

CRA 79 of 1992

**Abed Ali Gazi
Vs.
The State of West Bengal**

Mr. Debasish Roy, Ld. P.P.
Ms. Manasi Roy

Mr. Masooq Rahman

... ... for the State

... ... Amicus Curiae

1. The instant matter is of the year 1992. Instant appeal has been preferred challenging judgment and order dated February 29, 1992 by the learned Special Court, North 24-Parganas at Barasat in Special Case No.198 of 1990 thereby convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for violation of para 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and sentencing the appellant to suffer rigorous imprisonment for four months and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment for one month more.
2. The learned counsel for the appellant Mr. Masooq Rahman, the learned amicus curiae has categorically stated that though no Sugar has been seized specifically from the possession of the appellant on the relevant date and time, the appellant was convicted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and he was sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs.500/- in default to suffer

rigorous imprisonment for one month more. The learned counsel has further submitted that the appellant could have been released on probation after suspending his sentence but that was also not done by the learned Trial Judge.

3. The learned counsel for the State has opposed the prayer for acquittal of the appellant. According to him there was sufficient materials showing that the appellant did not display the stock-cum-rate board in his shop at the relevant time. It is also contended that the judgment passed by the learned Trial Judge has dealt with several aspects of the matter. Accordingly, he prays for dismissal of the present appeal.
4. I have considered the materials on record. It appears from the observation of the learned Trial Judge that on the relevant date several shops were raided by the police officers and according to the learned Trial Judge, whose observation is, "but in this case no sugar was seized at all it might be that the enforcement police officers were raised another shop wherefrom huge quantities of sugar were seized. There is no case reference about any seizure of sugar on that date." It appears that the learned Trial Judge has committed a gross error by relying upon the document of the defence at the time of his examination under Section 313 Cr.P.C.. The learned Trial Judge has recorded that the fact of raid, search and seizure has been admitted by defence. It is further

observed that at the time of his examination under Section 313 Cr.P.C., the accused claimed back the seizure articles as he was their owner. It is needless to mention that the conviction cannot be based on the statement of the accused under Section 313 Cr.P.C. When there is no seizure list showing that sugar was seized from the shop of the appellant, it is not proper to rely upon the statement of the accused under Section 313 Cr.P.C. It is true that no stock-cum-rate board was displayed in the shop of the accused person but in that case the learned Trial Judge could have released the appellant on probation. Unfortunately no specific reason was given by the learned Trial Judge as to why the appellant was not released on probation. However, after going through the entire materials on record I find that this appeal is pending since 1992 and further there are several incurable defects in the relevant judgment. Considering the entire facts and circumstances I find that the prosecution has not been able to prove the charge against the accused beyond all sorts of reasonable doubt. The appellant is acquitted from the charge of the case.

5. Learned Special Court, North 24-Parganas at Barasat in Special Case No.198 of 1990 dated 29th February, 1992 is hereby set aside.
6. Accordingly, the instant criminal appeal being CRA 79 of 1992 is allowed.

7. The Secretary, High Court Legal Services Committee, Calcutta is requested to regularize the appointment of Mr. Masooq Rahman, learned Amicus Curiae, in accordance with rules.
8. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Apurba Sinha Ray, J.)