

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 115 of 1997

**Sunil Barman
-Vs-
The State of West Bengal**

For the Appellant : Mr. Rajeshwar Chakraborty
(Amicus Curiae)

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

Heard on : 10.05.2024, 10.09.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against an order dated March 18, 1997 passed by the Learned Judge, Special Court, E.C. Act, Cooch Behar in connection with E.C.G.R. Case No.9 of 1995 (State Vs. Sunil Barman) convicting the appellant for committing offence under Section 7(i)(a)(ii) of the Essential Commodities Act for violation of the provisions of Clause 3(1) of West Bengal Rice and Paddy (Licencing and Control) Order, 1967 and also for violation of the provision of Clause 3(2) of the West Bengal Declaration of Stock and Price of Essential Commodities Order, 1977 and sentencing him to suffer simple imprisonment of three months and further sentencing him to pay a

fine of Rs.300/- only, in default, to suffer further simple imprisonment for 30 days.

2. The appellant was placed on trial before the Learned Judge, Special Court, E.C. Act, Cooch Behar, to face a charge under Section 7(i)(a)(ii) of the Essential Commodities Act for contravention of Paragraph 3(2) of West Bengal Declaration for Stocks and Prices of Essential Commodities Order, 1977 and Paragraph 3(1) of West Bengal Rice and Paddy (Licencing and Control) Order, 1967.

3. The Learned Advocate for the appellant submitted as follows:-

- i. The Learned Trial Judge had not considered that out of ten prosecution witnesses, eight witnesses were declared hostile and remaining were interested witnesses and the same witnesses failed to prove the case of prosecution beyond reasonable doubt.
- ii. Recovery and seizure was made from the grocery shop of one Anil Barman who was the brother of the appellant and at the time of alleged inspection as Anil Barman was not present and the appellant was called from his house and his signature was taken on some blank papers.
- iii. There was no cogent evidence that the appellant was engaged in selling rice or sugar of atta or other essential commodities at the time of inspection on July 16, 1995.
- iv. The Learned Trial Judge had not considered that prosecution witness no.6 Watcher Constable 669 Jogen alias Jogendra Ch. Dey, witness no.7 Home Guard 804 Madhab Chandra Saha and

witness no.8 Home Guard 786 Bachha Barman were police personnel but declared hostile.

- v. Only the evidence of PW-10 and PW-9 was considered. Other witnesses were declared hostile.
 - vi. The evidence adduced by PW-10 was contradictory to his own evidence as well as the evidence adduced by PW-9.
 - vii. There was no beam scale at the place of occurrence and as per the statement of the appellant PW-10 S. S. Bose had prepared the weighment chart (Exbt.- 2/4).
4. The Learned Advocate for the State submitted that after reasonable assessment of evidence both oral and documentary, rightly passed the impugned judgment and the appeal shall be dismissed.
 5. The assessment of the oral and documentary evidence adduced by the prosecution revealed that that the appellant used to operate the grocery shop of his brother, Anil Barman without a valid licence, issued in his favour, dealing in rice. The stock register, rate board could not be produced.
 6. The seizure list marked Exbt. 1/4, Exbt. 2/4, Exbt. 2/3, Exbt. 1/3 proved the seizure of the commodities and there subsequent weighment.
 7. The Learned Trial Court on consideration of oral and documentary evidence rightly convicted the appellant.
 8. In the decision of ***Tarak Nath Keshari Vs. State of West Bengal***¹, the Hon'ble Apex Court held as follows:-

¹2023 SCC OnLine SC 605

“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 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.”

9. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1995. 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 30 years.
10. 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.
11. Accordingly, the instant Criminal Appeal being CRA 115 of 1997 stands disposed of.
12. I record my appreciation for the able assistance rendered by Mr. Rajeshwar Chakraborty, Learned Advocate representing the appellant, in disposing of the instant appeal.
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.)