

Court No. - 82

Case :- CRIMINAL APPEAL No. - 2666 of 1987

Appellant :- Subedar

Respondent :- State of U.P.

Counsel for Appellant :- R.K. Yadav, Akhilesh Singh, Yogendra Yadav

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Present Appeal under Section 374 (2) Cr.P.C. has been filed by accused-appellant - **Subedar** against the judgment and order dated 19.10.1987 passed by Special Judge, Basti in Special Case No.3 of 1984 (State Vs. Subedar and another) under Section 3/7 Essential Commodities Act, Police Station Harraiya, District Basti convicting the appellant under section 3/7 Essential Commodities Act and imposing sentence of one year rigorous imprisonment with fine of Rs.500/- and in default of payment of fine two months additional rigorous imprisonment.

2. The brief facts of the case, as culled out from the record, are that accused Subedar was the salesman of the shop of Sadhan Sahkari Samiti, Belarey Shukul, P.S. Harriaya, District Basti. There was a complaint against him that in the intervening night of 17/18.2.1983 at about 4:00 A.M., accused Subedar alongwith Salahuddin and Samsuddin taken out one bag of sugar, one bag of rice and one bag of wheat from the godown of the shop for black marketing purpose. To this effect, a written complaint (Ex.Ka-1) was made to the S.D.O. Harriya on 18.2.1983 by the villagers. On this complaint, the S.D.O. had directed the Senior Marketing Inspector, Harriaya to inspect the spot, to which he made enquiry before the villagers and found sugar in a urea bag which was put into the puwal in village Belarey in front of the house of Ram Sunder. The same has been brought to the Sadhan Sahkari Samiti and after weighing the bag it was found 54 Kg, which was given in the custody of Sachiv of the Samiti and fard of the same has been prepared which is on record as Ex.Ka.-2. At the time of inspection of the shop, the salesman and sachiv were not found present there and the shop was locked. Later on, the sachiv came at the shop but he was not having keys with him. The team waited for the salesman upto 4:30 P.M. but he did not come. The lock of the shop was broken by the Inspector before the witnesses and they found 4

bags of sugar, 19 bags of rice and 45 bags of wheat kept there which were given in the custody of the sachiv after preparing fard of the same as Ex.Ka-3. On the same day, after taking the statements of the witnesses, the Marketing Inspector submitted the report to S.D.O., Harriaya, which is Ex.Ka.-4. On the said report, the S.D.O., Harriaya, on the same day, directed the Marketing Inspector to take necessary records from the salesman and check the sale by him and in default of the same, lodge an F.I.R. against the salesman. The said order is Ex.Ka.-5. Thereafter the Marketing Inspector lodged the report before the Station Officer, Harriaya on 18.2.1983 which is Ex.Ka.-6. On 19.3.1983, the Marketing Inspector alongwith Sub Inspector of Police and the witnesses again inspected the shop in question and on checking the sale register it was found that on 17.2.1983, the sugar was distributed to 20 persons. Among them, 17 ration cards were checked in which 10 rations cards were found false as the salesman had shown wrong entries on the said ration cards and the quantity of sugar of that very ration cards were sold in black-market. Differences were also found between the quantity of sugar and rice in sale register and ration cards. In this way, the accused has committed the offence punishable under Section 3/7 Essential Commodities Act and to this effect after completing necessary legal formalities on spot, the F.I.R. was lodged on 19.2.1983 before the S.O., Harriaya by the Marketing Inspector which is Ex.Ka.-7. After investigation and fulfilling required formalities and obtaining prosecution sanction, charge-sheet was submitted against the accused persons before the Court, which is Ex.Ka.-11.

3. Thereafter, accused were examined under Section 251 Cr.P.C. Accused Subedar denied the case of the prosecution and the allegations levelled against him.

4. The prosecution, in order to prove its case, examined P.W.-1 Ram Naresh Mall, Senior Marketing Inspector who is the the witness of fact and proved the Ex.Ka.-1 to 6 and material Exts.-1 to 14, P.W.2 Rama Shanker, Chaukidar who is also witness of fact and was declared hostile, P.W.3 Shyam Lal is also the witness of fact but he was also declared hostile, P.W.4 Ram Sawarey is also the witness of fact, but he also did not support the prosecution case and was declared hostile. Likewise, P.W.5 Buddhul, P.W.6 Jaggi, P.W.7 Jhinkan, P.W.8 Kuwar Ali and P.W.9 Nihar are also the witnesses of fact and supported the prosecution case. P.W.10 Brikh Ketu Rai, the Investigating Officer of the case and P.W.11 S.I. Ram Sewak Singh are the formal witnesses of the case. Relevant documents were also filed and proved by the prosecution.

