

CRA 115 of 1988

In the matter of : Swapan Kumar Sadhukhan

Mr. Soham Banerjee, Appellant.
Ms. Faria Hossain ... For the amicus curiae.
Ms. B. Basu, ... for the State.

1. The instant case was initiated under Sections 7(1)(a)(ii) (Act 10) of Essential Commodities Act, 1955 for violation of provisions of para 3(2) of West Bengal Declaration of Stocks and Prices of Essential Commodities order 1977 convicting the appellant Swapan Kumar Sadhukhan, who was the owner of a fertilizer shop for keeping excess amount of fertilizer to his shop. After raiding, one S.I. of D.E.B, Hooghly lodged a complaint on 12.03.1986. After due enquiry and investigation the accused was charged for violation of provisions of para 3(2) of West Bengal Declaration of Stock and Prices of Essential Commodities order dated 1977. After holding a summary trial, the learned Judge, Special Court (EC Act), Hooghly found the accused guilty by a judgment and order dated 23.02.1988 under Sections 7(1)(a)(iii) of E.C. Act, 1955 as amended up to date and the accused was convicted and sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs. 1000/- in default to suffer further rigorous imprisonment for 15 days.

2. Challenging that order, an appeal was filed and the same was admitted on 28th March, 1988 on the grounds that there are

several discrepancies in the deposition of PWs including the PW 8 who was the Investigating Officer.

3. Although learned Advocate appearing as amicus curiae submits that the appellant is at present aged about 70 years and he further submits that there are several discrepancies in the deposition of prosecution witnesses including the deposition of the Investigating Officer being the PW 8. He has also drawn the attention of this court to the deposition of the said witnesses and has tried to impress upon the court that although the prosecution case was that there was an excess of fertilizer in the relevant shop room, there was no weighing articles seized during investigation. In fact, there is no mention how the excess amount of fertilizers was weighed by the concerned Investigating Officer as well as raiding party.

4. Learned State Advocate submits that there is sufficient incriminating evidence against the present appellant and the learned Trial Judge has rightly convicted the appellant. However, in her usual fairness she submits that the instant appeal was started in the year 1988 and thereafter almost 37 years has passed by and accordingly she has left the matter to the discretion of the court.

5. I have found that there are certain discrepancies in the evidence, particularly, the fact that no weighing/measurement chart was prepared at the time of raiding the said shop. Moreover, no weighment article was shown to be used at the time of weighing the alleged excess weight of fertilizer. The learned trial Judge did not consider this aspect properly. The prosecution case was not

proved beyond doubt and hence, I am inclined to allow this appeal acquitting the convict from the charge of the case.

6. The appeal is, accordingly, allowed.

7. Hence, the appellant Swapan Kumar Sadhukhan is acquitted from the charge under Sections 7(1)(a)(ii) of (Act 10) Essential Commodities Act, 1955 for contravention of para 3(2) of West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977.

8. The TCR be sent down to the concerned trial court along with a copy of the judgment.

9. Urgent certified copy of this judgment and order be supplied, if applied for, upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.)