

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 142 of 1998

Anil Kumar Mondal

-Vs-

The State of West Bengal

For the Appellant : Ms. Pallavi Priyadarshee
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 21.05.2024, 01.10.2024

Judgment on : 21.04.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment dated 09.03.1998 passed by the Learned Judge, Special Court, under the Essential Commodities Act, Murshidabad in E.C. Case No.40 of 1991 (corresponding T.R. No.32 of 1993) thereby convicting the appellant for the offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act and for violation of paragraph 3(1)(b) of West Bengal Rice and Paddy Licensing Control Order, 1967 and para 3(2) of West Bengal Declaration Stocks and Prices of Essential Commodity Order, 1977 and sentenced him to suffer simple imprisonment

in 3 months and to pay fine of Rs.1000/- in default to suffer simple imprisonment for 1 month more.

2. The prosecution case precisely stated on 12.04.91 the complainant i.e., PW-3 along with others were conducting raid at the grocery shop of the appellant. During raid the shop owner Anil Kumar Mondal i.e., the appellant was carrying on his business. On demand the appellant failed to produce any rice license, fertilizer license, stock cum rate board, books of accounts, cash memo for carrying business in respect of fertilizers and other essential commodities exposed for sale in his shop. He also failed to produce any trade license for running the grocery shop. Thereafter the complainant seized the articles under a seizure list and took weighment of the articles in presence of witnesses and prepared one seizure list at the spot in presence of witnesses. He gave jimma of the seized articles to the appellant after obtaining a proper jummanama. Thereafter, the appellant on the plea of bringing trade license entered into his house and fled away. Then, the complainant came to P.S. and lodged a written complaint before the O.C., Hariharpara P.S. which prompted the concerned case was started.
3. After completion of investigation, the Police submitted charge- sheet against the appellant to whom he pleaded not guilty and claimed to be tried.
4. In order to prove its case, the prosecution examined as many as 3 witnesses and exhibited certain documents.

5. The Learned Amicus Curiae representing the appellant submitted that:-

- i. The impugned order of conviction and sentenced recorded by the Learned Judge, Special Court (under the Essential Commodities Act), Murshidabad against the appellant was passed without proper appreciation of the evidence and other materials on record which has prejudiced the appellants.
- ii. The Learned Judge, Special Court (under the Essential Commodities Act), Murshidabad at the time of passing the impugned order of conviction and sentenced against the appellant also directed that 'the seized grocery articles be confiscated to state'. That was for beyond the jurisdiction conferred upon the Learned Judge under the Essential Commodities Act and did not conform to law. The power of ordering confiscation of seized articles was vested only upon the collector under Section 6A of the Essential Commodities Act, as such the impugned order of confiscation was bad in law.

7. Considered the rival submissions of the Learned Amicus Curiae as well as Learned Advocate for the State.

8. The order dated 09.03.98 passed by the Learned Judge, Special Court, under the Essential Commodities Act, Murshidabad in E.C. Case No.40 of 1991, inter alia stated as follows:-

"After a careful scrutiny of the record I find that the factum of seizure has been proved by the evidence of PW-1 and PW-3. The accused also admitted the presence of enforcement officer and the preparation of

seizure list sitting by the side of his shop. Therefore, the seizure of the articles and the non-availability of the rate board books of accounts and cash book have been proved by cogent evidence and also for the evidence of accused. There is no reason to disbelieve or discard that evidence.

Now u/s 14 of E.C. Act where a person is prosecuted for contravening any order made u/s 3 which prohibits him from doing any act or being in possession, the burden of proving he has such ant unity - - shall be on him. This burden is heavy on the accused and it can be discharged either by examine witness or by eliciting examination. In this case the accused has been examined as DW-1. But unfortunately accused in his examination supported the case of prosecution. It is the positive case of the defence that the shop was closed as it was Friday. Accused in his cross-examination by the prosecution lawyer deposed that he had no document to show that the Friday is declared as statutory holiday in his area. If any area is declared holiday under the West Bengal Shop and Establishment Act every shop holder's bound to fill up Form-B and display the same at a conspicuously place of the shop. The accused failed to discharge his onus by showing that the shop was closed on Friday by producing a copy of Form-B under the West Bengal Shop and Establishment Act. Therefore, the accused has failed to discharge his onus. There is clear admission of the accused

that the board was not hanging and he is not in a position to produce books of accounts and cash book.”

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.*

¹2023 SCC OnLine SC 605

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.”*

10. The Trial Court after reasonable assessment of the evidence both oral and documentary rightly passed the impugned judgment.
11. In view of the observations as cited above, the appellant can be released on probation since the incident related to the year 1991. 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 34 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.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.

13. I appreciate the able assistance rendered by Learned Advocate Ms. Pallavi Priyadarshee 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.)