

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Partha Sartha Sen

C.R.A. 19 of 1991

Uday Sankar Mondal & Another

-Versus -

The State of West Bengal

For the Appellant No.2 : Ms. Jonaki Saha.

For the State : Mr. Arindam Sen,
Mr. Pratick Bose.

Heard on : January 29, 2025.

Judgment on : **January 29, 2025.**

Partha Sarathi Sen, J.:

1. In this appeal the judgment of conviction and the order of sentence, both dated 31st December, 1990 as passed in D.E.B.G.R. Case no.25 of 1989 by the learned Judge, Special Court, E. C. Act-cum-Additional District and Sessions Judge, Midnapore is impugned.

2. By the said judgment, the said Court found that one Uday Sankar Mondal and one Ganesh Sahani guilty of the charge under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as the said Act of 1955, in short) and thus, convicted them to suffer rigorous imprisonment for one year each and to pay a fine of Rs.500/- each, in default, to suffer further rigorous imprisonment for three months each. While passing the said order of sentence, the learned Trial Court also directed for setting off of period of detention of both the convicts against the term of imprisonment, as imposed upon them. Both the convicts aforementioned felt aggrieved and preferred the instant appeal.
3. It is pertinent to mention herein that during pendency of the instant appeal the appellant no.1, Uday Sankar Mondal passed away and thus, by an order dated 15th July, 2024 this Court had recorded the abatement of the instant appeal against the said deceased appellant no.1, Uday Sankar Mondal. It further reveals that an administrative notice was served upon the appellant no.2, Ganesh Sahani but despite several attempts such administrative notice could not be served upon the appellant no.2 and accordingly, this Court vide order dated 16th January, 2025 appointed Ms. Jonaki Saha, a

learned advocate of this Hon'ble Court to represent the appellant no.2 in this appeal with a direction to the Member Secretary, Calcutta High Court Legal Services Committee to regularise her appointment as an advocate for the appellant no.2.

4. For effective adjudication of the instant appeal, the facts leading to initiation of D.E.B.G.R. Case no.25 of 1989 before the learned Trial Court are required to be dealt with in a nutshell and those are discussed hereunder.
5. One Shri Santosh Kumar Chakraborty, Inspector of Police, D.E.B., Medinipur lodged a written complaint dated 31st May, 1989 with the Officer-in-Charge, Debra Police Station stating, inter alia, that on the self-same day on the basis of a secret source information regarding clandestine trade in rice and paddy by unauthorised person from Medinipur district to Howrah district without licence, he along with some other police personnel, particulars of whom has been mentioned in the said written complaint, intercepted a truck bearing registration no.WMV 1944 loaded with 106 bags of paddy near Ansari Bandh on Bombay Road at about 10:30 hours.
6. In the said written complaint, it has been stated further that the occupants of the said truck on being asked by him stated that they were carrying the said rice for sale at

Uluberia under the district Howrah but the occupants of the said truck, however, could not produce any licence, permit or authority for dealing in paddy, which according to the de facto complainant tantamounts to violation of the provision of para 3 of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 (hereinafter referred to as the said Order of 1967) which is an offence punishable under Section 7(1)(a)(ii) of the said Act of 1955.

7. It has been stated further in the said written complaint that after arresting the two accused persons, he took the truck to a nearby rice mill and after weighing the same, it was found that the said 106 bags contained 64 quintals and 44.200 Kgs. of paddy. The de facto complainant thereafter kept the said paddy, as seized by him, to one Zimmadar, namely; Tapan Kumar Kar and produced the accused persons before the said police station.
8. On the basis of the said written complaint, Debra Police Station Case no. 85 of 1989, dated 31st May, 1989 under Section 7(1)(a)(ii) of the said Act of 1955 was started and on completion of the same, charge sheet was submitted under Section 7(1)(a)(ii) of the said Act of 1955 against two accused persons, namely, Uday Sankar Mondal and Ganesh Sahani. However, in the said final report, the I.O.

had made a prayer for discharge of Satya Narayan Maity which was allowed by the said Court.

