

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction

Present :
The Hon'ble Justice Prasenjit Biswas

C.R.A. 177 of 1994

Swapan Kumar Panja
Vs.
The State of West Bengal

For the Appellant : Mr. Chittapriya Ghosh
Mr. Sabyasachi Roy Chowdhury

For the State : Mr. Debasish Roy, Ld. PP
Ms. Faria Hossain, Ld. APP

Heard on : 15.01.2026

Judgment on : 15.01.2026

(Dictated in Court)

Prasenjit Biswas, J.

1. The impugned judgment and order of conviction dated 15.06.1994 passed by the learned Judge, Special Court (E.C. Act) Burdwan in connection with T.R. Case No. 53 of 1991 is assailed in this appeal.

2. By passing the impugned judgment, the present appellant was found guilty for violation of provisions of paragraph 4 and 35 of the Fertilizer (Control) Order, 1985 and was convicted under Section 7(1)(a)(ii) of the E.C. Act (Act X/55) and was sentenced to suffer rigorous imprisonment for six months along with a fine of Rs. 2,000/-, and in default of payment of fine to suffer further rigorous imprisonment for two months.

3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred at the behest of the appellant.

4. In short compass, the prosecution case, as unfolded from the record, is delineated hereunder:—

"S.I. B. Chakraborty, D.E.O., Katwa, submitted a written complaint on 19.08.1991 alleging, inter alia, that acting upon secret information, he, along with police personnel, conducted a raid at the shop of the accused at about 9:30 a.m., under the supervision of the D.E.B. Inspector, Katwa. Upon arrival at the shop and godown of the accused, it was allegedly found that the accused was engaged in the business of fertilizers and that a huge quantity of fertilizers of different brands was stored and exposed for sale. It was further alleged that a notice was

served upon the shopkeeper and, in the presence of local witnesses; physical verification of the stock was carried out. During such verification, it was noticed that no rate and stock board was displayed either at the shop or at the godown of the accused. On actual counting of the stock, certain discrepancies and anomalies were allegedly detected. In particular, no stock of "Lalan Super Phosphate" was shown in the stock register produced at the time of inspection, and the accused allegedly failed to furnish any satisfactory explanation for the said discrepancy in the fertilizer stock. On the basis of the aforesaid allegations, it was claimed that the accused had violated paragraphs 3 and 5 of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977, as well as paragraphs 3, 4, 5 and 21 of the Fertilizer (Control) Order, 1956, thereby rendering himself liable to be prosecuted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Accordingly, a written complaint was lodged before the concerned police station, and the case was registered and taken up for investigation".

5. After completion of investigation charge sheet was submitted against the accused for violation of paragraphs 3 and 5 of the West

Bengal West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and paragraphs 4 and 5 of the Fertilizer (Control) Order, 1985.

6. The accused was examined under Section 251 of Cr.P.C and the substance of accusation was read over and explained to him as the accused allegedly violated the provisions of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and paragraphs 4 and 5 of the Fertilizer (Control) Order, 1985 and was liable for conviction under Section 7(1)(a)(ii) of the E.C. Act (Act X/55).

7. The accused pleaded not guilty and claimed to be tried.

8. In this case five witnesses were examined by the side of the prosecution and four witnesses including the accused himself were examined on behalf of the defence. Documents were marked exhibits on behalf of both the sides.

9. Mr. Chittapriya Ghosh, learned advocate appearing on behalf of the appellant, has strenuously contended that the impugned judgment and order of conviction cannot be sustained in the eye of law, inasmuch as the prosecution case is riddled with material contradictions and omissions in the testimonies of its witnesses, which go to the very root of the case.

