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HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Criminal Appeal No. 62 of 2000

Sanjeet Kumar Gupta @ Munna

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

CAV JUDGMENT

Post for 07/10/2016

Sd/-
R.C.S. Samant
Judge

06/10/2016

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 62 of 2000****Judgment Reserved on 03.10.2016****Judgment Delivered on 07.10.2016**

Sanjeet Kumar Gupta @ Munna, S/o Triloki Prasad Gupta, age 23 years, Asst. Sales man, R/o Village Bardar, P.S. Balrampur, District Surguja, Chhattisgarh.

---- Appellant

Versus

The State of Chhattisgarh through P.S. Balrampur, District Surguja, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri A.K. Prasad, Advocate.
For the Respondent/ State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 25.11.2000 passed by the Special Judge, Ambikapur, District Surguja, Chhattisgarh in Special Criminal Case No. 47 of 1997, whereby and whereunder the learned Special Judge convicted the appellant under Section 3/7 (i)(a)(ii) of the Essential Commodities Act, 1955 (for short 'the Act') and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/-, in default of payment of fine, to further undergo SI for four 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 and thereby committed illegality.

3. The case of the prosecution, in brief, is that appellant – Sanjeet Kumar Gupta @ Munna was a Salesman in Government Fair Price Shop No. 1 at Village Bardar. It was his duty to receive the food-grains and distribute the same in accordance with the Madhya Pradesh Sarvajanic Nagrik Purti Vitran Scheme, 1991 (for short 'the Scheme, 1991'). On 29.3.1997, appellant – Sanjeet Kumar Gupta @ Munna sold four bags of wheat weighing 3.84 quintals to one Vijay Gupta from the stock of the fair price shop. When the sold wheat was being transported, a raid took place and the wheat was seized by the officer of Police Station Balrampur. First Information Report was registered by Police Station Balrampur under Section 3 read with Section 7(i)(a)(ii) of the Act. During investigation, it was also found that the appellant and his father Triloki Prasad Gupta had opened the stitching of the gunny bags containing wheat to reduce the quantity of wheat. Police station Balrampur sent a report to the Sub-Divisional Magistrate, Balrampur and by the order of SDM, Balrampur, the Assistant Food Officer, Ramanujganj, conducted an enquiry in which it was reported that the provisions of Serial No.6(3)(4)(5) of the Scheme, 1991 were breached. After completion of the investigation, the appellant and his father Triloki Prasad Gupta were charge-sheeted under Section 3 read with Section 7 of the Act and Section 209/34 of the Indian Penal Code.

4. Statements of the appellant and his father were recorded under Section 313 of the Code of Criminal Procedure (for short "Code") in which they denied the charges levelled against them. The trial Court after hearing learned counsel for the respective parties and considering the material available on record, by the impugned judgment, the trial Court acquitted

Triloki Prasad Gupta, however, holding the appellant guilty, convicted and sentenced him as mentioned above.

5. The grounds of the appeal are that the impugned judgment is contrary to the facts, law and circumstances of the case. Learned trial Court did not consider the fact that the prosecution had utterly failed to prove the guilt of the appellant beyond reasonable doubt. The trial Court has convicted the appellant only on the basis of his statement under Section 313 of the Code and hence it is urged that the conviction is unsustainable and, therefore, the appeal may be allowed by acquitting the appellant of the charge.

6. During the course of arguments, learned counsel for the appellant argued that the conviction imposed upon the appellant cannot be sustained on the ground that the act of the appellant is not covered under Section 3/7 of the Act. If any action was required to be taken, that should have been taken against the licensee of the fair price shop as the appellant was simply a salesman engaged by the licensee for performing the duties in accordance with the instructions given by the licensee. The licensee of the shop has not been made accused in this case.

7. Learned counsel for the appellant has relied upon a decision of the High Court of Madhya Pradesh in **Arvind Kumar vs. State of Madhya Pradesh, reported in 2008 (2) M.P.H.T. 38**, wherein it is held in paragraph 6 as under:

'6. The validity of the "Scheme" was considered in AIR 1981 SC2001, Madhya Pradesh Ration Vikreta Sangh and Ors. v. State of M.P., and it was held that the "Scheme" was not made in exercise of any power conferred by the order under Section

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3 of E.C. Act Clause 2 (d) of the order only defines the expression of "Government Scheme" and it does not confer any power to make scheme. The definition itself postulates that the "Scheme" is one which is made in exercise of its Executive Power. The Executive Power of the State is provided in Article 162 of the Constitution extends to the matter with respect of which the legislature of the State has power to make laws. It was the duty and burden of the prosecution to prove the nature of "Scheme", and whether the "Scheme" for violation of which appellant has been convicted is framed under the provisions of Section 3/5 of the E.C. Act.'

