



2026:AHC:48842

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1207 of 1987

Arvind Kumar

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Anuj Kumar Gupta, Shyam Lal
Counsel for Respondent(s)	:	A.G.A.

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. This appeal has been preferred by the appellant against the conviction and sentence recorded vide judgment and order dated 24.04.1987 passed by learned Special Judge, Moradabad in E.C. Act Case No.35/9 of 1994 convicting and sentencing the appellant under Section 3/7 of E.C. Act, P.S.- Sambhal, District- Mordabad, to undergo RI for 9 months and a fine of Rs.3000/- and in default of payment of fine the accused to further undergo for 3 months.
2. The prosecution case, in brief, is that the accused, Arvind Kumar is a fertilizer dealer and licensee and proprietor of the firm in the name of Kisan Khad Store situated at Alam Sarai, Sambhal. The B.D.O., Sambhal Sri Surendra Pal inspected the fertilizer store on 05.07.1983 in the presence of the accused. The accused was found to have not maintained the stock register as required under the law and the entries in the stock register were not up to date. The entries were made only up to 03.07.1983 in the stock register. There were entry of 56 bags of Calcium 25% and 16 bags of Calcium 26% on 30.06.1983, however, these entries were not carried forward further.
3. From the cash memo, seal of 7 bags was shown in the name of Sri Kishan on 05.07.1983 but on physical verification 26 bags of Urea and 6 bags of super Phosphate were found and two bags of UPI and 3 bags of super phosphate were from less in stock.
4. On physical verification, 72 bags of Calcium 25% and 26% were also found in stock for which no explanation could be given by the licensee.

5. The B.D.O. prepared recovery memo Ext. Ka-1, regarding 72 bags of Calcium and it was given in the supurdagi of Sri Ajendra Kumar, who was present at the time of inspection. An FIR was lodged at Police Station Sambhal Kotwali, chik report was drawn and G.D. entries were made. After investigation of the case, charge-sheet was submitted.

6. Charges under Section 3/7 of E.C. Act were framed and read over to the accused. He denied the charges and claimed the trial.

7. The prosecution has produced PW-1 B.D.O. Surendra Pal Singh and PW-2 Sri Balwant Singh A.R.O. The genuineness of chik report Ext. Ka-3, site plan Ext. Ka-4, charge-sheet Ext. Ka-5 and sanctioning order of the District Magistrate Ext. Ka-6 have been admitted by the defence counsel and the same has been dispensed with under Section 294 Cr.P.C. Statement under Section 313 Cr.P.C. has been recorded in which the accused again denied the charges levelled against him. In defence, DW-1 accused Arvind Kumar, DW-2 Sri Jishan Ahamad and DW-3 Sri Kishan Lal were examined.

8. DW-1, accused Arvind Kumar stated that his shop was closed on Monday, on 04.07.1983, he made entries of the closing stock in the stock register on 03.07.1983. On 05.07.1983, Sri Kishan Lal had purchased 7 bags of Urea, which were kept outside the shop. Besides this, 2 bags of Urea and 3 bags of super phosphate have been taken by the Sri Jishan Ahamad. He took out the stock register and the cash memo but Sri Kishan Lal was in a hurry and so he left one blank cash memo receipt. When the B.D.O. arrived, he took the cash memo book and the stock register from the accused and he did not counted the bags sold to Kishan Lal and Jishan Ahamad.

9. The accused, Arvind Kumar DW-1 further stated that 72 bags of Calcium, which was recovered by the B.D.O. were not recovered from the shop but they were lying in their tractor trolley parked outside his shop. He stated that the B.D.O. forced him to make an entry of Calcium bags in the stock register dated 30.06.1983 and then the B.D.O. himself struck it. The B.D.O. did not allow him to complaint the receipt.

10. D.W.-2 Jishan Ahamad stated regarding purchase of 2 bags of Urea and 3 bags of super Phosphate from the shop of accused Arvind Kumar. D.W.-3 Sri Kishan Lal stated regarding purchase of 7 bags of Urea from the accused on the date of occurrence. He also supported the defence taken by the accused.

