



2025:AHC:166909

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. - 1219 of 1987

Prakash

.....Petitioners(s)

Versus

State

.....Respondents(s)

Counsel for Petitioners(s)	: V.K. Sharma, Siddharth Jaiswal
Counsel for Respondent(s)	: A.G.A.

A.F.R

Judgment Reserved On 8th September, 2025
Judgment Delivered On 18th September, 2025

Court No.-48

HON'BLE AVNISH SAXENA, J.

1. This case is listed under heading, ***“Supreme Court in Model Action Plan Cases-more than 30 years’ old, not be adjourned.”***
2. Heard Sri Siddharth Jaiswal, learned counsel for the appellant and Sri Chandrabadan, learned A.G.A. for the State.
3. Present criminal appeal is preferred against judgment and sentence dated 10.04.1987 passed by Special Judge (Economic Offences), Agra (the Sessions Court) in Criminal Case No.3 of 1985 (State Versus Prakash) for offence under Sections 7 read with Section 3 of Essential Commodities Act, 1955, Police Station Hari Parvat, Agra, whereby the Trial Court has punished the accused-appellant for rigorous

imprisonment of six months for violating Clause 3 of U.P. Foodgrains Dealers' (Licensing and Restriction on Hoarding) Order, 1976, along with fine of Rs.1000/-and in default whereof directed rigorous imprisonment of one month.

4. The prosecution case as disclosed from F.I.R. dated 20.10.1983 lodged at 17:35 hours by Sri Asha Ram Prabal, ARO, Lohamandi, Agra, registered as Case Crime No.630 of 1983 reveals that on 20.10.1983 at 10 a.m., the informant along with Inspectors and Secretary, Krishi Utpadan Mandi Samiti, Agra, inspected the Galla Mandi, Ghatia Azam Khan Agra, where he had inspected the shop of the accused-appellant and found therein 100 bags of wheat weighing 100 quintals. On asking for license and the documents, he failed to show the same. The wheat was seized and gave in possession of M/s Ramesh Chand Naresh Chand.

5. Charge-sheet was submitted after investigation. The prosecution has produced PW-1 Asha Ram Prabal, ARO. The counsel for the appellant-accused, who was defending the trial has not disputed the genuineness of the prosecution documents, Exhibits Ka-3 to 8, which led to dispensation of formal proof of those documents. The prosecution, thus concluded.

6. The appellant-accused has produced two witnesses, DW-1 Suresh Chand and DW-2 Uda Ram.

7. The Trial Court has found that the prosecution has proved its case. The defence witnesses are not reliable, as they did not know the appellant-accused, but despite that they have allegedly kept their bags of wheat in his shop. The Trial Court further considered that if the bags of wheat is kept outside the shop, the same cannot be believed. Further held that the appellant was a retailer who could keep only 25 bags of wheat. He has no document to show 100 bags in his shop and therefore, held that presumption under Section 10-C of Essential Commodities Act got attracted. Hence, convicted and sentenced the appellant-accused as above.

8. Sri Siddharth Jaiswal, learned counsel for the appellant has submitted that 100 bags of wheat was recovered in front of the shop of the accused-appellant and not inside the shop. There is no independent witness of seizure. The prosecution failed to prove the case and incorrect presumption is drawn against the accused-appellant. It is lastly submitted that appellant is more than 80 years of age. Therefore, he prayed that appeal be allowed and judgment of conviction and sentence be set aside.

9. **Per contra**, Sri Chandrabhan, learned A.G.A. submits that the conviction has rightly been recorded by the Trial Judge. The prosecution has proved its case beyond the shadow of doubt. The documents have been admitted by the counsel for the accused-appellant, which attracts Section 294 Cr.P.C., as the genuineness of document is not disputed. The Trial Judge has considered the deposition of defence witness and found them as planted witnesses. The bags of wheat had been recovered from the shop of the appellant, which has been ascertained in evidence. The appellant has flouted the condition of his license and found hoarded the wheat in his shop in contravention to the license. Hence, the appellant stood rightly convicted and sentenced. The appeal does not have any ground, which is liable to be dismissed.

