, 1967. It was also found that Dilip Kr. Jana was not a bulk consumer or Rice Miller or a Producer. Hence, Dilip Kr. Jana was arrested for violation of provision of under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of para 3(1)(a) of the West Bengal Rice and Paddy (Licensing and Control) Order 1967 and para 3(2) of the West Bengal Declaration of Stock and Prices of Essential Commodities Order 1977.

3. On the basis of the aforesaid complaint, the Police initiated Sankrail P.S. Case No.3/34 dated 11.12.1988 under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of para 3(1)(a) of the West Bengal Rice and Paddy (Licensing and Control) Order 1967.
4. After completion of investigation, the Police submitted charge-sheet against the appellant.
5. The charge was framed against the accused person to whom he pleaded not guilty and claimed to be tried.
6. In order to prove its case, the prosecution examined as many as 5 witnesses and exhibited certain documents.
7. Considered the submission of the Learned Amicus Curiae representing the appellant as well as the Learned Advocate for the State.
8. The relevant portion of the judgment and order dated 18.05.1989 passed by the Learned Judge, Special Court, (E.C. Act) in D.E.B. G.R. Case No. 58 of 1988 stated as follows:-

“Therefore on the face of the evidence of the prosecution witnesses as discussed above, it appears that the accused is a dealer as defined

under para 2(d) of the said order of 1967. It further appears from the evidence on record that the accused has not produced any scrap of paper to show that he has dealt in rice as a retailer at the relevant point of time in compliance with the provisions of para 3(1)(b) of the said order of 1967. The total quantity of rice seized is 10 quintals. It is within the limit as required under para 5(a) of the said order of 1967. So where it is found from the evidence on record that the accused has dealt in rice at the relevant point of time as a retailer without any registration certificate as required under para 3(1)(b) of the said order of 1967, it is held that he had contravened the provisions of para 3(1)(b) of the said order of 1967.

Further from the evidence of P.Ws. 1, 2, 4 & 5, it appears that all these witnesses have categorically stated in examination in chief that no stock cum rate board has been found in the shop of the accused. Now from the cross examination portion of the evidence of all the witnesses, I do not find any material on the basis of which the evidence of these witnesses regarding non-existence of stock cum rate board can be disbelieved. As per schedule 1 of West Bengal Declaration of Stocks and Prices of Essential Commodities Order 1977 (hereinafter called the said Order of 1977) rice is one of the essential commodities. Now I have already observed that the prosecution has been able to prove that after arrival on the spot, the complainant and his party found the accused person dealing in rice. So the accused person is under legal obligation to comply with the provisions of para 3(2) of the said Order of 1977. But here that is not been done. So this is another violation of the said provision by the accused.

It is needless to mention that where the accused deals in rice as a retailing dealer without any registration certificate, he does so, certainly with some culpable state of mind at the relevant point of time and therefore for such violation, the accused is liable to be convicted u/Section 7(1)(a)(ii) of Act 10 of 1955.”

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.5,000/- 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.5,000/- within 06 (six) months from the date of this order failing which he shall be called to serve out the sentence.

12. Accordingly, the Criminal Appeal being CRA 245 of 1989 stands disposed of.

13. I appreciate the able assistance rendered by Learned Advocate Mr. Srinjon Ghosh as Amicus Curiae appearing for the appellant, in disposing this appeal.

14. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
15. 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.)