10. It is submitted by the learned advocate that the learned Trial Court failed to properly consider and appreciate the evidences of

P.W. 1 and P.W. 2, who were cited by the prosecution as independent witnesses to the seizure. According to the appellant, these witnesses were crucial to establish the legality and authenticity of the alleged seizure, yet their evidences do not inspire confidence. The learned advocate has assailed that both P.W. 1 and P.W. 2, in their examination-in-chief, stated that the police officials informed them about an alleged discrepancy of 47 bags of urea, on the basis of which the police seized the stock of urea along with the books of accounts, as reflected in the seizure list. However, during cross-examination, both these witnesses categorically admitted that they did not go through the seizure list and that the contents thereof were not read over or explained to them.

11. On the strength of these admissions, the learned advocate submits that the evidences of P.W. 1 and P.W. 2 clearly demonstrate that they had no personal knowledge or independent verification regarding the alleged discrepancy or the seizure of the articles. Their testimonies reveal that they merely acted upon what was stated by the police officials and did not themselves verify either the alleged shortage of stock or the contents of the seizure list. In such circumstances, it is contended that the credibility of the seizure is seriously undermined, rendering the very factum of seizure doubtful and unreliable.

12. The learned advocate has further drawn the attention of this Court to the deposition of P.W. 3, the District Enforcement Officer (D.E.O.), Katwa, who stated that he had issued a written requisition upon the accused to produce all the books of accounts relating to his business, and that the accused complied with such requisition by producing the said books, which were examined by him. According to the learned advocate, this part of the testimony materially weakens the prosecution case, as it indicates that the accused did not withhold any document during inspection. It is further pointed out that P.W. 3 went on to depose that he did not find any stock display board in the shop of the accused at the time of inspection. This assertion, as contended by the learned advocate, is in direct contradiction to the statement of P.W. 1, the independent seizure witness, who categorically stated that a stock display board was displayed outside the shop of the accused. The learned advocate submits that such inconsistency on a material aspect of statutory compliance casts a serious doubt on the veracity and reliability of the prosecution evidence.

13. The learned advocate has also highlighted that, during cross-examination, P.W. 3 admitted that he did not ask the accused to produce the earlier stock register for verification. This omission, according to the defence, assumes considerable significance, as the failure to verify the previous stock position weakens the very

basis on which the alleged discrepancies were calculated and determined. It is the further submission of the learned advocate that the prosecution evidence suffers from contradictions and inconsistencies regarding the alleged discrepancies in the stock of fertilizers found at the shop of the accused. These inconsistencies, when viewed cumulatively, render the prosecution case doubtful and unreliable. It is contended that the learned Trial Judge failed to properly appreciate these material discrepancies and contradictions in the prosecution evidence, thereby arriving at a finding which is not supported by the evidence on record.

14. In view of the aforesaid submissions, the learned advocate prays that this Court may be pleased to hold that the impugned judgment and order of conviction are unsustainable in law, and accordingly, to set aside the same and allow the present appeal, granting appropriate relief to the appellant.

15. Mrs. Faria Hossain Learned Advocate appearing on behalf of the State has refuted the submissions advanced on behalf of the appellant and contended that the impugned judgment and order of conviction suffer from no infirmity warranting interference by this Court. It is submitted that the alleged contradictions and omissions pointed out by the defence are minor in nature, do not go to the root of the prosecution case, and are wholly insufficient to discredit the otherwise consistent and cogent evidence on record.

16. With regard to the evidence of P.W. 1 and P.W. 2, who were cited as independent seizure witnesses, the learned State counsel submits that their presence at the time of inspection and seizure stands clearly established. Both witnesses have consistently stated that the police inspected the shop of the accused, examined the stock and books of accounts, and informed them about the discrepancy detected therein. Merely because they did not personally verify the contents of the seizure list or because the seizure list was not read over to them, their evidences cannot be discarded in its entirety. It is well settled that seizure witnesses are not expected to conduct an independent audit or verification of stock, and their role is limited to witnessing the process of seizure.