10. I have perused entire record, evidence and considered rival submissions made by the parties.

11. The Trial Court has recorded conviction under Section 7 of Essential Commodities Act, as the accused-appellant has violated clause 3 of U.P. Foodgrains Dealers' (Licensing and Restriction on Hoarding) Order, 1976 issued in exercise of powers under Section 3 of the Essential Commodities Act, 1955. The provision is reproduced hereinbelow.

“3. Licensing of Dealers and commission agents.-- (1) No person shall carry on business as a dealer or commission agent except under and in accordance with the terms and conditions of a license issued in this behalf by the licensing authority.

*(2) For the purpose of this clause, any person who stores any foodgrains in quantity of five quintals or more of any one of the foodgrains or twenty-five quintals of all foodgrains taken together at any one time shall, **unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale.***

12. Sub-clause (2) provides for keeping of foodgrain, more than the required quantity. The proviso attracted to the sub-clause is the deeming provision that the foodgrain stored is for the purpose of sale. There is a reverse burden on the part of the licensee to be discharged, if the prosecution proves that search and seizure has been made in accordance with Clause 14 of the Order, 1976. The provision is reproduced underneath:

“14. Power of entry, search, seizure, etc.

(1) Any Enforcement Officer or the Licensing Authority or any other officer authorised by the State Government in this behalf may, with such assistance, if any, as he thinks fit

(a) enter, inspect or break open and search any place or premises, vehicle or vessel used or believed to be used for the purchase, sale or storage for sale of any of the Scheduled Commodities or in which he has reason to believe that any contravention of the provisions of this Order or the conditions of any licence issued thereunder, has been or is being or is about to be committed;

(b) require the owner, occupier or any other person incharge of any place, premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this Order, or of the conditions of any licence issued thereunder has been or is being, or is about to be committed, to produce any book, accounts or other documents showing transactions relating to such contraventions;

(c) take or cause to be taken, extract from, or copies of any documents showing transactions relating to such contraventions which are produced before him;

(d) search, seize and remove stocks of Scheduled Commodities and the animals, vehicles, vessels or other conveyances used in the said Scheduled Commodities in contravention of the provisions of this Order, or of the conditions of the licence issued thereunder and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of Scheduled Commodities and the animals, vehicles, vessels or other conveyance so seized in a court and for their safe custody pending such production.

(2) The provisions of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) relating to search and seizure shall, so far as may be, apply to the searches and seizures made under this clause.”

13. Sub-clause (2) provides that the provision of Section 100 Cr.P.C. relating to search and seizure shall be made applicable under this clause.

14. Therefore, the Trial Court has to look into the prosecution evidence that search and seizure of seized 100 bags of wheat has been carried out within the provisions of law.

15. The prosecution has produced only one prosecution witness, the Officer who has seized the bags, as PW-1 Asha Ram Prabhal, ARO, Lohamandi, Agra. He has given statement on oath that on 20.10.1983, he along with Secretary, Krishi Utpadan Mandi Samiti, Agra and Food Inspector has inspected the shop of appellant and found 100 bags of wheat weighed 100 quintals. The appellant on demand failed to produce license to keep the bags of wheat. He has further stated that he has handed over the bags of wheat to M/S Ramesh Chand Naresh Kumar Firm. The memo of recovery of wheat and handing over certificate proved by him is Ext. Ka-1 and Ka-2, respectively.

16. Ext.Ka-1 merely shows the number of bag and its weight. It does not disclose the details of search conducted and the place from where the bags have been recovered, whereas Ext. Ka-2 is the memo of handing over the bags to M/s Ramesh Chand Naresh Kumar (*Supurdagigar*).

17. According to the prosecution, the search and seizure has been made from inside the shop. Though the appellant has defence that the bags of wheat were kept by DW-1 Suresh Chand and DW-2 Udaram in front of his shop, which belongs to them and the appellant has no concern with the bags.

18. This Court will look into the defence of the appellant after considering prosecution evidence. Presently, it is to be seen whether the prosecution has rightly carried out the search and seizure as per Section 100 of Cr.P.C.

19. Section 100 Cr.P.C. provides, 'Person Incharge of closed places to allow search'. The relevant provisions are reiterated underneath:

“

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

.....”

