

**Court No. 15**

**Case :-** CRIMINAL APPEAL No. - 2158 of 2008

**Appellant :-** Ram Yaggya Pandey

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Santosh Kumar Srivastava

**Counsel for Respondent :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. Heard Shri Santosh Kumar Srivastava, learned counsel for the appellant, as well as learned A.G.A. for the State and gone through the record.

2. The instant criminal appeal under section 374(2) CrPC has been filed against the impugned judgment and order dated 26th August, 2008 passed by the learned Special Judge, E.C. Act, Faizabad (now Ayodhyaji) in Criminal Case No.54 of 1990, arising out of Case Crime No.071 of 1981, under Section 3/7 Essential Commodities Act lodged at police station Akbarpur, district Ambedkar Nagar whereby the appellant has been convicted for committing the offence under section 3 read with section 7 of the Essential Commodities Act and has been sentenced to undergo six months' imprisonment and to pay Rs.1,000/- as fine with default clause.

3. Brief facts, giving rise to the instant appeal, are in terms that an FIR has been lodged by the then Naib Tehsildar- Ram Prasad Lal on 09.02.1981 alleging therein that on 09.02.1981 at about 12 noon he had inspected the fair-price-shop of the appellant as it was informed by the Secretary- Mahendra Prasad Tripathi that sugar and kerosene-oil has not been disbursed by the appellant and during the course of inspection kerosene oil in a drum was found kept in the vicinity of the office of Cooperative Society and when this drum was being attempted to be taken to the police station, the appellant, who was the licensee of the fair-price-shop, informed that this kerosene oil belongs to him and he had taken the same from 'Verma Sales' on 09.02.1981 and since the place where the drum was kept is falling adjacent to his

fair-price-shop, he had kept the same there. The statement of the appellant was taken as suspicious and distribution registration of the shop was called for which was not produced by the appellant and it was believed that the kerosene oil which was meant to be distributed amongst the poor and eligible people has been kept for misappropriation and, thus, the FIR be lodged.

4. On the basis of aforesaid written information, the FIR under section 3/7 Essential Commodities Act at Case Crime No.071 of 1981 was lodged at police station Akbarpur, district Ambedkar Nagar.

5. Charges against the appellant were also framed by the Trial Court under section 3/7 of the Essential Commodities Act to which he denied and claimed trial.

6. The prosecution, to prove its case beyond reasonable doubt, has produced Mahendra Prasad Tripathi as PW-1, Ram Prasad Lal as PW-2 and Ved Prakash Mishra as PW-3 and K.V. Srivastava as CD-1. The prosecution has also relied on various documentary evidence.

7. After completion of the evidence by the prosecution, statement of the appellant/accused was recorded under section 313 CrPC wherein he denied all the evidence produced by the prosecution and presented himself as DW-1.

8. The Trial Court, after appreciating the evidence available on record, has found the case of the prosecution proved beyond reasonable doubt and convicted the appellant for offence under section 3/7 Essential Commodities Act and sentenced him in the manner stated in 2nd paragraph of this judgment.

9. Learned counsel for the appellant, while drawing attention of this Court towards the impugned judgment and order passed by the Trial Court, vehemently submits that the Trial Court has committed manifest illegality in appreciating the evidence available on record and while PW-1 (Mahendra Prasad Tripathi), who was a key-witness of the prosecution, has not supported the case of the prosecution, the

Trial Court has relied on the statement of PW-2 (Ram Prasad Lal), who was an unreliable witness in the facts and circumstances of the case. It is further submitted that the Trial Court has adopted a unique approach which is alien to the criminal jurisprudence and has committed an illegality by placing the reverse burden of prove of his innocence upon the appellant. It is further submitted that it is only on the basis of apprehension the FIR has been lodged while the kerosene oil, which was taken for the purpose of distribution by the appellant, has admittedly been recovered and it was simply a case of mismanagement, more-so, in the background that no departmental proceedings for the purpose of cancellation of the license of the appellant has been initiated in the matter it was indirectly admitted to the department also that the appellant has not committed any mischief and, thus, the various allegations levelled by the appellant against PW-2 (Ram Prasad Lal) of demanding illegal gratification appear to be not substantiated by the facts and circumstances of the case and, therefore, the Trial Court has committed illegality in convicting the appellant and, thus, the impugned judgment and order of the Trial Court may not sustain and is liable to be set-aside/quashed.

