



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1876 of 1997

- Sanjay Sharma, S/o Ramchandra Sharma, aged 26 years, Proprietor Sharma Krishi Kendra, R/o G.E. Road, Durg, Tahsil and Distt. Durg (M.P.)

---- Appellant

Versus

- Senior Agricultural Development Officer/Food Inspector, Durg, Distt. Durg (MP)
- State of MP through respondent No.1 as above described.

---- Respondent

For Appellant : Shri Alok Bakshi, Advocate.
For Respondent/State : Shri Ashish Surana, Panel Lawyer.

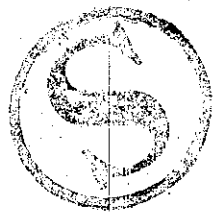
Hon'ble Shri Pritinker Diwaker, J

Judgment On Board

24/06/2016

This appeal arises out of the judgment of conviction and order of sentence dated 27.8.1997 passed by the Special Judge, Durg in Special Criminal Case No.16/1991 convicting the appellant under Section 7 of the Essential Commodities Act, 1955 and sentencing him to undergo RI for three months and fine of Rs.1000/- with default stipulation.

03. Brief facts of the case are that on 4.7.1991 shop of the appellant namely Sharma Krishi Kendra was inspected by one BM Sharma, Sr. Agriculture Development Officer, Durg, and it was noticed that the appellant sold a bag of super-phosphate to Tikaram (PW-3) @ Rs.55/- per bag instead of Rs.48.80 as fixed. It was further noticed that neither list of the stock was displayed nor the stock register was filled in as per the requirement of law. The complaint was filed against the appellant under Section 3/7 of the Essential Commodities Act read with Sections



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3 & 4 of the Fertilizer (Control Order) Act, 1985. Charges were framed accordingly and the appellant was prosecuted.

04. So as to hold the accused/appellant guilty, the prosecution examined three witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

06. Counsel for the appellants submits as under:

(i) that there are material contradictions in the statements of the witnesses, in particular the statements of test purchaser and the officer who allegedly conducted trap.

(ii) that no reason has been assigned for conducting trap in the shop of the appellant and in absence of any specific complaint, the very proceedings are bad in law.

(iii) that independent witnesses have not supported the prosecution case.

(iv) that fertilizer "super-phosphate" does not fall under the definition of essential commodity as defined under Section 3 of the Essential Commodities Act. No such declaration has been envisaged under the schedule as per requirement of the law.

(v) that in absence of any receipt by the test purchaser, it cannot be held that any fertilizer was purchased by Tikaram (PW-3) from the

shop of the appellant and merely on the oral statement of the official witness, the appellant cannot be convicted.

07. On the other hand, State counsel has supported the impugned judgment.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Itwari Ram, a witness of Panchanama (Ex.P/1), has stated that in his presence Shri Sharma, Agriculture Extension Officer, gave Rs.100/- to Tikaram (PW-3) and instructed him for purchasing fertilizer. However, in cross-examination he has stated that he is not aware as to from which shop the fertilizer was to be purchased. PW-2 BM Sharma is the complainant and in-charge of the entire proceedings. He has though supported the prosecution case but has admitted that no written complaint was made to him against the appellant and if someone has made any such complaint to the Collector, he is not aware of the same. He admits that Tikaram is a government employee and there are as many as six shops dealing in chemical fertilizer, including the shop of one another Sharma. He has stated that he had asked Tikaram to purchase fertilizer from the shop of Sanjay Sharma and thereafter, he states that he did not ask Tikaram to purchase fertilizer from the shop of Sanjay Sharma, but had asked him to purchase fertilizer from Sharma Krishi Kendra. He has further stated that he had asked Tikaram to first orally ascertain the rate of the fertilizer. He admits that Panchanama has not been signed by any independent witness, though several surrounding shops were found to be open at that time and

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number of persons were there. In para-18 he admits that while giving Rs.100/- to Tikaram, he did not check his pockets nor did he check the pockets of Tikaram when he returned the balance amount to him (PW-2) and as such, he cannot tell with certainty whether Tikaram had kept some amount with him while returning the balance amount to him (PW-2).

10. PW-3 Tikaram, the test purchaser, has stated that he was called in the office of SDM by PW-2 and was given Rs.100/- to purchase super-phosphate from the shop of the appellant. He has stated that upon being asked, the accused/appellant stated the rate of super-phosphate to be Rs.55/- per bag, then he purchased one bag for Rs.55/- and thereafter, PW-2 along with other officials also reached there, enquired from him about the contents of the bag, its rate, recovered Rs.45/- from him and then seized Rs.45/- and the bag of fertilizer. If part of paras-1 and 6 of PW-3 is compared with the statement of PW-2, it appears that both these witnesses are narrating contrary facts. PW-3 has further admitted the fact that he did not obtain any receipt of purchasing fertilizer. He also admits that he was asked to go to the shop of one Sharma and accordingly, he went to the shop of the appellant and is not aware whether any other shop of one Jageshwar Sharma is also there. In respect of issuance of documents also, he does not fully support the prosecution case.

11. Close scrutiny of the evidence makes it clear that there are material contradictions in the statements of PW-2 and PW-3, who is the star witness of the prosecution. They give different story on material points. The witnesses have admitted the fact that they have not obtained any

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receipt from the appellant in lieu of purchase of fertilizer. The prosecution has also failed to prove as to who made complaint against the appellant and considering the fact that there were two shops owned by Sharma, in absence of any concrete evidence⁹ that the complaint was against the appellant only, it cannot be said with certainty that it is the appellant against whom the complaint was made. It has been admitted by PW-2 that neither before handing over amount to Tikaram nor while receiving back the remaining amount from him, pockets of Tikaram were checked, and thus, it cannot be said with certainty that full amount returned by the appellant was given by PW-3 to PW-2⁴ or PW-3 kept some amount with himself.

12. Taking the totality of the case, it is apparent that the prosecution has failed to prove its case against the appellant beyond all reasonable doubt and thus, the appellant being entitled for benefit of doubt deserves to be acquitted of the charges leveled against him.

13. In the result, the appeal is allowed. The appellant is acquitted of the charge under Section 7 of the Essential Commodities Act, 1955 by extending him benefit of doubt. Appellant is on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-
Pritinker Diwaker
Judge