

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 455 of 1990

Ashoke Agarwal

-Vs-

The State of West Bengal

For the Appellant : Mr. Souvik Mitter
Mr. Shiladitya Banerjee
Mr. Arnab Chatterjee

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 01.02.2024, 15.03.2024, 02.07.2024

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 13.09.1989 passed by the Learned Judge, Special Court (Essential Commodities Act), Alipore, 24 Parganas (South) in Special Case No.5(3)/87 convicting the appellant and another under Section 7(i)a(ii) of the Essential Commodities Act, 1955 for violation of para 4 of the West Bengal Essential Foodstuff Anti Hoarding Order 1966 and sentence of rigorous imprisonment for 3 months and a fine of Rs.100/-, in default, to suffer further 7 days rigorous imprisonment. An order of confiscation of the seized rice which had the effect of forfeiture was also passed by the Learned Judge.

2. The prosecution case precisely stated on 04.03.1987 PW-3 along with PW-1, 2 and 4 held raid at the grocery shop at 20B, Lake Road, Calcutta-700029 and found 90 kgs. basmati rice in 3 bags and 20 kgs. of boiled rice in another bag, Bijoy Agarwal the person-in-charge of the shop could not produce any satisfactory explanation of possession of the same as such he was arrested and on the complaint of PW-2 the instant case was initiated against the appellant and Bijoy Kumar Agarwal for violation the provision of para no.4 of West Bengal Anti Hoarding Order 1966 and thereby committed an offence under Section 7(i)a(ii) of the Essential Commodities Act, 1955.
3. On 04.03.1987 PW-3 lodged a written complaint with the Officer-in-Charge at Tollygunge Police Station and said written complaint was registered as Tollygunge Police Case No.61 of 1987 dated 04.03.1987 under Section 7(i)a(ii) of the Essential Commodities Act, 1955 for violation the provision of para no.4 of West Bengal Essential Commodities Foodstuff Anti Hoarding Order, 1966.
4. After completion of investigation, the Police submitted charge- sheet against the appellant to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 4 witnesses and exhibited certain documents and two defence witnesses were also examined.
6. The Learned Advocate representing the appellant submitted as follows:-
 - i. The Exhibit and the GD entry which were subsequently treated as F.I.R., was relied upon by the PW-1.
 - ii. PW-2 being a member of the raiding team conducted the investigation of the instant case partly. PW-2 deposed there were two independent

seizure witnesses of the alleged seizure namely Bacchu Singh and Shekh Kena, who were not examined during trial.

- iii. The evidence of PW-2 and the contents in the complaint, with regard to the seizure of rice which was allegedly seized from the footpath and not from the shop of the appellant had been doubtful and inconsistent.
- iv. At the time of raid incidentally the appellant was not present in the said shop and one Bijay Agarwal who was entrusted to run the shop was present at the time of seizure.
- v. All the witnesses deposed that a raid was conducted at the shop situated at *20B lake road* but no documentary evidence relating to the said shop room was produced during trial. No enquiry was conducted during the course of investigation to establish the ownership of the alleged place of occurrence.
- vi. PW-2 stated that he didn't remember the quantity of the rice was seized and no sample of rice was produced before the trial court. During the course of trial the seized material was not produced before the court.

In judgment of the Hon'ble Apex Court in *Ouseph Vs State Of Kerala*, reported in *2004 (10) SCC 647* where the Hon'ble Apex Court deprecated such practice and have doubted about the authenticity of the alleged seizure. In the present case entire search and the seizure was completely doubtful and the appellant was entitled to get an order of acquittal in the present appeal.

- vii. PW-2 being a member of the raiding party conducted the investigation of the instant case on and from 04.03.1987 to 03.06.1987. After alleged search and seizure he filled a F.I.R. The formal F.I.R was filed in pursuant to GD entry bearing no.334 at 04.03.1987. PW2 in his deposition states that “*he took up the charge of the investigation of the case*”.
- viii. In criminal law jurisprudence registration F.I.R. was not a conclusion of an inquiry. It was only a beginning of an investigation. *Latin Maxim INemodebetesse Judex in propia causa* elaborates an important issue of law which says, “*no one can be a judge in his own case.*” In the instant case PW-3 on one hand was the seizing officer cum de facto complainant and on the other hand he was the investigating officer.
- ix. The Hon’ble Apex Court in *State Vs Rajangam* reported in 2010 (15) SCC 369 deprecated such practice and have doubted about the authenticity of the alleged seizure.
- x. In that instant case the allegation is of 110 kgs., of basmati rice was stored inside the shop of the appellant. The appellant was convicted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.

Section 7(1)(a)(i) of the Essential Commodities Act 1955 does not have a minimum punishment. During the course of initial arrest and detention, appellant have undergone 14 days of imprisonment. Thus alternatively the appellant prays for modification of conviction for violation of the provisions of para no 4 of West Bengal Essential Commodities stuff Anti hoarding order, 1966 under the provision of section 7(1)(i) of the Essential Commodities Act 1955. As the instant

case was of 04.03.1987 and at this juncture sending back the appellant to serve out his remaining sentence will obviously be a great hardship for him.

- xi. The overall assessment of the evidence by the learned Judge is unworthy of any credit and acceptance by a man of reasonable prudence. Each part of the prosecution case suffers from meagerness of evidence or absence of satisfactory evidence, but the learned judge in a very slipshod and casual manner discussed the evidence wherein he left the material facts favouring the accused from his consideration and thus acted with serious illegality.

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

8. The Learned Trial Court in the impugned judgment dated 13.09.89, inter alia, observed as follows:-

“Now, after going through the testimonies of the witnesses of both sides it is crystal clear that on 04.03.1987 police held a raid at the shop of the accused, situated at 20B, Lake Road within P.S., Tollygunj and that some rice namely 110 kg of rice was recovered by police.

Now the question is whether this rice was lying on the footpath as stated by the DWs or those were stored in the shop as stated by police.

It is true that the seizure list witnesses having been examined in this case though the prosecution made efforts to produce them in court. Now there is no whisper or suggestion as to why the police will implicate the accused persons and start a proceeding against them if no rice was recovered from his shop. To my mind it is hardly believable that if a person

runs with bag of rice by seeing the police he would drop the same in front of the shop of the accused. I think this sort of defence has been taken by the accused since no other defence is available to the accused persons and no explanation could be given for storage of rice by them in the shop. That apart both the DWs being associates of the accused Ashoke Agarwal since DW-1 has got his shop at the same premises and DW-2 reside with the accused Ashoke Agarwal in the same premises they are deposing falsely to save the accused from being prosecuted.

Considering the testimonies of PWs I find that the police held a raid at the shop of the accused on the alleged date and recovered 110 kg of rice from the shop and the accused having no license or permit for storing the same or dealing in rice they violated the provisions of para 4 of W.B. Essential Food Stuff Anti Hoarding Order, 1966.

Accordingly I find the prosecution has been able to prove the charge levelled against the accused beyond reasonable shadow of doubt and as such I find both the accused persons to be guilty of the said charge.”

9. The Learned Trial Court, after reasonable assessment of evidence both oral and documentary, rightly passed the impugned judgment, which should not be interfered with in its essence.
10. 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

¹2023 SCC OnLine SC 605

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 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.”*

11. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1987. 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 38 years.
12. 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/- with one surety 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 120 days from the date of this order failing which he shall be called to serve out the sentence.
13. Accordingly, the instant Criminal Appeal being CRA 455 of 1990 is disposed of.
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.)