

Court No. - 75

Case :- CRIMINAL APPEAL No. - 3083 of 1984

Appellant :- Ram Kishan Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Dinesh Rai, Ravindra Singh

Counsel for Respondent :- A.G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Dinesh Rai, learned counsel for the appellant and Sri Vikas Sharma, learned State Law Officer for the State.

2. Challenge in this appeal U/s 374 (2) Cr.P.C. is the judgment and the order dated 31.10.1984 passed by Special Judge (E.C. court) Mainpuri in S.T. No.13 of 1904 convicting the appellant under Section 9 of Essential Commodities Act, 1955 read with clause 39 of U.P. Foodgrains and other Essential Articles and Distribution order 1977, sentencing him to undergo rigorous imprisonment for a period of six months.

3. The prosecution story in brief is that Kendriya Thok Upbhokta Bhandar, Mainpuri runs a fair price shop in kasba and police station Bhogaon Mainpuri. The appellant herein was a sales man (authorized retail distributor) for sale of government foodgrains and other essential article of the aforesaid shop. It is alleged that on 20.08.1983 at about 10/11 a.m. Supply Inspector namely R.K. Paliwal, accompanied by Supply Inspector Sri Jai Krishna Sharma came to the aforesaid shop and at that time, the appellant accused was selling the essential articles from the shop. Sri R.K. Paliwal took sale register exhibit-1 from the possession of the appellant accused and gave him receipt of exhibit Ka-1, wherein following irregularities were found:

"1. In Sale register Ex.1 on 23.07.1983 sale of 170 liters of kerosene has been shown but from stock the total sale of 160 liters of kerosene has been deducted.

2. In the aforesaid sale register on the aforesaid day sale of 2.74 kgs of sugar has been shown but from stock the total sale of 2.73 kgs of sugar has been deducted.

3. The price of kerosene realised from consumers has not been entered in the above register."

4. Sri R.K. Paliwal inquired into the matter and he recorded the

statement of Raja Ram Verma, Balak Ram and Nasiruddin which are exhibit Ka-3, Ka-4 and Ka-5 respectively. A report was also reduced in writing being exhibit Ka-2 pointing out the irregularities found by him. On the basis of a written report Ex.Ka-2, the police official of police station Bhogaon registered FIR exhibit Ka-6 and made necessary entries in GD which is Ex.Ka-7. The sale register was deposited in police station at Bhogaon. The copy of the GD Ex.Ka-8. S.I. Sri Chandra Mohan Rawan investigated the case and interrogated the witnesses, a site plan was prepared Ex.Ka-10 and after investigation, charge-sheet came to be submitted in the aforesaid provisions/ sections Ex.Ka-11.

5. The statement of the acquisition was explainted to the accused. He pleaded not guilty and claimed to be trial. In the statement U/s 313 Cr.P.C., the appellant accused stated that the Supply Inspector Sri R.K. Paliwal has made no enquiry and he only came to the shop and took the sale register and the entries made in the sale register are in the hand writing of Gopal Singh Yadav and he took charge to Gopal Singh Yadav on 17.07.1983. In support of the prosecution, the prosecution in order to bring on the charge examined P.W.-1 the Supply Inspector Sri R.K. Paliwal. The defence D.W.-1 namely Trilok Chandra, Sr. Clerk of the Office of Cooperative Societies, Mainpuri. Thereafter the court of Special Judge/EC Act Mainpuri by virtue in S.T. No. 13 of 1984 proceeded to convict the appellant U/s 9 of the E.C. Act read with clause 23 of U.P. Foodgrains and Other Essential Article, 1977 while sentencing him to undergo rigorous imprisonment for a period of six months.