20. Sub-section (4) provides a duty on the Officer for calling upon two or more independent and respectable inhabitants of the locality, where the place to be searched is situated. It is not the prosecution case that the independent witnesses were being called. Sub-section (5) and (6) further

provide for a list of items seized and the place from where they are found and the copy of it shall be provided to the person and signed by the officers and other persons including the witnesses. The Trial Court has not recorded any finding on the point of compliance of Section 100 Cr.PC.

21. In the case of **Ranjan Kumar Chadha v. State of Himachal Pradesh reported** in [2023 SCC OnLine SC 1262] the Supreme Court held that if there is non-compliance of Section 100 or 165 that itself cannot be a ground for rejecting the prosecution case outright. The effect of such non-compliance will have a bearing on appreciation of evidence of official witnesses and other material depending upon the facts and circumstances of each case.

22. This non-compliance of Section 100 Cr.P.C. creates doubt on the prosecution story and prejudice the right of accused-appellant. There is nothing on record to show that the prosecution has proved the contravention of Clause 3 of Order, 1976, to carry out the search by the raiding party, as the terms of license, provided under Clause 5 of the Order, 1976 has not been discussed. The restrictions on possession of foodgrains is provided under Clause 11 of Order.

23. The appellant to absolve himself from the liability of deeming provision of Clause 3 has produced two defence witnesses before the Court. It is also the case of the appellant that the bags of wheat were not stored inside the shop, but were stored outside the shop and he has no concern with the alleged bags. Two witnesses DW-1 Suresh Chand and DW-2 Uda Ram have deposed before the Trial Court that they are the farmers having agricultural field and the bags of wheat have been kept by them in front of the shop. After keeping the bags for some time they merely went in the market to know the price that could be fetched. Both the witnesses have provided their revenue record to show that they were farmers. DW-2 Udaram has also given Nagar Mahapalika Chungi receipt of taking the foodgrain to the Mandi. They have also deposed before the

Trial Court that for the release of their seized bags of wheat they have moved application before the District Magistrate.

24. The Trial Court has not considered the statement of these two defence witnesses, as trustworthy, because they did not know the appellant. Therefore, the Trial Court was of the opinion that keeping the bags inside the shop of the appellant without knowing him is hard to be believed. To my opinion is not a correct analysis of statement of defence witnesses, who have stated that they have kept the bags outside the shop and went to know the price of wheat in the market, in such circumstances, their knowing the appellant-accused is of no importance. Moreover, the prosecution has not disclosed in the search and seizure memo about the place where the bags were kept.

25. The Trial Court has failed to appreciate that the prosecution has failed to establish the place from where the bags were recovered, as it is not mentioned in the memo of search and seizure, which is necessary under Section 100 of Cr.P.C.

26 Learned counsel for the accused has admitted the documents invoking Section 294(3) Cr.P.C. The documents which have been admitted to be genuine by the counsel for the accused-appellant are the documents pertaining to police investigation. On this point, a Division Bench of this Court in **Saddiq Versus State of U.P., reported in 1981 Cr.L.J. 379, Alld.** has held:

“If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under sub-section (1) of Section 294 Cr. P.C. it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implies the admission of the correctness of its contents. Such a document may be read in evidence under sub-section (3) of Section 294 Cr. P.C. Neither the signature nor the

correctness of the contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct.”

27. If the documents prepared by the investigating officer is considered to be admitted in evidence, it cannot fill the gap left by the search party.

28. Therefore, considering the entire gamut of the facts, this Court is of the view that prosecution has failed to prove its case. The Trial Court has not considered evidence produced by the prosecution and defence in right perspective, but merely considered the statement of prosecution witness and presumed the guilt of the accused-appellant, which has been duly discharged by the appellant by producing the defence witnesses. In the facts and circumstances of the present case, this Court, therefore, is of the opinion that the accused-appellant is entitled to the benefit of doubt.

29. The criminal appeal succeeds and is **allowed**.

30. Accused-appellant Prakash son of Achal Bahadur, is on bail, therefore, his bail bonds are discharged. He need not surrender. He shall file personal bond and surety bonds in compliance of Section 437A Cr.P.C. to the satisfaction of Trial Court within a period of four weeks.

31. The office is directed to transmit the lower court record along with a copy of the judgment to the Trial Court for ensuring compliance.

(Avnish Saxena, J.)

September 18, 2025
MN/-