11. The learned Trial Court, after considering the oral and documentary evidence on record observed that the prosecution has proved his case beyond reasonable doubt by producing oral and documentary evidences. Stock register and cash memo which were taken into possession at the time of inspection are proved as Ext.- 1 and 2. The defence taken by the accused was an afterthought. Even if the explanation given by the accused regarding the shortage of fertilizer stock is accepted. There is no satisfactory explanation regarding other irregularities in the stock. The accused has disowned the recovery of 72 bags of Calcium and stated that they were recovered from a tractor trolley parked in front of his shop because no person has come to claim these 72 bags if these bags were lying in the tractor there must be some owner and he certainly would have claimed the same. The version of the accused that the B.D.O. forced him to make entry regarding 72 bags in the stock register for 30.06.1983 and then cut it off himself was also considered absurd.

12. After considering oral and documentary evidences placed on record, the trial court convinced that the accused was not maintaining the record according to the conditions of the license and at the time of inspection, his stock was not found according to the stock as shown in the stock register. The Trial Court convicted the accused for offence under Section 3/7 of E.C. Act and sentenced him to undergo rigorous imprisonment for 9 months and a fine of Rs.3000/-. In default of payment of fine, a further imprisonment of 3 months have been awarded.

13. Aggrieved by the order of conviction and sentence, the appeal has been preferred. It is submitted that the conviction and sentence of the appellant is against the weight of evidence on record. The sentence is imposed on the appellant is too severe, therefore, it is prayed that appeal be allowed and the judgment and order of conviction and sentence be set aside.

14. At the time of argument, learned counsel for the appellant contended that the offence is of the year 1987, nearly 4 decades old. The accused is now have been 65 years of age. The offence is technical and regulatory in nature, involving no violence and moral turpitude. The appellant has already suffered the trauma of protracted criminal proceedings for an inordinate long period. He also submitted that the conviction on merit is not under challenge. The appeal is confined only to the question of sentence.

15. Learned A.G.A. for the State supported the conviction but submits that question of sentence may be left to the discretion of the Court.

16. This Court has taken into consideration to the submissions of both the parties and perused the record. The witnesses P.W.-1 and P.W.-2 produced by the prosecution fully supported the prosecution version against the accused. There is no material contradiction in their statements. The appellant was undergone for a period of 8 days. This Court finds no infirmity or jurisdictional error in the findings of the Trial Court. The oral and documentary evidences produced by the prosecution transpires that the accused has contravened the conditions of the license and also contravened the provisions of the Fertilizer Control Order, 1957, and thereby committed an offence punishable under Section 3/7 of E.C. Act. The conviction recorded by the trial court deserves to be upheld.

17. So far as the sentence is concerned, it is well settled that the sentencing is the discretionary function of the Court, which must be exercised judicially, balancing the gravity of the offence with mitigating circumstances. In *State of Punjab Vs. Prem Sagar*, (2008) 7 SCC 550, the Hon'ble Supreme Court held that proportionality on sentence is cornerstone of criminal jurisprudence and the punishment must be tailored to the facts of each case. Similarly, in *Ali Star Anthony Pareira Vs. State of Maharashtra*, (2012) 2 SCC 648, the Hon'ble Supreme Court reiterated that sentence imposed should reflect the balance between deterrence and reform, depending upon the nature of the offence in cases involving old and technical offences. The Supreme Court has consistently adopted a technical approach in sentencing, particularly where the accused has faced prolong litigation, sentence may be reduced, considering the long lapse of time and age of the accused.

18. As regards the sentence, it is true that Section 7 of the Act prescribes a minimum period of 3 months of imprisonment, but the proviso empowers the Court to impose a lesser sentence in special circumstances and for adequate reasons. In the present case, the following mitigating factors assumes significance :-

(a) The offences is non-violent and regulatory.

(b) The incident occurred in 1987, and the appellant has faced criminal proceedings for decades.

19. The appellant is now elderly, and incarceration at this stage would serve no meaningful purpose. These mitigating factors constitute special reasons within the meaning of the said proviso. The ends of justice would be made by reducing the custodial sentence and enhancing the fine.

20. In view of the foregoing discussion, while the conviction of the appellant deserves to be sustained, the sentence imposed by the trial court calls for interference and modification. Accordingly, the appeal is partly allowed in the following terms :-

"(1) The conviction of the appellant under Section 3/7 of E.C. Act is affirmed.

(2) The sentence of 9 months of rigorous imprisonment is modified to the imprisonment already undergone 8 days.

(3) The fine is enhanced from Rs.3000/- to Rs.10000/-. The enhanced fine shall be deposited within a period of two months from the date of receipt of a certified copy of this judgment. In default of payment of fine, the appellant shall undergo the default sentence as directed by the trial court."

January 28, 2026
P. Pandey

(Mrs. Vani Ranjan Agrawal,J.)