6. Learned counsel for the applicant has submitted that the entire prosecution theory so sought to be developed has no legs to stand for a simple reason that there was no irregularity found during the alleged inspection conducted by the Supply Inspector Sri R.K. Paliwal. It is further submitted that no enquiry whatsoever was conducted. According to him only the sale register was taken in possession which was in the hand writing of the Gopal Singh Yadav from hom the appellant had taken the charge on 17.07.1983. Further submission is that there has been violation of Section 11 of the E.C. Act as according him in view of the amendment made in Section 11 by U.P. Act no.9 of 1974 w.e.f. 24.04.1974 without there being any sanction accorded by the concerned District Magistrate, cognizance could not have been taken. Learned counsel for the appllant submits that he is innocent. It is also submitted that the incident is of 20.08.1983 and more than 42 years have passed and the applicant does not possess any criminal history thus the sentence so sought to be awarded to the appellant U/s 9 of E.C. Act read with clause 23 of U.P. Foodgrains and other Essential Articles Distribution

order 1973 be altered and modified from rigorous imprisonment for a period of six months to fine.

7. Learned State Law Officer on the other hand submits that from the record it is apparent that the appellant herein happens to be sales man/ authorized distributor and during the course of the inspection various irregularities were noticed which is apparent from the register which was taken in possession and according to him the prosecution witnesses also supported the theory and further the defence taken U/s 313 Cr.P.C. is unbelievable. He however submits that since the incident is on 20.08.1983 more than 42 years have passed and it is not forthcoming from the record that there is any criminal history possessed by the appellant thus the sentence so sought to be awarded under the above noted provisions be altered and modified to fine in place of rigorous imprisonment for six months.

8. I have heard the submissions so made across the bar and perused the record carefully.

9. Apparently, the allegations has set forth against the appellant is that there happens to be a Kendriya Thok Upbhokhta Bhandar Mainpuri which was running a fair price shop in Kasba, police station Bhogwaon District Mainpuri wherein the appellant was a sales man (authorized distributor) for the foodgrains and during the course of inspection on 20.08.1983 at 10/11 am by the Supply Inspector namely R.K. Paliwal accompanied by Supply Inspector Sri Jai Krishna Sharma, it was found that the accused appellant was selling essential commodity of the shop and when the sale register was taken in possession then the various irregularities were noticed as discussed above. Thereafter, post recording of statements of the prosecution witnesses and after considering the submissions U/s 313 Cr.P.C. and also the statements of the defence, the appellant was convicted under section 9 of Essential Commodities Act read with clause 23 of U.P. Foodgrains and Essential Articles Distribution order 1977 while sentencing him to undergo rigorous imprisonment for a period of six months. Thus it cannot be said that offences were not committed by the appellant.

10. Bearing in mind the fact that the offences alleged to have been committed is on 20.08.1983 and more than 42 years have been passed from the date of the incident and there is nothing on record to suggest that the appellant possess any criminal history and also the nature of the offences committed by the appellant and also the stand of the counsel for the appellant and learned State Counsel for the respondents that the conviction

U/s 9 of the Essential Commodity Act, 1955 read with section 39 of U.P. Foodgrains and Essential Articles and Distribution or order, 1977 sentencing and convicting the appellant to undergo rigorous imprisonment be modified and altered to fine. A case is made out for modification and alteration of sentence.

11. Accordingly, the appeal is allowed in part. The conviction of the appellant for the offence U/s 9 of E.C. Act, 1955 read with Section 39 of U.P. Foodgrains and other Essential Articles and Distribution Order, 1977 is upheld. However, the sentence to undergo rigorous imprisonment for a period of six months is altered and modified to imposition and fine of Rs. 2000/- under Section 9 of E.C. Act, 1955 and Rs.1000/- under clause 39 of U.P. Foodgrains and Other Essential Articles and Distribution Order, 1977. The fine amount imposed upon the appellant accused for the aforesaid offences shall be deposited by the appellant within three weeks from today. In case of any default in payment of the fine within the aforesaid period, the appellant shall selfout the entire sentence awarded to him by the trial court vide impugned judgment and the order.

12. Let a copy of the judgment along with LCR sent to the court below for compliance.

13. The compliance report be submitted to this Court.

14. A copy of the order be provided to the counsel for the appellant as well as learned AGA as per rules.

Order Date :- 18.7.2025

C. MANI

(Vikas Budhwar,J.)