17. The learned State counsel further submits that the admissions of P.W. 1 and P.W. 2 that they relied upon the statements of the police officials does not render the seizure illegal or doubtful, particularly when the seizure has been proved through the testimony of official witnesses, whose evidence carries a presumption of regularity unless malafides or procedural violations are specifically established. No such allegation has been substantiated in the present case. So far as the alleged contradiction between P.W. 1 and P.W. 3 regarding the existence of a stock display board is concerned, the learned State counsel submits that this aspect is peripheral and does not have any direct

bearing on the core allegation relating to discrepancy in stock and non-production of statutory records. Minor inconsistencies on such collateral issues are natural and do not undermine the substratum of the prosecution case.

18. The learned State counsel has also addressed the submission that P.W. 3 did not ask for production of earlier stock registers. It is submitted that the prosecution case does not rest upon verification of earlier stock but upon the discrepancy detected during physical verification on the date of inspection and the failure of the accused to produce proper and complete stock records at that time. Therefore, the omission pointed out by the defence does not materially affect the prosecution case.

19. It is further contended that the learned Trial Court has carefully evaluated all these aspects, including the defence contentions, and has recorded detailed reasons for accepting the prosecution evidence. The findings are based on a proper appreciation of oral and documentary evidence and do not suffer from perversity, illegality, or mis-appreciation of evidence.

20. In such circumstances, the learned State counsel submits that the appeal is devoid of merit and prays for dismissal of the appeal and affirmation of the impugned judgment and order of conviction.

21. The germane of the allegations against the accused centers around the detection of a discrepancy between the actual physical stock of fertilizer found at the premises during inspection and the entries reflected in the stock register produced at that time. The prosecution case is not founded merely on a numerical mismatch, but on the more fundamental allegation that the stock register seized by the police did not contain any entry whatsoever relating to "Lalan Super Phosphate Fertilizer", despite the physical presence of such fertilizer at the business premises of the accused.

22. The prosecution witnesses have consistently and categorically deposed that the stock register produced and seized during inspection made no reference at all to Lalan Super Phosphate fertilizer. According to them, this omission was not accidental or clerical in nature but constituted a clear violation of the statutory requirement mandating proper maintenance and production of stock and sale records for all fertilizers dealt with by a licensed dealer. The absence of entries relating to Lalan Super Phosphate fertilizer, therefore, formed the very foundation of the prosecution case.

23. In an attempt to rebut this allegation, the accused examined himself as D.W. 4. During his deposition, he made a significant admission that in the original stock register there was sufficient space available for recording entries relating to Lalan Super

Phosphate fertilizer. This admission effectively negates any suggestion that the omission occurred due to lack of space or any practical difficulty in maintaining a consolidated register. The defence sought to explain the absence of such entries by asserting that, on the direction of the Sub-Divisional Agricultural Officer, Katwa, the accused had allegedly opened a separate khata exclusively for stocking and selling Lalan Super Phosphate fertilizer.

24. However, this explanation does not inspire confidence when tested against the surrounding circumstances and the evidentiary materials on record. If, in fact, such a separate khata had been regularly maintained in compliance with official directions, there was no plausible reason for the accused not to produce the same before the Inspecting Authority or the police at the time of inspection. The contemporaneous production of such a register would have provided immediate clarification and could have decisively rebutted the allegation of discrepancy.

25. Significantly, the alleged separate khata, marked as Exhibit B/1, was neither produced at the time of inspection nor seized during the course of investigation. It surfaced only at a much later stage during the defence evidence. The learned Trial Court, upon careful scrutiny of Exhibit B/1, recorded a specific and reasoned observation in the impugned judgment that the document

contained over-writing and insertion of dates, giving rise to a reasonable suspicion regarding possible manipulation. Such an observation cannot be characterized as perverse or unfounded, particularly in view of the fact that the document was not a contemporaneous record placed before the authorities at the relevant time but was introduced only after the prosecution evidence had concluded.

26. In these circumstances, it stands clearly established that on the date of inspection and raid by the police officer, there was no stock and sale register available or produced by the accused in respect of Lalan Super Phosphate fertilizer. Even if the defence version is accepted at face value, it leads to the inescapable conclusion that the statutory record relating to Lalan Super Phosphate fertilizer was not available for verification at the material time.