5. After closing of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. The accused appellant Subedar in his statement under section 313 Cr.P.C. categorically denied the truthfulness of the evidence produced against him and pleaded that witnesses have given their statement due to animosity. He also submitted that the Marketing Inspector was demanding money from him and when it was not fulfilled, he has falsely implicated him in this case.

6. The trial Court after perusing the record and analysing the oral and documentary evidence produced against the accused-appellant recorded a finding that the evidence rendered by the prosecution is trustworthy. The prosecution has succeeded to prove its case beyond reasonable doubt and the accused-appellant was found guilty for violating Section 8 of U.P.E.C. (Display of Prices and Stocks and Control of Supply and Distribution) Order, 1977. Under the said provision, the accused was under obligation to maintain the sale and stock register of the controlled commodities and he was also under obligation to produce them at the time of inspection, but the same was done by him and conviction was recorded accordingly and the accused-appellant was sentenced to rigorous imprisonment for a period of one year and a fine of Rs.500/- for the offence under Section 3/7 Essential Commodities Act.

7. Heard learned counsel for the appellant and the learned A.G.A. appearing for the State.

8. Learned counsel for the appellant, at the outset, submitted that he does not wish to press the appeal on merits and confines his arguments to the sentence part only. The attention of this Court has been drawn towards the provisions of section 7(1)(a)(ii) of the Essential Commodities Act which provides that for adequate and special reasons mentioned, the sentence imposed may be less than three months. It has been submitted that at present the appellant Subedar is an old aged person of about 65 years of age and must be a repenting man. The appeal was filed in the year 1987 and about 37 years have passed. The incident is said to be occurred in the year 1983. It has been further submitted that the appellant has already suffered since long on account of the pendency of the present criminal proceedings going on against him. It has also been submitted that the appellant in this case has been detained in jail for some days. The Trial Court has passed a sentence of rigorous imprisonment for one year. It has been submitted that the sentence imposed by the trial court vide impugned judgment and order may be modified to the extent of the period already undergone.

9. The learned A.G.A. has made no objection to the submissions of the learned counsel for the appellant on the point of sentence and submitted that in view of the long pendency of the criminal proceedings against the appellant, the sentence imposed by the trial Court may be reduced.

10. From the perusal of the record, it is evident that the findings and conclusion arrived at by the trial Court in the impugned judgment and order are on the basis of the evidence and facts on record which require no interference. The conviction of the appellant has been correctly recorded by the trial Court.

11. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the Court but the same has to be guided by certain principles. Hon'ble Supreme Court in **Raj Bala vs. State of Haryana & Ors (passed in Special Leave Petition (Crl.) Nos.4099-4100 of 2015)** in this context, has observed that neither the personal perception of a Judge nor self adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A Court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

12. In the instant case, criminal machinery came into motion about 41 years ago and the present appeal has been pending for a long period of 37 years. There is nothing on record to show that the appellant is a previous convict or having any criminal antecedents. Also the accused-appellant alone cannot be held responsible for long delay in disposal of this appeal. He is an old person. It has been submitted and also finds support from the record that the appellant remained in custody for a considerable period of time during trial. Hence, considering all aspects of the matter, in my view, no useful purpose would be served by sending accused-appellant in judicial custody at this stage, rather in the aforesaid special circumstances, it would be in the interest of

justice if sentence imposed upon the appellant by the trial court for imprisonment and fine be modified to the extent that the sentence of the period already undergone is imposed without fine.

13. Resultantly, the appeal is partly allowed. The conviction of the appellant Subedar for the offence under Section 3/7 of the Essential Commodities Act is upheld but the sentence of one year rigorous imprisonment awarded by the trial court vide impugned judgment and order is modified to the period of sentence already undergone by him. Appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

14. A copy of this order alongwith trial court record be transmitted to the court concerned.

Order Date :- 13.11.2024

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