
(2018) 08 CAL CK 0036
In the Calcutta High Court
Case No : Criminal Appeal No. 351 of 1985

Suresh Chowdhury, Suresh Chandra Chowdhuri	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)
Code of Criminal Procedure, 1973 — Section 100(4), 251

Citation : (2018) 08 CAL CK 0036

Hon'ble Judges : RAJARSHI BHARADWAJ, J

Bench : Single Bench

Advocate : Subham Kanti Bhakat, Saswata Gopal Mukherjee, Faria Hossain

Final Decision : Allowed

Judgement

Rajarshi Bharadwaj, J.

This appeal arose out of an order dated 6th September, 1985 passed by the learned Judge, Special Court (Essential Commodities Act), Purulia in Trial

No. 17 of 1985 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for violation of paragraph 3(1) of the West Bengal

Rice and Paddy (Licensing and Control) Order, 1967 and sentencing him thereunder to suffer rigorous imprisonment for three months and to pay fine

of Rs. 500/-, in default to suffer rigorous imprisonment for fifteen days. The seized stock of rice be confiscated to the State.

The prosecution case in brief is that on 31st August, 1984 at 13.05 hours, P.W.3 Sub-Inspector, Baldeb Mishra, D.E.O. Kashipur Zone inspected and

checked the grocery shop of the accused Suresh Chandra Chowdhury of Adra Bazar accompanied by P.W.2, W/C Subhash Chandra Mahanty. At

that time the accused was found selling both atap and boil rice to customers. On

demand the accused could not show any licence for dealing in rice.

P.W. 3 then seized 30 kgs. of atap rice and 75 kgs. of boil rice from the shop of the accused upon a seizure-list in presence of witnesses. Thereafter,

he lodged First Information Report with Kashipur Police Station and a case, being Kashipur Police Station Case no. 18 dated 31st August, 1984 was

initiated.

Investigation was started and P.W. 3 examined witnesses. After completion of investigation, he submitted charge-sheet against the accused person on

7th March, 1985 under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with paragraph 3(1) of the West Bengal Rice and Paddy

(Licensing and Control) Order, 1967. The accused/appellant had been examined under Section 251 of the Code of Criminal Procedure and the

substance of acquisition had been explained to him. The accused pleaded not guilty and claimed to be tried.

Learned advocate for the appellant submitted that the appellant had a grocery shop and the raiding party found only hundred kgs of rice. The

prosecution did not adduce any documentary evidence to show that the appellant was in the business of buying and selling rice. The learned Trial

Judge ought to have held that search and seizure having not been conducted in substantial compliance of Section 100(4) of the Code of Criminal

Procedure, the impugned prosecution had vitiated. He further submitted that the prosecution failed to prove that the appellant had contravened the

provision of paragraph 3(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967, wherein it has been stated that â?

â??Paragraph 3 â?" Regulation of business in rice and paddy â?" (1) No person shall act as a dealer- (a) except under and in accordance with a

licence granted under this Order, if such person is-

(i) a bulk consumer of the category which sells or supplies rice;

(ii) a rice-miller, or

(iii) a wholesaler, and

(b) except under and in accordance with registration certificate granted under this Order, if such person is â?

(i) a bulk consumer or any other category, or

(ii) a retailer.â??

Hence, there was no violation of paragraph 3(1) of the West Bengal Rice and Paddy (Licensing and Control) Order, 1967 by the appellant. Learned

advocate for the appellant has relied on two judgements of this Honâ??ble Court in the case of Raj Kumar Ram â??vs- The State of West Bengal

passed in CRA 54 of 1991 on 7th April, 2016 and in the case of Shew Ranjan Prosad Shaw â??vs- The State of West Bengal reported in 1981

Criminal Law Journal page 1100. Learned advocate for the appellant has prayed for setting aside the impugned order of conviction and sentence

dated 6th September, 1985. Heard learned advocates for the parties.

From the evidences of P.W.1, P.W. 2 and the defence witness it can be seen that the appellant was an agriculturist having vast stretch of land. No

document can be seized to prove that the appellant was carrying on business of buying and selling paddy and moreover, in view of the aforesaid

judgements delivered in the case of Raj Kumar Ram (supra) and Shew Ranjan Prosad Shaw (supra), the order of conviction and sentence is hereby

set aside. The appellant is acquitted of the charge levelled against him and he is discharged from his bail bond.

However, considering a line of defence as adopted by the appellant herein, I do not like to pass any order reversing the trial Courtâ??s verdict with

regard to confiscation of the seized paddy, rather it stands unaltered, since after a lapse of 33 years, it lost its relevance. Accordingly, the appeal, being

CRA 351 of 1985, is allowed. Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance. Urgent

Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.