

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2040 of 1998

- Asif Ali aged about 30 years, S/o Akbar Ali, R/o Usmania Bada, Gole-Bazar, Dhamtari, Distt. Raipur (M.P.) [now State of C.G.]

---- Appellant

Versus

- State of M.P., through Police Station – Dhamtari, District – Raipur (Now State of CG).

---- Respondent

For Appellant	:	Mr. Sanjeev Kumar Sahu, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 04-08-2015

- 1) The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 26.08.1998 passed in Criminal Case No. 3/98 by Special Judge, Raipur, whereby & whereunder learned Special Judge after holding the appellant guilty for violation of Liquefied Petroleum Gas (Regulation of Supply & Distribution) Order, 1993 (hereinafter referred to as “the P.G. Order”) convicted him under Section 3 & 7 of Essential Commodities Act, 1955 (for short, 'the Act') and sentenced him to undergo S.I. for three months and to pay fine of Rs. 500/-, in default of payment of fine to undergo additional S.I. for 10 days.
- 2) The facts as projected by the trial Court are that the appellant/accused is a hotel-keeper, he was arrested and

prosecuted for alleged violation of clause 3(1) (c) and 6(1)(c) of the P.G. Order. Prosecution has alleged that on 11.01.1998 Naib Tehsildar, Dhamtari Shri D.R. Margiya (PW-3) along with Food Inspector R.K. Shukla (PW-1) inspected the hotel "Cafe Akbari" which belongs to appellant in presence of Abdul Salim and Naveen Masih and found the appellant using Liquefied Petroleum Gas (Domestic) in cooking and preparation of some edible items. Seizure & Panchnama (Exs.P-1 & P-2) were prepared and gas cylinder, brass regulator and a rubber pipe were seized which were allegedly handed over to LPG Dealer, Mohan Lal Agrawal on Supurdnama. After preliminary inquiry FIR (Ex.P-8) was lodged by Inspector, Food and Supply, Dhamtari and after completion of investigation police has filed challan sheet against the appellant under Section 3 & 7 of the Act.

- 3) Learned trial Court relying upon the testimonies of Ram Kishore Shukla (PW-1), D.R. Margiya (PW-3) and Ashok Kumar Dwivedi (PW-4) convicted the appellant as aforementioned.
- 4) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 5) Learned counsel appearing for the appellant has submitted that trial Court has wrongly convicted under Section 3 & 7 of the Act. Since the independent witnesses have not been examined, therefore, seizure and panchnama (Exs.P-1 & P-2) were not

properly proved. Testimonies of the prosecution witnesses are not unimpeachable, reliable and trustworthy and the trial Court has committed grave error by relying on them, therefore, impugned judgment of conviction and order of sentence are liable to be set aside.

- 6) *Per contra*, learned counsel appearing for the State has supported the judgment passed by the trial Court and opposed the appellant's argument.
- 7) Food Inspector Ram Kishore Shukla (PW-1), who is complainant of this case, has stated that on 11th January, 1998, he alongwith other Government official D.K. Margiya (PW-2) went to appellant's hotel, where they saw that the accused was using domestic Gas Cylinder for the purpose of hotel and was making Samosa before independent witnesses, for which he had prepared Panchnama (Ex.P-1) and seizure memo (Ex.P-2) and recorded the statement of accused vide Ex.P-3.
- 8) Another Government Official D.K. Margiya, Naib Tehsildar (PW-3) has supported the statement of Ram Kishore Shukla (PW-1).
- 9) In their statements, these two witnesses have stated about Abdul Salim and Navin Masih, two independent witnesses of panchnama and seizure, but the prosecution has not examined these two independent witnesses and has also not offered any explanation as to why these witnesses were not examined before the trial Court. Though the independent witnesses were

easily available, but they have not been examined, it means they don't support the prosecution story. Without examination of independent witnesses, solely basis of governmental witness cannot be believed on prepared document, both examined witnesses were doing leadership of raid and they have done formality before the independent witnesses, therefore, only on the basis of the statements of Government witnesses Food Inspector Ram Kishore Shukla (PW-1) and Naib Tehsildar D.R. Margiya (PW-3), conviction of accused cannot be sustained.

- 10) There is no specific evidence to show that the accused was running a hotel at public place nor there is a specific proof that any domestic LPG cylinder was seized from him. Prosecution has also not examined LPG Gas distributor, Mohal Lal, who has taken Gas Cylinder on Supurdnama. If he would have been examined, then he might have disclosed that Gas Cylinder was for the purpose of domestic or commercial use.
- 11) Considering all the facts and circumstances of the case, I am of the considered opinion that the prosecution has totally failed to prove its case beyond reasonable doubt and while convicting and sentencing the appellant, the trial Court has ignored the evidence available on record and has entered into wrong conclusion by wrong presumption that the appellant was using domestic LPG for commercial purpose and thereby committed illegality.

- 12) Consequently, the appeal deserves to be and is hereby allowed. Conviction and sentence of the appellant under Section 3 & 7 of the Act are hereby set aside. Fine amount, if paid, shall be refunded to the appellant.
- 13) It is stated that the appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE