

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA NO.297 of 1994

(In the matter of application under Section 374(2) of the Criminal Procedure Code, 1973.).

Hrusikesh Sahoo and another Appellants

-versus-

State of Orissa Respondent

For Appellants : Mr. S.D. Das, Sr. Advocate

For Respondent : Mr. M. Mishra, ASC

CORAM:

JUSTICE G. SATAPATHY

DATE OF JUDGMENT:09.02.2023

G. Satapathy, J.

1. An appeal having come to be filed U/S.374(2) of Cr.P.C. by the appellants assailing their conviction for offence U/Ss.7 and 8 of Essential Commodities Act, 1955 (in short the E.C. Act) respectively and sentence to undergo Rigorous Imprisonment each for a period of six

months as passed/recorded on 18.08.1994 by the learned Special Judge, Special Court, Mayurbhanj at Baripada in G.R. Case No.243 of 1992.

2. In the course of hearing of the appeal, Mr. S.D. Das, learned Senior Counsel submits that the appellants does not intend to challenge their conviction, but they carves for sympathetic consideration for their sentence and accordingly, learned Senior Counsel urges to modify the sentence of the convict-appellants by releasing them under beneficial provision of Probation of Offenders Act, 1958 (in short, "P.O. Act") instead of sentencing them at once. Learned counsel for the State does not oppose such prayer of the appellants.

3. In view of the specific submission made by the learned Senior Counsel for the appellants, this Court clarifies it not to recapitulate the facts of the case in extenso, but limits itself to state the necessary facts for disposal of this appeal as, the convict-Hrusikesh Sahoo

being the owner of the rice stock was transporting 77 bags of rice each weighing one quintal in the Truck driven by other convict-Bhagaban Patra and, accordingly, the learned trial Court found them for the facts of transporting such quantity of rice violating the Clause-3 of the Orissa Rice and Paddy Control Order, 1965 and, accordingly, convicted and sentenced the appellants as indicated above.

4. Law is fairly well settled for sentencing the convict for an offence not punishable with imprisonment for life or death by extending the beneficial provision of P.O. Act. In this regard, this Court considers it profitable to refer to the following decisions.

5. In ***Harivallabha and another Vrs. State of M.P.; (2005) 10 SCC 330***, upon noticing the conviction of the appellant for Sec.7 of the E.C. Act and High Court reducing the sentence of imprisonment to three months, the Apex Court in Paragraph 3 has held that:-

"A Court can refuse to release a person on probation of good conduct U/S.360 of the Cr.P.C., but in the facts and circumstances of the case, the appellants should have been dealt with under the provisions of Sec.360 of the Cr.P.C."

5.1 In ***Som Dutt and others Vrs. State of Himachal Pradesh; (2022) 6 SCC 722***, the Apex Court in Paragraph-6 has held as under:-

"Having regard to sentence imposed by the Courts below on the appellants for the offence U/S.379 r/w Section-34 of IPC, and having regard to the fact that there are no criminal antecedents against the appellants, the Court is inclined to give them the benefit of releasing them on probation of good conduct."

5.2 In ***Lakhvir Singh Vrs. State of Punjab; (2021) 2 SCC 763***, while extending the benefit of Sec. 4 of P.O. Act to the convict, the Apex Court has held the following in Para-6:-

"We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as

useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved."

5.3 In Vipul Vrs. State of Uttar Pradesh;

(2022) SCC Online SC 1686, the Apex Court at

Paragraph-30 has held as under:-

"Section 360 pertains to an order after conviction, to be passed by the Court after admonition, facilitating a release and also probation of good conduct. It is to be exercised on two categories of persons. The first category consists of persons attaining 21 years and above with the proposed punishment for a term of 7 years or less. While the other for a larger term except punishable with death or imprisonment for life. This is made applicable to a convict aged under 21 years or any woman. The Court has to weigh the age, character and antecedent of the convict with the circumstances leading to the offence committed. If satisfied, it can release the convict entering into a bond while a direction to keep the peace and maintain good behavior can be ordered during the said period. As discussed, this provision can be pressed into service while dealing with chapter-XXIA other than convicting a person after trial. Like the other two provisions involving plea bargaining and compounding, Sec. 360 of the Code is also a forgotten one."