9. On 4th May, 1990, both the accused persons were examined under Section 251 of the Code of Criminal Procedure and in course of plea, the said two accused persons pleaded their innocence and claimed to be tried and thus, trial before the learned Trial Court proceeded.
10. From the trial court record it reveals that in order to bring home the accusation against the accused persons, prosecution has examined nine (9) witnesses in all and some documents have been exhibited on their behalf. On behalf of the defence, however, two witnesses have been examined.
11. From the trend of cross-examination of the prosecution witnesses and from the evidence adduced by the D.Ws., it appears to this Court that the defence case is based on clear denial and false implication. As discussed hereinabove, the learned Trial Court on consideration of the evidence, both oral and documentary, as adduced by the prosecution witnesses and also considering the oral witnesses of the defence, found the said two accused persons guilty under the aforementioned sections and thus, passed the aforementioned judgment of conviction

and order of sentence which is an impugned in this appeal.

12. In order to arrive at a logical conclusion of this instant appeal, this Court does not intend to discuss the evidence of all the prosecution witnesses and the defence witnesses all over again except to the extent the same is necessary since those have been elaborately discussed by the learned Trial Court in the impugned judgment.

13. It is pertinent to mention herein that P.Ws. 1 and 2 are the constables of police and the members of the raiding team. P.W.3 is the informant. P.Ws. 4 and 5 are two independent seizure witnesses. P.W. 6 is an inspector of police and also a member of the said raiding team. P.W.7 is the zimmader. P.W.8 is an S.I. of police. P.W.9 is another S.I. of Police and was a member of the raiding team and he is also the Investigating Officer.

14. From the evidence of P.W.1, it appears to this Court that in his examination-in-chief he testified that on 1st May,1989 on the basis of a secret source information, a truck bearing registration no.WBR 1944 was intercepted at the place of occurrence and while checking the said truck, paddy was found loaded in the said truck. He further testified that one Uday Sankar Mondal and one driver were found in the said truck. He further testified

that a notice was served upon the accused persons to explain their position which they failed to justify. In his examination-in-chief, he further testified that thereafter the said paddy was taken to Rajlaxmi Rice Mill where weighment was made and thereafter, the paddy and the truck were seized in his presence. His cross-examination, in considered view of this Court, is of no use either to the prosecution or to the defence.

15. P.W.2 was tendered by the prosecution. He was, however, not cross-examined on behalf of the defence.
16. P.W. 3, being the informant, in his examination-in-chief practically echoed his version as made in his written complaint. He clearly testified that on the relevant day and hour after inception of the said truck he found 106 bags of paddy in the said truck and there were two persons in the said truck. One of them was the driver and the other was the owner of the said paddy. P.W. 3 further testified that the owner of the said paddy, i.e., Uday Sankar Mondal disclosed to him that he purchased paddy from Pataspur in the district of Midnapur. He stated that he served notice upon the said Uday Sankar Mondal for production of necessary papers and documents for possession of the said paddy. But the said Uday Sankar Mondal could not produce any paper in support of his

possession. P.W.3 was extensively cross-examined on behalf of the defence. On careful scrutiny of the said cross-examination nothing could be revealed which in considered view of this Court in favour of the defence.

17. P.W. 4, though was declared hostile but in his examination-in-chief, he categorically stated that at the relevant time in his presence 106 bags of paddy weighing 60 quintals and 61 Kgs. was seized by preparing a chart on which he put his signature.

18. The evidence of P.W.5, in considered view of this Court, is very much pertinent. Being an independent witness he testified that on the relevant day and hour a vehicle was intercepted by the police officials and he found a driver and another person in the said vehicle. He further testified that the said vehicle was carrying paddy. He also testified that on being asked by the police personnel the said two persons could not produce any licence for carrying the paddy. In his examination-in-chief P.W.5 identified both the accused persons. P.W. 5 was also extensively cross-examined by the defence. But nothing could be elucidated from his mouth which would be helpful from the accused persons.

19. P.W.6 being a member of the raiding team also adduced evidence in tune of P.W.3 and he testified that on the said

day and hour the said vehicle was intercepted on Bombay Road which was containing 106 bags of paddy and at the time of interception he found driver, Ganesh Sahani and another person, namely, Uday Sankar Mondal in the said truck. He also testified that both the accused persons could not produce any licence or permit for possession of the paddy.