27. The statutory obligation imposed upon a licensed fertilizer dealer is not confined merely to the abstract maintenance of records, but extends to the ready availability and production of such records for inspection by the competent authority. Failure to produce the relevant stock register at the time of inspection strikes at the very root of the regulatory framework and materially weakens the defence. Conversely, it lends substantial credence to the prosecution allegation that the discrepancy detected between

the physical stock and the recorded entries was real, material, and in violation of the governing statutory provisions.

28. The learned Trial Court, in the impugned judgment, has meticulously taken into account all the relevant aspects of the case, including the oral and documentary evidence adduced by the prosecution as well as the defence, the admissions made by D.W. 4, and the suspicious nature of the khata belatedly produced and marked as an exhibit. Upon a holistic appreciation of the entire evidentiary material, the learned Trial Court has arrived at a conclusion which is both plausible and well-reasoned, and does not suffer from any infirmity warranting appellate interference.

29. It is evident from the record that P.W. 1 and P.W. 2, who were projected as independent seizure witnesses, have consistently stated in their depositions that the police inspected the appellant's business premises, examined the stock and books of accounts, and found a discrepancy between the physical stock and the entries reflected in the stock register. Their evidences lend corroboration to the prosecution case regarding the manner in which the inspection was conducted and the deficiencies noticed in the maintenance and production of statutory records. The learned Trial Court has considered their testimonies in the proper perspective and found no material contradiction or infirmity so as to discard the same.

30. The learned Trial Court has further taken note of the fact that the defence explanation primarily rested on the testimony of D.W. 4, the accused himself, who made crucial admissions regarding the availability of sufficient space in the original stock register for recording entries of Lalan Super Phosphate fertilizer. The Court has rightly observed that the explanation put forth by D.W. 4, namely, that a separate khata was allegedly opened on the direction of the Sub-Divisional Agricultural Officer, was not supported by any contemporaneous material and was rendered doubtful by the non-production of such khata at the time of inspection.

31. Significantly, the learned Trial Court subjected the belatedly produced khata to careful scrutiny and recorded a reasoned finding that the document bore signs of over-writing and insertion of dates, giving rise to a reasonable suspicion regarding its authenticity. The Trial Court has not rejected the defence case on conjecture or surmise, but on the basis of objective assessment of the document itself and the circumstances under which it was brought on record. Such an appreciation of evidence squarely falls within the domain of the Trial Court and cannot be lightly interfered with in appeal.

32. So far as the merits of the appellant's case are concerned, this Court does not find that any ground has been made out for

interference with the findings of fact recorded by the learned Trial Court. The conclusions drawn are supported by evidence on record and are arrived at after due consideration of all relevant materials. The view taken by the learned Trial Court is a reasonable and possible view, and it cannot be said that the findings suffer from manifest illegality, perversity, or mis-appreciation of evidence.

33. It is well settled that where two views are possible on the evidence, the appellate court ought not to substitute its own view merely because another view may also be possible, unless the view taken by the Trial Court is shown to be wholly unreasonable or perverse. In the present case, no such infirmity has been demonstrated.

34. In the aforesaid circumstances, this Court finds no merit in the contention that the impugned judgment calls for interference. The findings recorded by the learned Trial Court are supported by cogent reasons and credible evidence, and therefore do not warrant any appellate intervention.

35. At the stage of conclusion of the hearing, the learned Advocate appearing for the appellant submitted that the appellant is an aged person and that the occurrence in question dates back to the year 1991, thereby making the prosecution more than three decades old. It was contended that the prolonged passage of time

itself is a relevant mitigating circumstance which deserves due consideration by this Court.

36. It was further urged that the appellant has no criminal antecedents whatsoever and has never been involved in any criminal activity either prior to or subsequent to the present case. According to the learned Advocate, the appellant has led a law-abiding life throughout, and the present case remains an isolated instance, which weighs in favour of extending leniency.

