

Court No. - 86

Case :- CRIMINAL APPEAL No. - 2860 of 1985

Appellant :- Ram Prakash Gupta

Respondent :- State of U.P.

Counsel for Appellant :- A.G.A., Neeharika Singh

Counsel for Respondent :- Jagdish Singh

Hon'ble Nalin Kumar Srivastava, J.

1. Present Appeal under Section 374 (2) Cr.P.C. has been filed by accused-appellant - **Ram Prakash Gupta** against the judgment and order dated 11.10.1985 passed by Special Judge (Essential Commodities Act), Agra in Sessions Trial No.14 of 1984 (State Vs. Ram Prakash) under Section 3/7 Essential Commodities Act, Police Station Firozabad (South), District Agra convicting the appellant under section 3/7 Essential Commodities Act and imposing sentence of six months rigorous imprisonment.

2. The brief facts of the case, as culled out from the record, are that accused Ram Prakash was the representative (salesman) of the fair price shop situate in Mohalla Bari Chhapeti, P.S. (Firozabad South), District Agra. On 20.7.1983 at 10:30 A.M., the Area Rationing Officer along with Senior Marketing Inspector inspected the said fair price shop of Smt. Usha Rani Gupta, which was the retail shop and on inspection it was found that on 16.7.1983, in the sale register at serial nos.2, 3, 4, 5, 13, 16, 17, 18, 28 and 39 the accused had shown the sale of rice to the ration card holders but in their cards there were no entries to that effect. Similarly at serial nos.2, 5, 23 and 26 of the sale register there were two entries against the card holders but no such entry was found in their cards. The inspection made by the Officers exposed anomalies in sale

register and ration cards on which they took the sale register and ration cards into their custody, as the accused not maintained the records of the shop and made wrong entries in the register. In this way by making forged entries in the sale register the accused was black-marketing the grains of the fair price shop. In this way, the accused has committed the offence punishable under Section 3/7 Essential Commodities Act in respect of which after completing necessary legal formalities on spot, the F.I.R. was lodged on the same day by the Area Rationing Officer at P.S. Firozabad (South), which is Ex.Ka.-4. After investigation and fulfilling required formalities and obtaining prosecution sanction, charge-sheet was submitted against the accused before the Court, which is Ex.Ka.-7.

3. The accused in his statement recorded before the Court admitted to be the salesman of the fair price shop, but denied the case of the prosecution and the allegations levelled against him.

4. The prosecution, in order to prove its case, examined P.W.-1 T.C, Jain, Area Rationing Officer who as a witness of fact supported the prosecution case and proved the Sale Register Ex.Ka.-1, the memo relating to collections of the ration cards Ex.Ka.-2 and written report Ex.Ka.-3. Relevant documents were also filed and proved by the prosecution.

5. The accused admitted the genuineness of the F.I.R. Ex.Ka.-4, G.D. Entry Ex.Ka.-5, Site Plan Ex.Ka.-6, Charge-sheet Ex.Ka.-7 and prosecution sanction Ex.Ka.-8.

6. After closing of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. The accused in his statement under section 313 Cr.P.C. denied the truthfulness of the evidence produced against him and pleaded that witness P.W.1 had given

false evidence against him. He also submitted that on 16.7.1983 at about 3:30 P.M. he was selling rice as soon as it was received at the shop and when he was making entries in the cards, the same were taken possession of by the Area Rationing Officer and he has been falsely implicated in this case.

7. 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 Section 8 (3) of U.P.E.C. (Display of Prices and Stocks and Control of Supply and Distribution) Order, 1977. Under the said provision, the accused was under obligation to maintain the sale and stock register of the controlled commodities and he was also under obligation to produce them at the time of inspection, but the same was not done by him and conviction was recorded accordingly and the accused-appellant was sentenced to rigorous imprisonment for a period of six months for the offence under Section 3/7 Essential Commodities Act.

8. Heard learned counsel for the appellant and the learned A.G.A. appearing for the State.

9. 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 Prakash Gupta is an old aged person and must be a repenting man. The appeal was filed in the year 1985 and about 40 years have passed. The incident is said to be occurred in the year 1983. 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 Trial Court has passed a sentence of rigorous imprisonment for six months against him. Learned counsel for the appellant further submitted that the Court may convert the period of sentence into a fine, especially in cases where the offence is not severe or a substantial amount of time has passed since the commission of the offence, imposing a sentence for imprisonment shall not be expedient in the interest of justice.

10. 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.

11. 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.

12. 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.

13. In the instant case, criminal machinery came into motion about 42 years ago and the present appeal has been pending for a long period of 40 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 facing several old age diseases and running to the Court continuously for 40 years and in this way he has been punished sufficiently. 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 the sentence imposed upon the appellant by the trial court for imprisonment of six months is converted into a fine of Rs.2000/- in lieu of the imprisonment and that would serve the interest of

justice and the appeal is liable to be partly allowed in the aforesaid terms.

14. Resultantly, the appeal is partly allowed. The conviction of the appellant Ram Prakash Gupta for the offence under Section 3/7 of the Essential Commodities Act is upheld but the sentence of six months rigorous imprisonment under Section 3/7 of the Essential Commodities Act awarded by the trial court vide impugned judgment and order is modified to the extent that in lieu of imprisonment, the appellant shall pay Rs.2000/- as fine within two months from today and in default of payment of fine, he shall serve simple imprisonment for a period of 15 days. Appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

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

Order Date :- 12.8.2025

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