20. P.W.9 is another member of the raiding team whose evidence is found to be similar with the P.W.3 and P.W.6. He testified that on the relevant day and hour after detaining the vehicle he found driver Ganesh Sahani and Uday Sankar Mondal in the said truck. He also testified that despite service of notice the said two accused persons could not produce any licence for transporting and possessing the rice.

21. At this juncture this Court proposes to look to the evidence of D.W. 1 and D.W.2 vis-à-vis exhibits 'A' and 'B'.

22. From the evidence of D.W.1 it reveals that he is a resident of village Goura. He testified that he knew both the accused persons. According to him, Ganesh Sahani was a driver. He further testified that in case of shortage of paddy, paddy was purchased from nearby areas for distribution to the villagers in exchange of their service as labours in the field. He further stated that accused Uday

Sankar Mondal filed an application before the Anchal Pradhan for purchase of paddy from outside and the said application was drafted by him and in course of his examination-in-chief he duly proved the said application.

23. D.W. 2 in course of examination-in-chief has proved a letter allegedly written by the then pradhan of the local gram panchayat. According to D.W. 2 accused Uday Sankar Mondal was authorised by the then Anchal Pradhan to purchase paddy on behalf of the local people.

24. On close scrutiny of exhibit A it reveals to this Court that 13 number of villagers of village Durgapur made an application to the Pradhan of Nandanpur – II, Gram Panchayat seeking permission to purchase rice from Pataspur of the district Medinipur on 25th May, 1989. On the left side bottom of the said application, this Court finds that the said Pradhan allegedly recommended accused Uday Sankar Mondal to purchase paddy from Pataspur and to carry the same to village Durgapur. From exhibit B it reveals that the same is a memo dated 6th November, 1990 allegedly issued by the Pradhan, Nandanpur-II, Gram Panchayat, Daspur – I addressed to the learned Trial Court whereby and whereunder it has been confirmed that permission and recommendation was

given by him for purchase of rice and carrying the same from Pataspur to Durgapur.

25. So far as, the exhibit-B is concerned, it appears to this Court that the same has been proved by D.W. 2, i.e., one Shri Ganesh Chandra Samanta who is not the author of the said document. It is not the case of the defence that the author of the said exhibit B is not alived and/or is not traceable and/or is unable to come before this court for any reasons.

26. In view of such, this Court considers that the learned Trial Court is not at all justified in admitting the memo dated 6th November, 1990 in evidence and marking the same as exhibit -'B'. **This Court, thus, in exercise of its appellate power expunges exhibit- 'B'.**

27. The department is directed to note the mark 'expunge' on exhibit 'B' as well as in the exhibit list, as received from the learned Trial Court.

28. In course of her argument Ms. Jonaki Saha, learned advocate appearing for the appellant no. 2 contended that the learned Trial Court is not justified in passing the impugned judgment of conviction and order of sentence as against the present appellant no. 2 since the alleged involvement of the present appellant no. 2 was not proved from the evidence as adduced by the PWs. It is submitted

by her that it is the case of the prosecution that the appellant no. 2, Ganesh Sahani was mere a driver and he had no role in the alleged carrying of paddy.

29. It is further argued by her that the presence of the present appellant no. 2 on the relevant day and hour at the place of occurrence has become doubtful in the absence of any notice allegedly served upon him.

30. Ms. Saha, thus, submits that it is a fit case to allow the appeal by setting aside the impugned judgment.

31. Per contra, Mr. Sen, learned senior government advocate assisted by Mr. Bose, learned advocate appearing for the State contended that the seizure of 160 bags of rice has been duly proved by the prosecution witnesses. He submits that from the evidence of DW 1 and exhibit- 'A' it would reveal that carrying of rice has been practically admitted by the accused persons. He further submits that Anchal Pradhan is not the licensing authority. Mr. Sen further contended that the appellant no. 2 has miserably failed to discharge his onus that the seized rice was procured for any other purpose and not for sale. Mr. Sen, thus, submits that it is a fit case for dismissal of the instant appeal.