37. In support of the aforesaid submissions, the learned Advocate for the appellant placed reliance upon the decision of the Hon'ble Supreme Court in **Tarak Nath Keshari vs. State of West Bengal**, reported in **2023 SCC OnLine SC 605**, wherein the Apex Court took into account factors such as the age of the accused, absence of criminal antecedents, and the long lapse of time since the occurrence while considering the question of sentence. Reliance was also placed on the decision of this Court in **Majed Ali vs. State of West Bengal**, reported in **2025 SCC OnLine Cal 5221**, wherein similar mitigating circumstances, including the clean antecedents of the accused and the delay of several years since the incident, were held to be relevant considerations for granting appropriate relief.

38. Additionally, the learned Advocate for the appellant relied upon the judgment of the Hon'ble Supreme Court in **Dhurukumar**

& Anr. vs. State of Maharashtra, reported in **(2017) 9 SCC 411**, to contend that in cases where the accused has no prior criminal history and the incident is of considerable antiquity, a compassionate and reformatory approach is warranted while dealing with the matter.

39. It is profitable to quote the observation of the Hon'ble Apex Court in the case of **Tarak Nath Keshari** wherein Hon'ble Apex Court held as follows:

"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. Criminal Appeal No. 1444 of 2023 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 sub-section (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 sub-section (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 & Ors."

40. On the cumulative consideration of the aforesaid grounds and upon placing reliance on the decisions referred to hereinabove, it was prayed on behalf of the appellant that he be dealt with leniency and be extended the benefit of probation in respect of the substantive sentence.

41. I have given due consideration to the submissions advanced by the learned Advocate for the appellant as well as to the materials and documents available on record. I have also carefully gone through the decisions cited on behalf of the appellant. While considering the question of sentence, it is well settled that the Court is required to strike a judicious balance between the nature of the offence and the circumstances of the offender. Sentencing is not to be guided by rigidity alone; it must also reflect a reformatory approach wherever the facts and circumstances of the case so permit.

42. In the present case, it is not in dispute that the appellant has no criminal antecedents. The record further reveals that the appellant remained on bail throughout the trial as well as after its conclusion, and there is no material to indicate that he misused the liberty granted to him or conducted himself in a manner unbecoming of a law-abiding citizen. On the contrary, his conduct during the entire period of trial and thereafter has remained satisfactory.

43. This Court has also taken note of the social background of the appellant, the considerable lapse of time since the occurrence, and the fact that the incident took place more than three decades ago. The prolonged pendency of the proceedings has, by itself, subjected the appellant to considerable mental stress and anxiety. Further, although the offence cannot be treated lightly, its gravity and impact, when viewed in the backdrop of the attendant circumstances, do not appear to be such as would render the appellant unfit for being considered for the benefit of probation.

44. Taking into account the age of the appellant, the absence of any criminal antecedents, his conduct during the trial, the long passage of time since the commission of the offence, and the overall facts and circumstances of the case, I am of the considered opinion that the ends of justice would be met by extending the benefit of probation to the appellant. Accordingly, the appellant is

entitled to be released on probation, subject to such terms and conditions as may be deemed fit and proper.

45. 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/- (Rupees Five Thousand) with two sureties to the satisfaction of the learned Additional Chief Judicial Magistrate, Katwa. He has to ensure that he will maintain peace and good behaviour for the remaining part of his sentence and shall not repeat the offence. Should he fail to maintain the peace or not be of good behavior or repeat the offence, he shall serve out the sentence imposed by the learned Trial Court.

46. The appellant is released from his bail bonds.

47. Hence, the appeal is allowed in part upholding the conviction and sentence awarded to the appellant.

48. Accordingly, the Criminal Appeal being **CRA 177 of 1994** stands **disposed of**.

49. Copy of this judgment also be remitted to the learned Trial Court for information and compliance along with its records.

50. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)