

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 911 of 2002

1. Pawan Kumar Agrawal S/o Nagarmal Agrawal, Aged about 42 years, Occupation : Shopkeeper, R/o Ramanujganj, Ward No.9, Distt. Surguja (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through P.S. Ramanujganj, Distt. Surguja (C.G.)

---- Respondent

For Appellant – Ms. Sareena Khan, Advocate.
For Respondent – Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

30/03/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10-08-2002 passed by the Special Judge, Surguja (Ambikapur) C.G. competent to try the case under Section 3 read with Section 7 of the Essential Commodities Act, 1955 (in short 'the EC Act') in Special Criminal Case No.129/96 whereby and whereunder the learned Special Judge after holding the appellant guilty that though he was authorized to sell cement and fertilizer but he failed to exhibit the price and stock of the said commodity as required and also failed to show stock register and bill book during authorized enquiry and thereby violated Mulya Pradarshan and Niyantiran Aadesh-1977, M. P. Cement Dealer Licensing and Control Order-1973, M. P. Khadyann Vyapari Anugyapak Aadesh-1965 and Fertilizer Control Order-1985 and found him guilty under Section 3(2) (i) read with Section 7(1)(a)(i) of the EC Act and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/-, in default of payment of fine to further undergo additional rigorous imprisonment for three months.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned thereby committed illegality.

3. As per case of the prosecution, complainant Komal Ram Mandavi (retired after the incident and during trial) on 21-12-1995 investigated the shop of present appellant jointly owned by co-accused Vinod Kumar Agrawal (discharged by the then High Court of M.P. at Jabalpur in Criminal Revision No.167/2000 vide order dated 25-04-2000) and noticed that daily stock of the said fertilizer and cement was not displayed, daily stock register and bill book was not properly maintained and during investigation stock register and bill book was not submitted. Thereafter, Shri Komal Ram Mandavi conducted the entire investigation, lodged the FIR and seized required documents. The FIR was registered before Police Station Ramanujganj as Crime No.159/1995.

4. After completion of the investigation, charge sheet was filed before The Special Judge, Ambikapur competent to try the cases under Section 3/7 of the EC Act. The Special Judge during the trial explained the substance to frame charge as required in trial for the offence under Section 3/7 of the EC Act. The present accused/appellant denied the substance of the charge and prayed for trial.

5. In order to prove guilt of the appellant, the prosecution has examined as many as 4 witnesses. As the Investigating Officer Shri Komal Ram Mandavi, Food Officer was retired and not traceable, during the trial the prosecution examined Shri M.R.S. Paikara, Assistant Food Inspector to prove the enquiry/investigation conducted by Shri Komal Ram Mandavi. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned Special

Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant submits that after perusal of the entire material and the evidence adduced before the trial Court and other facts, she is not contesting the instant criminal appeal against the judgment of conviction, on the other hand, she is contesting the instant criminal appeal merely for the quantum of sentence. Learned counsel would submit that the incident is about 20 years 3 months old, the appellant is the first offender, co-accused duly discharged for the offence and the State has not challenged the said discharge before Hon'ble the Apex Court thereby it attains finality. The appellant was in custody for one month 23 days, i.e., he was arrested on 22-12-1995 and he remained in the custody till 13-02-1996 thereby he remained in custody for 1 month 23 days. There is no any minimum sentence prescribed for the offence. Looking to the entire facts and also as he has deposited the entire fine amount, he may be sentenced for the period already undergone, and also that with the same set of evidence co-accused was discharged, also for the fact that the person who conducted the enquiry was not examined though he was alive as per statement of Assistant Food Officer M.R.S.Paikara (PW-4) and also the appellant tested the post effect of the incident by contesting the said matter before the trial Court and also before this Court for last more than 20 years. Thus, on the humanitarian ground he may be sentenced for the period already undergone by him.

9. Per contra, learned counsel for the State/respondent opposed the argument advanced in this behalf and submitted that the appellant was required to exhibit the daily stock and to update the stock register and bill book; as the appellant failed to maintain those record and bill book and also not displayed the daily stock, the trial Court adequately sentenced the appellant, hence, the

appeal may be dismissed on both counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

11. Upon minute examination, it appears that initially the appellant is not contesting the instant criminal appeal for his conviction and also after entire perusal of the evidence including the cross-examination and the Statement under Section 313 of the Code, it goes to show that the trial Court not committed any illegality or impropriety by convicting the appellant as aforementioned. Hence, in the considered view of this Court, the judgment of conviction requires no interference. Also so far as the fine sentence awarded to the appellant by the trial Court is concerned, the trial Court moderately awarded fine of Rs.1000/- which cannot be said as on the higher side. Hence, the sentence of fine also does not require any interference. So far as quantum of substantive jail sentence is concerned, as prayed, the incident is more than 20 years old, the appellant is the first offender facing trial and other litigation for more than 20 years thereby sufficiently tested the post effect of the non-compliance of the different control orders issued on behalf of the State under the relevant provisions of EC Act, he remained in custody for 1 month 23 days; there is no any minimum sentence prescribed for the offence under Section 7(1)(a)(i) of the EC Act. And further 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. As there is no minimum sentence prescribed and for adequate and special reasons, the court may impose lesser sentence, the incident is about 20 years old, the appellant is the first offender, after considering the entire facts, in the considered view of this Court, the period already undergone of one month 23 days would meet the ends of justice for the offence committed by the appellant along with the facts as discussed.

12. Consequently, the appeal filed by the appellant is partly allowed.

Judgment of conviction and fine sentence awarded by the trial Court to the appellant are hereby affirmed. However, instead of the substantive jail sentence of rigorous imprisonment for six months awarded by the trial Court, the appellant is hereby sentenced for the period already by him. It is stated that the appellant is on bail. He be set at liberty forthwith. His bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

13. The appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE