



2025:AHC:170534

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1167 of 1987

Krishna Chand

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: B.B. Paul, Praveen Kumar Singh, Syed Imran Ibrahim
Counsel for Respondent(s)	: A.G.A.

Court No. - 92

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State.
2. The instant criminal appeal has been preferred against the judgment and order dated 03.04.1987 passed by learned Special Judge, Arthic Aprath (Economical Crime), Agra in Criminal Case No.61 of 1984, under Section 3/7 of the Essential Commodities Act.
3. Learned counsel for the appellant, at this juncture, requested for hearing of bail on merits as matter is very old and present appeal is still pending in the year 1987.
4. According to the prosecution case, in brief, A.R.O. Asha Ram Prabhal conducted an inspection of the shop of Krishan Chand, situated at Mohalla Varshu Gate, District Agra, in the presence of Bhagwan Das, son of Krishan Chand. During the inspection, Bhagwan Das was found selling kerosene oil, and four liters of kerosene oil had been sold at the rate of Rs.3.25/- per liter. A total of 280 liters of kerosene oil was seized from the shop and handed over to the custody of Giriraj Kishor. The recovery memo of the kerosene oil has been marked as Exhibit Ka-1. Bhagwan Das submitted in writing that he had sold four liters of kerosene oil to Shekhar Mal at the rate of Rs.13/- per liter. He also stated that he usually sold kerosene oil at the rate of Rs.3.25 per liter, and that his father also used to sell kerosene oil at the same rate, though his father was not present at the time of inspection. The seized 280 liters of kerosene oil was kept in the

shop for sale. He did not have any license to sell kerosene oil and also admitted that no sale receipts were given to the customers. His confessional statement is marked as Ext. Ka-2. The customer, Shekar Mal, had also given written information stating that he purchased four liters of kerosene oil at the rate of Rs. 3-25 per liter. The informant, Asha Ram, filed a written report marked as Ext. Ka-4 at Police Station Hariparwat, on the basis of which, chik FIR Ext. Ka-7 was lodged, and a case was registered vide G.D. No. 53 at 16:30 hours on 03.11.1983 as Case Crime No. 671 of 1983 under Section 3/7 of the E.C. Act against the accused persons. The Investigating Officer conducted spot inspection of the shop and prepared site plan, which was marked as Ext. Ka-6. He obtained prosecution sanction from the District Magistrate, Agra. After concluding the investigation, the Investigating Officer submitted the charge-sheet, marked as Ext. Ka-5. The learned Special Judge took cognizance of the offence on the basis of the charge-sheet and summoned the accused persons. The charge-sheeted accused, Kishan Singh and Bhagwan Das, were explained the substance of the accusation at the commencement of the trial. They denied the accusation and claimed to be tried.

5. The prosecution examined P.W.1, Asha Ram, in support of its case against the accused persons. The statements of Bhagwan Das and Kishan Chand were recorded under Section 313 Cr.P.C. Kishan Chand stated that neither his son nor he himself was engaged in the sale of kerosene oil. The trial court, after hearing the submissions of both sides and appreciating the evidence available on record, observed that the accused, Bhagwan Das, appeared to be about 22 years of age on the basis of the evidence adduced by the prosecution. It was also proved that Kishan Chand and Bhagwan Das were selling kerosene oil without obtaining a license from the competent authority and that they were engaged in the illegal trade of kerosene oil in violation of Clause 3 of the U.P. Kerosene Control Order, 1962, punishable under Section 3/7 of the Essential Commodities Act.

6. With above observations and findings, the trial Court convicted the accused persons, Kishan Chand and Bhagwan Das, under Section 3/7 of the Essential Commodities Act for violation of Clause (3) of the U.P.

Kerosene Control Order, 1962. The accused persons were taken into custody and sentenced to six months' rigorous imprisonment and a fine of Rs. 1,000/- each, and in default of payment of fine, they were directed to further undergo one month's rigorous imprisonment by the impugned judgment and order dated 03.04.1987.

7. Feeling aggrieved by the impugned judgment and order, the appellants assailed it by filing an appeal before this Court.

8. Appellant No.1, Kishan Chand died during pendency of the appeal and appeal on his behalf was abated vide order dated 18.08.2022. Thus, the appeal has been heard only in respect of the surviving appellant No.2, Bhagwan Das.

9. After arguing at some length, learned counsel for the appellant submitted that as matter is very old and he is not inclined to assail the conviction of appellant at this stage and his arguments are confined question of sentence. He further submitted that alleged offence is punishable upto seven years imprisonment and fine, which shall not be less than three months' imprisonment. However, it is provided that court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months. He next submitted that in the present case, the appellant has been awarded sentence of six months' imprisonment and Rs.1000/- fine.

10. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in **Tarak Nath Keshari vs. State of West Bengal; 2023 SCC Online SC 605**, wherein a case under Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955 for violation of Para 3 (1) of the West Bengal Pulses, Edible Oil (Dealers' Licensing) Order, 1978, resulted in a sentence of six months' rigorous imprisonment and a fine of Rs.500/-. The facts of that case are similar to the present case. In that case, the Hon'ble Apex Court observed as follows:-

"10. However, still we find that a case is made out for grant of benefit of probation to the appellant for the reason that the offence was committed more than 37 years back and it was not pointed out at the time of hearing that the appellant was involved in any other offence. Before all the courts below, the

appellant remained on bail. While entertaining his appeal, even this Court had granted him exemption from surrendering. [Section 4](#) of the Probation of Offenders Act, 1958 has a non obstante clause. The same is extracted below:

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub- section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

11. Even if there is minimum sentence provided in [Section 7](#) of the EC Act, in our opinion, the appellant is entitled to the benefit of probation, the [EC Act](#), being of the year 1955 and the [Probation of Offenders Act, 1958](#) being later. Even if minimum sentence is provided in the [EC Act, 1955](#) the same will not be a hurdle for invoking the applicability of provisions of the [Probation of Offenders Act, 1958](#). Reference can be made to a judgment of this Court in [Lakhvir Singh v. The State of Punjab & Ors](#)¹."

11. Keeping in view the proviso to Section 7 (1) (a) (ii) of the Essential Commodities Act, there is no legal impediment to extending the benefit of the Probation of Offenders Act, 1958 to the surviving appellant, Bhagwan Das.

12. Considering the nature of the accusation, totality of facts and circumstances of the case and the fact that the offence was allegedly committed in the year 1983, i.e., around 43 years ago and no useful purpose would be served in sending the appellant back to jail to serve the remaining period of imprisonment. He is not a previous convict and has no criminal history. Therefore, it is prayed that the appellant may kindly be extended the benefit of probation.

13. In view of the above and foregoing reasons and also in light of the judgment of the Hon'ble Apex Court cited above, the appeal is accordingly **disposed of** in the manner that the conviction of the appellant for charge under Section 3/7 of the Essential Commodities Act is affirmed, but the sentence is set aside. The appellant, Bhagwan Das, is directed to be released on probation under Section 4 of the Probation of Offenders Act, 1958, upon entering into a bond and furnishing two sureties, each to ensure that he will maintain peace and good behavior for a period of six months, failing which he may be called upon to serve the sentence. The probation bond shall be filed before the Special Judge, E.C. Act, Agra, within 15 days from today, to the satisfaction of the concerned court. Upon filing of the probation bond, the release order shall be sent to

the jail authorities for the immediate release of the appellant, Bhagwan Das.

14. All the pending applications are also disposed of in the manner.

15. Let a copy of this order along with lower court record be sent to court concerned for necessary action and compliance.

(Ram Manohar Narayan Mishra,J.)

September 22, 2025

Amit