32. For the effective adjudication of the instant appeal paragraph 3(3)(a) of the said order of 1967 is required to

be looked into and the same has been quoted by the learned Trial Court in the impugned judgment and the same is also quoted hereunder in verbatim :

“No dealer other than a Government agent and a rice miller shall sell, purchase for sale, or store for sale, paddy except under and in accordance with a permit granted by the licensing authority and the licensing authority may specify in the permit the maximum quantity of paddy that may be purchased by such dealer during a particular period and the area or areas from which such purchases may be made”.

33. The provision of Section 7 of the said Act of 1955 is also required to be looked into and the same is reproduced hereunder in verbatim:-

*“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:”.*

34. Keeping in mind the aforementioned legislative provision, if I look into the factual aspects of this case it appears to me that by tendering D.W.1, the defence has practically admitted that by virtue of permission given by the local Anchal Pradhan the appellant no.1, Uday Shankar Mondal, (since deceased) purchased the paddy and carried the same from Patashpur, District Medinipur to Village Durgapur under Nandanpur-II gram panchayat.

Before the learned Trial Court no document could be placed on behalf of the defence that the Anchal Pradhan of gram panchayat is the licensing authority either under the said Act of 1955 or under the said order of 1967.

35. As rightly pointed out by Mr. Sen that from the oral evidence of the P.W.s and the exhibited documents from the side of the prosecution, it practically goes unchallenged that on the relevant day and hour 106 bags of paddy weighing 64 quintals and 44.200 kgs. was recovered from the offending truck. Sufficient evidence has been adduced by the prosecution witnesses that the present appellant no.2, Ganesh Sahani was driving the said truck and the appellant no.1, Uday Shankar Mondal, (since deceased) was on the truck.

36. It thus appears to this Court that both the appellants before this Court could not justify their possession with regard to the said huge number of rice bags except by production of Ext.-‘A’, which in considered view of this Court, is neither a valid document nor a valid licence for possessing the said paddy. This Court further considers that since it has been proved that huge quantity of paddy was recovered from the possession of the accused persons, burden lies upon them under Section 106 of the Evidence Act as to why they were carrying the said huge quantity of

paddy as the same was within their special knowledge and it appears to this Court that they have miserably failed to discharge such burden.

37. In view of such, this Court has no hesitation to hold that the learned Trial court is very much justified in holding that both the aforesaid two accused persons are guilty of the offence, as committed by them under Section 7(1)(a)(ii) of the said Act of 1955.

38. This Court, thus, finds no merit at all in the instant appeal and accordingly, the instant appeal is dismissed.

39. In view of such, the bail bond of the appellant No.2, Ganesh Sahani, stands hereby cancelled. Appellant no.2, Ganesh Sahani, is directed to surrender before the learned Trial Court within a month from today to serve the remainder part of his sentence.

40. In case of non-compliance by the appellant no. 2, Ganesh Sahani in surrendering before the learned Trial Court within the stipulated period as fixed by this Court the learned Trial Court is hereby directed to issue non-bailable warrant of arrest against the appellant no.2, Ganesh Sahani, for his apprehension, arrest and detention.

41. It is further directed that the period already undergone by the appellant no. 2 is to be set off from the remainder

part of his sentence, as awarded by the learned Trial Court in his aforementioned judgment.

42. Department is directed to forward a copy of this judgment to the learned Trial Court forthwith along with the Trial Court record.

43. Department is further directed to forward a copy of this judgment to the Member Secretary, Calcutta High Court Legal Services Committee, who, on receipt of the same, shall disburse admissible amount of honorarium to Ms. Jonaki Saha, learned advocate for the appellant No.2, who has been appointed by this Court preferably within a month from the date of communication of this judgment.

44. Department is further directed to forward a copy of this judgment to the learned Legal Remembrancer, Government of West Bengal at Writers' Buildings, Kolkata – 700 001 directly with a request to him to regularize the appointment of Mr. Sen, learned senior Government advocate and Mr. Bose, learned advocate for the State in connection with the instant appeal.

45. With the aforementioned observation CRA 19 of 1991 is disposed of.

46. Urgent photostat certified copy of this order/judgment, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Sen, J.)