

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1134 of 1998

- Gopal Prasad, S/o Vishwanath Prasad, aged 45 years, Businessman, resident of Ramanujganj, P.S. Ramanujganj, District – Surguja (M.P.) (now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh, (now State of Chhattisgarh)

---- Respondent

For Appellant	:	Mr. A.K. Prasad, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 10-09-2015

- 1) The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 29.04.1998 passed by the Special Judge, Surguja (Ambikapur) competent to try the case under Section 3 read with Section 7 of the Essential Commodities Act, 1955 (for short 'the E.C. Act') in Special Case No.127 of 1996, whereby and whereunder the learned Special Judge after holding the appellant guilty for violation of M.P. Scheduled Commodities Dealers (Licensing and Restriction of Hoarding) Order, 1991, convicted him under Section 3 read with Section 7(1)(a)(ii) of the E.C. Act and sentenced him to undergo R.I. for 3 months and to pay fine of Rs.500/-, in default of payment of fine to undergo additional S.I. for one month.
- 2) The case of the prosecution, in brief, is that accused/appellant is a businessman of Ramanujanj city. On 21.12.1995, Food

Inspector Kanhaiyalal Jaisawal (PW-2) inspected the premises of the appellant and during the course of said inspection it is alleged that in the stock register, there was entry of rice to the tune of 4.5 quintals, but on the physical verification of godown only 2.5 quintals stock was there, no bill was issued about said rice. It is further alleged that on inspection 2.50 quintals of *A/si*, 80 kgs. of Maize (Makka), 1.80 quintals of Mutter, 80 kgs. of Urad Dal, 80 kgs. of Jawa, 1.80 quintals of Jwar, 63 bags of wheat, 110 quintals of groundnut and 1 quintal of *Sarson* were found. There was no mention of the aforesaid articles in the said stock register and thus there was violation of the conditions No. 3, 4 and 6 of the M.P. Scheduled Commodities Dealers (Licensing and Restriction of Hoarding) Order, 1991.

- 3) After due investigation, a complaint case was lodged against the accused/appellant in police station, Ramanujganj, District – Surguja by the Food Inspector, thereafter, the charge sheet was filed against the accused/appellant on 28.06.1996. Appellant was charge sheeted, he has denied the charge and has taken plea of false implication and presented four defence witnesses for his defence.
- 4) After providing opportunity of hearing to the parties, learned Special Judge, on appreciation of evidence brought on record came to hold that the prosecution had been able to establish the charges against the accused and on that basis convicted

and imposed sentence as has been stated herein-before. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the accused/appellant has preferred the instant appeal.

- 5) I have heard learned counsel for both the parties and perused the judgment impugned including the record of trial Court.
- 6) Learned counsel appearing for the appellant submits that case of the prosecution was not supported by the *panch* witnesses, they have not supported the enquiry *panchnama* and seizure memo. He further submits that prosecution has not proved its case beyond the shadow of doubt for which benefit should be given to the appellant. In alternate he prayed that since the incident is about 20 years old, the appellant is first offender with no criminal past of like nature, sympathetic view may kindly be taken for the quantum of sentence, if case is proved. He has placed reliance in the matter of **Simadhari Nara Singh Murty v. State of Orissa** reported in **[Crimes, VI-1991(2) 248]** wherein it was observed that after considering the fact that it was a case of eight years old and no previous incident was there, the appellant was granted imprisonment till rising of the Court and fine of Rs. 5,000/-.
- 7) On the other hand, learned State counsel has opposed the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.

- 8) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 9) On minute scrutiny of the evidence, it appears that Food Inspector Kanhaiyalal Jaisawal (PW-2) has seized non-stocked food grains from the shop of the appellant and also found short stock of rice, it was fully supported by the evidence of seizure witnesses Bharat Thakur (PW-1) and Ashok Kumar (PW-6). Appellant has tried his best to offer an explanation through his examination and also by examining defence witness that stock of rice was not short that was put up near the shop and other seized grains were not related to him, but appellant has not given cogent, reliable and clinching evidence, which could be considerable.
- 10) Considering all the facts and circumstances of the case and on the basis of statements of Kanhaiyalal Jaisawal (Pw-2), Bharat Thakur (PW-1) and Ashok Kumar (PW-6), the prosecution has been able to prove that the appellant has violated the said order which was punishable under Section 3 read with Section 7 of the E.C. Act.
- 11) So far as the quantum of sentence is concerned, as per the facts of this case, it is a case which comes under the provisions of Section 7(1)(a)(ii) of the Act where minimum sentence prescribed was three months which may extend to seven years

and also to pay with fine, provided that the 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. In the present case the incident is about 20 years old, the appellant is first offender, he was holding legal license, but violated the legal order, it is not shown by prosecution that there was any *means rea* in a part of accused/appellant.

- 12) On considering the entire facts and circumstances of the case, I am of the view, *prima facie* that, this is a fit case where lenient view may be taken so that the appellant may not commit any likewise offence in future.
- 13) Consequently, the appeal filed by the appellant is partly allowed. Judgment of conviction awarded by the trial Court under Section 3 read with Section 7 of the E.C. Act is hereby affirmed. So far as the quantum of sentence is concerned, the substantive jail sentence of 3 months awarded to the appellant by the trial Court is modified to the extent that the appellant is sentenced for till rising of the Court and sentence of fine of Rs.500/- awarded by the trial Court is enhanced upto 5,000/-. It is noteworthy that in case fine amount as enhanced by this Court is not paid within one month, appellant shall undergo R.I. for 3 months.

- 14) The appellant is reported to be on bail. His bail bond shall continue for a further period of six months as per requirements of Section 437A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
JUDGE