5.4. In ***T. Sushila Patra Vrs. State; (1987) SCC Online Ori 144***, while extending the benefit of Sec. 360 of the Cr.P.C. to the convict-petitioner after confirming her conviction in a case where she was sentenced to undergo RI for six months with payment of fine of Rs.1,000/- (Rupees One Thousand) in default whereof to undergo further RI for one month for offence U/S.7(1)(a) of the E.C. Act, this Court has held in Paragraph-8 as under:-

"There is no doubt that the provisions of the Essential Commodities Act in certain circumstances prescribed imposition of a minimum sentence and it is undoubtedly a special statute, but neither of those two conditions totally bars the discretion of the Court to grant probation to the convict either under the criminal procedure code or even under the relevant Sections of the Probation of Offenders Act."

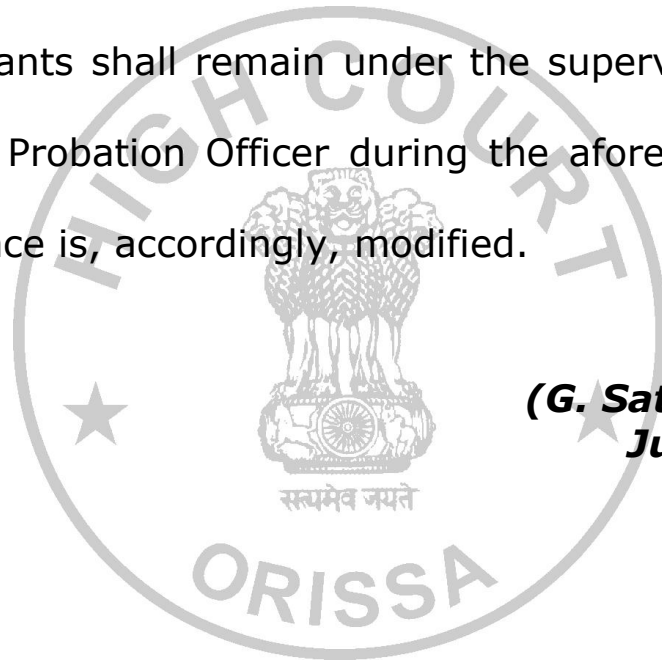
6. In scrutinizing the facts of the case in the backgrounds of the scope and object of P.O. Act and authoritative pronouncements made in the cases referred to above, it appears that the learned trial Court had

stated in the impugned judgment that appellants are convicted in this case for commission of offence U/Ss.7 and 8 of E.C. Act without specifying the particular clause of the penalties prescribed in the aforesaid Sections of the E.C. Act, but taking into consideration the guilt of the convicts for contravention of Orissa Rice and Paddy Control Order, 1965 which is punishable U/Ss.7(1)(a)(ii) of E.C. Act which prescribes with minimum punishment of three months, but which may extend to seven years and fine and, therefore, the benefit of Sec.3 of P.O. Act cannot be extended to the convicts-appellants. However, the convicts are first time offenders and no previous conviction of the appellants has been proved against them and more than 29 years have elapsed in the meantime after conviction of the appellants and the convicts were aged about 34 and 39 years as on the date of their conviction and now they would be more than 63 and 68 years. This Court, therefore, considers it

unnecessary to send the convicts-appellants to jail custody to suffer their sentence at this point of time. The State, however, has not come up with any convincing materials to show that the convicts are incorrigible and cannot be reformed and as has already been discussed that the object of punishment is also reformatory. Hence, in the above circumstances, this Court considers it proper to give the benefit of Sec.4 of P.O. Act to the convicts-appellants inasmuch as the offence with which the appellants are convicted does not prescribe punishment for life or death, and having regard to the circumstances of the cases including the nature of offence and the character of the appellants, it is considered expedient to release the appellants on probation of good conduct.

7. In the result, the appeal is dismissed on contest, but in the circumstance, there is no order as to cost and, accordingly, the conviction of the appellants is maintained, but instead of sentencing them to suffer any

punishment, it is directed that the appellants be released U/S.4 of the P.O. Act for a period of one year upon their entering into a bond of Rs.10,000/-(Rupees Ten Thousand) without any surety to appear and receive sentence, when called upon during such period and in the meantime, to keep the peace and be of good behavior. The appellants shall remain under the supervision of the concerned Probation Officer during the aforesaid period. The sentence is, accordingly, modified.



**(G. Satapathy)
Judge**

*Orissa High Court, Cuttack,
Dated the 9th day of February, 2023/Subhasmita*