

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 78 of 1988

Parameswar Shaw & Anr.

-Vs-

The State of West Bengal

For the Appellants : Mr. Ayan Bhattacharyya (Ld. Amicus Curiae)
Ms. Suveni Banerjee

For the State : Mr. Sudip Kumar
Mr. Santanu Talukdar

Judgment on : 24.02.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 09.02.1988 passed by the Learned Judge, Special Court (Essential Commodities Act), Howrah in Special Court Trial No.160 of 1985, convicting the appellants under Section 7(1)(a)(ii) of the Essential Commodities Act and sentencing them to suffer simple imprisonment for 3 months each and to pay a fine of Rs.1000/- in default to suffer further simple imprisonment for 1 month each.
2. The prosecution case precisely stated on 21.11.1985 at about 15:00 to 15:30 hours, the officials of the Intelligence Branch, West Bengal raided the iron

shop of M/s. Parameswar Shaw & Sons at 121, I.R. Belilious Lane, Howrah, whereby one Indane Cooking Gas Cylinder weighing 30 kgs., fitted with rubber tube and gas cutter was found kept stored in the said premises. On demand, the appellant no.2 could not produce any Govt. authority or valid consumer registration number for acquisition and possession of cooking gas cylinder for industrial purpose. The said gas cylinder fitted with rubber tube and gas cutter with some cart challans was seized and the appellant no.2 was arrested. Hence, the case was instituted for violation of paragraph 8(2) & (4) of the West Bengal Cooking Gas Cylinder (Licensing & Control) Order, 1985.

3. The prosecution cited 7 witnesses and exhibited certain documents.

4. Learned Advocate for the appellant submitted as follows:-

- i. The primary requirement to constitute an offence for violation of paragraph 8(2) & (4) of the West Bengal Cooking Gas Cylinder (Licensing & Control) Order, 1985 had been totally *non est*.
- ii. The prosecution failed to prove the contents of the Cylinder alleged to have been seized along with its usage.
- iii. The defence case denied seizure of cylinder and the offenders pleaded not guilty of the offence.

5. Considered the submissions of the Learned Advocate for both the parties.

6. A circumspection of evidence of PW-1 revealed that PW-1 was an expert and Exhibit-1 was his report. He had stated in his evidence that he inspected the gas cylinder No.1377667 and found the said gas cylinder of Indane (IOC). It appeared from his report (Exhibit-1) that the said gas cylinder had

approximate weight of 30 kgs. and the same was in sound condition. PW-1 stated in his cross-examination that with specific equipments and necessary arrangements gas could be filled inside the cylinder. He had also stated it was not possible for him to take gas from his cylinder for sampling purpose and he did not examine the contents of the cylinder chemically. The evidence of PW-1 did not indicate there was anything other than liquefied petroleum gas inside the seized cylinder.

7. In view of the evidence of PW-1 and his report (Exhibit-1), the seized cylinder was Indane Gas cylinder which was in sound condition. It could not be presumed that the seized cylinder contained cooking gas. Nothing was in evidence on record to support the defence argument that the seized cylinder contained any other gas (Exhibit-6) was the seizure list where the accused Monoj Kumar Shaw also signed (Exhibit-6/1). Exhibit-3 was the weighment certificate with net weight 30 kgs. It could not be said that the seized cylinder was an empty cylinder. Exhibit-2 was the cart challan from where it appeared that M/s. Parameswar Shaw & Sons dealt in iron and steel cutting and other related materials. It was not the defence case that the accused persons were the consumers within the meaning of the said order, 1985 or that the accused persons kept the cooking gas cylinder in the shop for any other purpose. The circumstances and place of seizure of the L.P.G. (Indane) cylinder fitted with rubber tube and gas cutter (Mat Exbt.-1 in the shop strongly support the prosecution case that the seized cooking gas cylinder was kept in the shop for industrial purpose.

8. The Learned Trial Court in the impugned judgment, *inter alia*, observed as follows:-

“.....

I, therefore, find that the accused persons are guilty of the offence U/Sec. 7(1)(a)(ii) of the E.C. Act. Regarding the sentence Sec. 7(1)(a)(ii) of the E.C. Act provides for minimum sentence of imprisonment for three months and also fine. In view of the facts and circumstances of the case, I propose the sentence the accused persons with imprisonment for three months (minimum statutory imprisonment) and a fine of Rs.1,000/- (one thousand) each. But I propose not to impose any separate sentence upon the acdd firm since the two other accused persons are sentenced.

Hence,

ORDERED

That the accused persons are found guilty of the offence U/Sec. 7(1)(a)(ii) of the E.C. Act and that the accused Parameswar Shaw alias Jaiswal and accused Monoj Kr. Shaw alias Jaiswal be convicted and sentenced thereunder to suffer S.I. for three months each and also to pay a fine of Rs.1000/- each, in default, to suffer S.I. for a further period of one month each. The seized articles be forfeited to the State. The period of detention in custody, if any, during investigation, of the accused persons be set off.”

9. The Learned Trial Court, after reasonable assessment of evidence both oral and documentary, rightly passed the impugned judgment.

10. 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

¹2023 SCC OnLine SC 605

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.

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.”

11. In view of the observations as cited above, the appellants can be released on probation since the incident related to the year 1985. The appellants to be taken into custody to serve out the sentence would not be expedient in the interest of justice after a lapse of nearly 41 years.
12. The appellants are directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958 on entering into bond of Rs.20,000/- each with two sureties to ensure that they will maintain peace and good behaviour for the remaining part of their sentence, failing of which they can be called upon to serve the sentence. Fine to be paid of Rs.20,000/- each within 60 days from the date of this order failing which they shall be called to serve out the sentence.
13. In view of the observations as cited above, the instant criminal appeal being CRA 78 of 1988 is disposed of.
14. I record my appreciation for the able assistance rendered by Mr. Ayan Bhattacharyya the Learned Advocate as *Amicus Curiae* in disposing of this appeal.
15. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

16. 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.)