In this judgment, High Court of Madhya Pradesh has relied upon decisions in **Shiv Kumar vs. State of M.P.**, reported in 2005(3) M.P.H.T.466 and **M.P. Ration Vikreta Sangh, Jabalpur and Others vs. State of M.P. and another**, reported in 1981 J LJ 564. The appellant has also relied upon a decision of **Shiv Singh Rawat vs. State of Madhya Pradesh and Others**, reported in 2008(2) M.P.H.T. 41 (DB) wherein also the Scheme, 1991 has been discussed. It has been held in the above mentioned judgments that this scheme has been formulated in exercise of executive powers of the State. Hence, the Scheme, 1991 is not an order under Section 3 of the Essential Commodities Act, 1955. Similarly, the judgments of Madhya Pradesh High Court in **Sukhram vs. State of M.P.**, reported in 2000(4) M.P.H.T. 363, **Sayyad Mahmood Ahmed vs. State of M.P.**, reported in 2012(3) M.P.H.T. 267 and **Mohan v. State of M.P.**, reported in 1990 J LJ 348 have also been relied upon in which Sarvajanic Nagrik Purti Vitaran Scheme, 1981 has been discussed and held that this scheme is not framed in exercise of power conferred under Section 3 of the Act. On the contrary, the scheme has been framed by exercising executive powers by the concerned authority.

8. In light of the aforementioned pronouncements of the Madhya Pradesh High Court wherein the judgments of Hon'ble Supreme Court has also been relied upon, the material on the basis of which the prosecution has been initiated, has to be examined.

9. The charge-sheet itself mentions that the prosecution under Section 3 read with Section 7 of the Act has been initiated on the basis of the averment that the appellant who was a salesman, breached the directions No. 6(3)(4) and (5) of the Scheme, 1991 and this charge-sheet was presented in the Court on 3.7.1997. At that time, Chhattisgarh was a part of Madhya Pradesh. Hence, the Scheme, 1991 was applicable and was in force in this part of the State. None of the witnesses examined by the prosecution have made any statement regarding the scheme. Ex.P/31 is the report submitted by M.R.S. Paikra (PW-15), Assistant Food Officer. This report mentions that the appellant committed breach of provisions No. 6(3)(4) and (5) of the Scheme, 1991. Neither a copy of the Scheme, 1991 has been submitted by the prosecution alongwith the charge-sheet nor has been produced at the time of recording evidence. There is no difficulty in coming to the conclusion that the Scheme, 1991 referred to in this case is the same Scheme, 1991 which has been referred to in the judgments of High Court of Madhya Pradesh relying upon the judgment of Hon'ble Supreme Court in M.P. Ration Vikreta Sangh, Jabalpur and Others vs. State of M.P. and another. As per the law established in these citations, it is very clear that the appellant was prosecuted for the breach of provisions 6(3)(4) and (5) of the Scheme, 1991 which is not an order passed by the State in exercise of any power conferred under Section 3 of the Essential Commodities Act. Section 7 of the

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Essential Commodities Act provides for punishment only for the breach of orders passed under Section 3 of the Act for the purpose of regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. The Scheme, 1991 which was framed in exercise of executive powers of the State Government cannot be enforced or a person cannot be prosecuted under the provisions of the Act. Hence, violation of any provision of such scheme is also not punishable under this Act.

10. In view of the above discussion, the conviction of the appellant under Section 3 read with Section 7 of the Act for breach of provisions 6 (3)(4) and (5) of the Scheme, 1991 is not sustainable. Hence, this appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court is hereby set aside. The appellant is acquitted of the charge framed against him. The fine amount which has already been paid be refunded to the appellant. The appellant is on bail. He need not surrender. His bail bonds shall remain operative for a period of six months in terms of Section 437-A Cr.P.C.

Sd/-

(Rajendra Chandra Singh Samant)
Judge