

[NON-REPORTABLE]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No.1444 of 2023
(Arising out of SLP (Crl) D No. 28476 of 2018)**

Tarak Nath Keshari

...Appellant

Versus

State of West Bengal

...Respondent

J U D G M E N T

Rajesh Bindal, J.

Delay condoned. Leave granted.

1. The present appeal has been filed challenging the judgment of the High Court at Calcutta passed in CRA No. 327 of 1986 dated 4.7.2017. Vide aforesaid judgment, the judgment of the Trial Court dated 29.7.1986 was upheld.

2. The appellant was tried and convicted under Section 7(1) (a)(ii) of the Essential Commodities Act, 1955 (hereinafter referred to as "the EC Act") for violation of para 3(1) of the West Bengal Pulses, Edible Oil (Dealers Licensing) Order, 1978. It was on account of the fact that at the time of inspection of his grocery shop on 20.8.1985,

mustard oil and vegetable oil were found to be more than the permissible limit.

3. The Trial Court sentenced the appellant to undergo rigorous imprisonment for a period of six months and imposed a fine of Rs.500/-. The sale proceeds of the seized oil were forfeited to the State. In appeal, the High Court upheld the conviction, however, reduced the sentence from rigorous imprisonment of six months to rigorous imprisonment of three months. However, the fine was upheld. Notice in the appeal was issued on 7.9.2018 restricted to the question of imposition of fine in lieu of or in addition to sentence.

4. The short argument raised by the learned counsel for the appellant is that it is a case where the incident had taken place way back in the year 1985 when the inspection of the grocery shop of the appellant was carried out. More than 37 years have gone by. Though the trial was concluded in less than a year, however, thereafter the matter remained pending in the High Court for a period of more than 31 years. The appellant was on bail throughout. Considering the aforesaid fact, the sentence of imprisonment awarded to him may be set aside and in case this Court finds appropriate, in lieu of sentence, fine may be imposed.

5. On the other hand, learned counsel for the State submitted that no doubt the incident had taken place more than 37 years back, however, still two courts have found that the offence against the appellant was made out. Under Section 7(1)(a)(ii) of the EC Act, minimum punishment of three months has been provided. However, Ms. Madhumita Bhattacharjee, learned counsel for the State, did not dispute the fact that the proviso of the aforesaid provision clearly stipulates that the sentence less than the minimum prescribed can be awarded for 'special' and 'adequate' reasons to be recorded.

6. 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;”

7. 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.

8. 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.

9. 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 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."*

10. 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***¹.

11. The appeal is accordingly disposed of. The appellant is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond and two sureties each to ensure that he will maintain peace and good behaviour for the remaining part of his sentence, failing which he can be called upon to serve the sentence.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
May 10, 2023

// NR, SS //

1 (2021) 2 SCC 763