

Court No. - 86

Case :- CRIMINAL APPEAL No. - 469 of 1994

Appellant :- Ram Lal And another

Respondent :- State

Counsel for Appellant :- Satya Prakash Srivastava, Brij Gopal, Rakesh Prasad Mishra, Shri Kant Kesarwani

Counsel for Respondent :- AGA

Hon'ble Nalin Kumar Srivastava, J.

1. Present appeal has been filed by accused-appellants against the judgment and order dated 23.3.1994 passed by Special Judge, Allahabad in Criminal Case No.3 of 1989 (State Vs. Ram Lal and another) under Section 3/7 Essential Commodities Act, Police Station Khiri, District Allahabad convicting the appellants under section 3/7 Essential Commodities Act and imposing sentence for six months rigorous imprisonment with a fine of Rs.1,000/- with the stipulation of default clause.

2. As per report dated 29.10.2022 submitted by the Chief Judicial Magistrate, Allahabad the appellant no.2 Ram Ji Dubey has expired. Hence appeal in respect of appellant no.2 Ram Ji Dubey is abated. Now this Court proceeds with the appeal in respect of appellant no. 1 - **Ram Lal**.

3. The brief facts of the case, as culled out from the record, are that on 22.3.1987 at 10.15 P.M., while K.R. Pundrik, Marketing Inspector of Lendiyari town along with other officials were present at Khiri Crossing, one Tractor bearing Registration No. U.G.V. 595 was seen coming from lendiyari side and was going towards Nari-Bari which was tried to be intercepted but it did not stop and ultimately it was stopped by them near M/s Gosain Rice Mills Pvt.

Ltd. Khapitiha. On checking, 28 bags of rice were found in the trolley and the tractor was being driven by accused Ram Ji Pandey and accused appellant Ram Lal, who was Trader, was sitting in the trolley. He claimed his right over the said rice, which he had purchased from Lendiyari market and was being taken to Rewa (M.P.) for selling it out. He could not show any paper or licence regarding the said recovered rice which on weighing was 25 quintals and 50 kilograms. Accused appellant Ram Lal was taken into custody on the spot and the other accused Ram Ji Dubey anyhow managed to fly away in the meantime. After completing necessary legal formalities on spot, FIR was lodged against the accused persons. After investigation, charge-sheet was filed against them before the Court.

4. The prosecution, in order to prove its case, examined P.W.-1 Maheshwar Pati Tripathi, Marketing Inspector, P.W.-2 S.I. Brij Pal Sharma, the Investigating Officer. The facts of the case were proved by P.W.-1 in his deposition and P.W.-2 proved the proceedings of the investigation and also the FIR and G.D. of the case. Relevant documents were also filed and proved by the prosecution.

5. The appellant Ram Lal in his statement under section 313 Cr.P.C. categorically denied the truthfulness of the evidence produced against him and pleaded that he has no concern with the rice recovered from the said Tractor and he was not the owner of the rice so recovered. He also submitted that the police has falsely implicated him in this case. In defence evidence, D.W.1 Ram Khelawan was examined as defence witness to prove the innocence of the accused persons in the matter.

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 the provisions of U.P. Food Grains Dealers (Licencing Restriction on Hoarding) Order, 1976 and U.P. Rice and Food (Levy and Regulation of Trade) Order, 1985 and conviction was recorded accordingly and the accused-appellant was sentenced to rigorous imprisonment for a period of six months imprisonment and a fine of Rs.1,000/- for the said offence under Section 3/7 Essential Commodities Act.

7. Heard learned counsel for the appellant and the learned AGA 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 Ram Lal is an old aged person and must be a repenting man. The appeal was filed in the year 1994 and about 30 years have passed. The incident is said to be occurred in the year 1987. 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 six months. 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 37 years ago and the present appeal has been pending for a long period of 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 some days 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 be modified to the extent that the sentence of the period already undergone is imposed.

13. Resultantly, the appeal is partly allowed. The conviction of the appellant **Ram Lal** for the offence under Section 3/7 of the Act is upheld but the sentence of six months 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 :- 8.8.2024

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