10. On the other hand, learned A.G.A. appearing for the State submits that the prosecution has proved its case beyond reasonable doubt before the Trial Court and it was finding on record that the appellant has taken kerosene oil for the purpose of distribution to the eligible persons, however, instead of doing so, he kept the same separately and the drum wherein the kerosene oil was stored has also been recovered and, thus, there is no illegality committed by the Trial Court either in convicting or in sentencing the appellant.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the charges against the appellant are to the tune that he had taken 220 litres of kerosene oil for the purpose of distribution to the eligible persons as he was having license of fair-price-shop but he did not maintain any record of the kerosene and he

kept the same stored in different place for being sold. It appears to be an admitted situation that at the time of inspection of the shop of the appellant, the same could not be opened as it was informed by the appellant that he is not possessing the keys of the shop and the same has been taken away by his brother, thus, it was denied by the PW-2 (Ram Prasad Lal) that at the relevant point of time Naib Tehsildar could not enter into the shop of the appellant and could not get access to the record. Thus, the only evidence which might be read against the appellant is recovery of a drum containing 220 litres of kerosene oil which the appellant has admittedly taken from somewhere for the purpose of distributing it amongst the eligible persons. The appellant has fairly not denied receipt of the kerosene oil and the same has also been shown to have been traced and recovered from the building of the Cooperative Society. It may be inferred from the impugned judgment and order passed by the Trial Court that the fair-price-shop of the appellant was also adjacent to the building from where the kerosene oil so seized has been recovered. In this regard, it is also pertinent to mention that one of the key witnesses of the prosecution, namely, PW-1 (Mahendra Prasad Tripathi) has not supported the allegations of the prosecution and no explanation has been given by the prosecution as to why this witness has not supported the prosecution case. Apart from PW-2 (Ram Prasad Lal) against whom serious allegations of demanding illegal gratification has been levelled by the appellant. The prosecution has not presented the investigating officer of the case before the Trial Court for the reasons best known to the prosecution. Thus, only one prosecution witness has supported the case of prosecution. With regard to the cases based on the testimony of single prosecution witness the law is well settled that the conviction of an accused may safely be made on the basis of the testimony of a single witness, however, the quality of the evidence of that sole witness must be of the nature of 'wholly reliable' and if there is any doubt in the evidence of sole witness, the evidence of that shaky witness, may not be relied.

12. Having regard to all the facts and circumstances of the case and the defence taken by the appellant in his statement recorded under section 313 CrPC and the contradictions and embellishment which are emerging in the testimony of PW-2 (Ram Prasad Lal) the Trial Court appears to have committed a manifest illegality in appreciating his evidence. The Trial Court has not considered this aspect of the matter at all as to why the investigating officer has not been produced before it and, in this regard, prejudice appears to have been caused to the appellant as the contradictions, which might have been drawn by cross examination of the investigating officer in the manner described under Section 145 of the Indian Evidence Act could not be done and this opportunity was taken away from the appellant-accused. Thus, having regard to all the facts and circumstances of the case and for the reasons narrated herein before, I find that the Trial Court has committed illegality in appreciating the evidence available on record. Needless to say that it is always the duty of the prosecution to prove its case beyond reasonable doubt. A criminal trial starts with the presumption of innocence in favour of the accused and, therefore, it is always the duty of the prosecution to tender such evidence before the trial court, which may negate the initial presumption of innocence, in other words, the evidence produced by the prosecution must be so strong that the presumption of innocence, which is in favour of the accused person, must vanish, which unfortunately is not the case with the instant case.

13. In result, the instant appeal is allowed and the impugned judgment and order passed by the learned Trial Court is hereby set-aside/quashed.

14. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

15. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with two sureties

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of Rs. 50,000/- before the Trial Court for the purpose of securing his presence before the Hon'ble Supreme Court, if any S.L.P. or to say any criminal appeal is filed against this judgment.

16. Let a copy of this order, along with record of the trial court, be immediately sent to the trial court for compliance.

Order Date :- 27.8.2024

MVS/-