

Court No. - 86

Case :- CRIMINAL APPEAL No. - 265 of 1994

Appellant :- Kishori Lal

Respondent :- State

Counsel for Appellant :- Anil Srivastava, Ishwar Chandra Tyagi, Ram Charan Lal, Umesh Vats

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Present appeal has been filed by accused-appellant - Kishori Lal against the judgment and order dated 11.2.1994 passed by Additional District Judge / Special Judge (E.C. Act), Budaun in Special Case No.14 of 1989 (State Vs. Kishori Lal) under Section 3/7 Essential Commodities Act, Police Station Ushait, District Budaun convicting the appellant under section 3/7 Essential Commodities Act and imposing sentence for two years rigorous imprisonment with fine of Rs.5000/- and in default of payment of fine six months additional simple imprisonment.

2. The brief facts arising out of this appeal are that on 3.9.1988 at about 5:45 P.M., Hulasi Ram, the Pargana Adhikari and Jaipal Singh, the Supply Inspector along with other officials inspected the fair price shop of Kishori Lal (appellant) situated in Ushait, Budaun. According to the records related to the shop, 243 liters of kerosene oil should have been in stock, but however during physical verification only 180 liters of kerosene oil was found in the shop and in this way shortage of 63 litres of kerosene oil was detected to which the accused could not give any explanation. The officials came to the conclusion that the accused Kishori Lal sold 63 litres of kerosene oil in black market. During inspection, the sale register was also not found verified by any competent authority. Items which are sold in the shop, their quantity and rates were not mentioned on the stock board according to rules. After taking possession of the kerosene oil, stock board, rate board etc. the same were given in the custody of Natthu Lal Saini, the employee of town area Ushait. After completing necessary legal formalities on spot, the FIR was lodged against the accused under section 3/7 Essential Commodities Act and after investigation and prosecution sanction, charge-sheet was filed against the accused before the Court.

4. The prosecution, in order to prove its case, examined P.W.1 Hulasi Ram, A.C.M., Moradabad, P.W.2 Ram Bahadur Singh, Inspector E.O.W., Lucknow and P.W.3 Shanti Swaroop Saxena, S.I. (Retd.). The facts of the case were proved by P.W.1 in his deposition and P.W.2 & P.W.3 proved the proceedings of the investigation and also the FIR and G.D. of the case. Relevant documents viz. written report Ex.Ka.-1, charge-sheet Ex.Ka.-2, prosecution sanction Ex.Ka.-3, chik F.I.R. Ex.Ka.-4, G.D. Entry Ex.Ka.-5 were also filed by the prosecution.

5. The appellant/accused in his statement under section 313 Cr.P.C. categorically denied the truthfulness of the evidence produced against him and also denied the shortage of 63 litres found in kerosene oil. In defense evidence, no witness was produced by him.

6. The trial Court after perusing the record and analysing oral and documentary evidence produced against the accused-appellant recorded a finding that the evidence rendered by the prosecution is trustworthy.

7. It was found that the prosecution has succeeded to prove its case beyond reasonable doubt and the accused-appellant was found guilty of sale/ of kerosene oil and thereby he contravened the provisions of U.P. Kerosene Control Order 1962 which was punishable under Section 3 read with Section 7 of the Essential Commodities Act and a conviction was recorded accordingly and the accused-appellant was sentenced to rigorous imprisonment for a period of two years imprisonment and a fine of Rs.5000/- for the said offence.

8. During the course of argument, the learned counsel for the appellant submits that there is no error in the conviction recorded by the trial court but the imposition of sentence by the trial court is too harsh. 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 Kishori Lal is an old aged person and must be dependent man. The appeal was filed in the year 1994 and about 30 years have passed. 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 two years. It has

been submitted that the sentence as imposed by the trial court 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 question 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 finding and conclusion given by the trial Court are on the basis of the evidence and facts on record which require no interference. On the basis of the facts and evidence on record, 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 36 years ago and the present appeal has been pending for 30 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, no useful purpose would be

served by sending accused-appellant in judicial custody at this stage, rather in the aforesaid special circumstances, it appears that ends of justice would be served if sentence imposed upon the appellant by the trial court be modified to the extent that the sentence of the period already undergone is imposed and the amount of fine imposed by the learned trial court be decreased to Rs.500/- only and as such the appeal is liable to be partly allowed accordingly.

13. Therefore, the conviction of accused-appellant Kishori Lal is upheld, but sentence of two years rigorous imprisonment for the aforesaid offences, awarded by the trial court, is modified to the period of sentence already undergone by him and the amount of fine of Rs.5000/- imposed in the impugned judgment and order be decreased to Rs.500/-.

14. The instant appeal is **partly allowed** in above terms.

15. A copy of this order alongwith trial court record be transmitted to the court concerned for necessary compliance.

Order Date :- 9.9.2024

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