

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 176 OF 2001

Govind Ram S/o Asan Das Jothwani, aged about 60 years, R/o Katora Talab, Near Popular Bazar Raipur Firm, Baijnathpara (Kirana Dukan), District Raipur (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. City Kotwali, Raipur District Raipur (C.G)

... Respondent

For Appellant	:	Mr. Kashif Shakeel, Advocate.
For Respondent-State	:	Mr. Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

25/10/2016

1. The present appeal has been preferred by the Appellant assailing the judgment dated 12.2.2001 passed by the Special Sessions Judge, Raipur in Special Criminal Case No. 36 of 1997, whereby the Appellant has been found guilty of having committing an offence under Section 3/7 of the Essential Commodities Act ('the Act', in short) and sentenced to undergo R.I. for three months and to pay fine of Rs.500/- with default sentence of R.I. for 1 month.

2. Case of the prosecution is that on the date of incident on a complaint made by one Sajjad Ahmed (PW-7), a raid was conducted by the Food Inspector, Sanjay Sharma (PW-1) in the provision store of the Appellant. In the course of the raid, the Appellant was found to be in possession of 148 liters of blue kerosene oil which otherwise could be distributed only from the PDS shops and not from any provision store which the Appellant was running. It was also charged against the Appellant that he had sold 1 liter of blue kerosene oil to the complainant (PW-7), Sajjad Ahmed for Rs.8/- per

liter instead of Rs.3/- per liter which was the market price for the blue kerosene oil at the relevant point of time.

3. After investigation was completed, the matter was put to trial. After conclusion of the trial, the Court below reached to the conclusion that the prosecution has been able to establish its case beyond reasonable doubt and finding the Appellant to be guilty of having committed the offence under Section 3/7 of the Act convicted him for the said offence and sentenced as mentioned in the preceding paragraph, leading to the filing of the present appeal.

4. Learned Counsel for the Appellant submits that the conviction of the Appellant revolves around the statement of the departmental witnesses alone and that the prosecution has not been able to prove its case from independent witnesses. According to him, there has been no proof in respect of the allegation which has been levelled by the Complainant against the Appellant. He further submits that in the instant case the Complainant himself has turned hostile and has not supported the case of the prosecution. In addition, all the other independent witnesses led have also not supported the case of the prosecution and the entire conviction of the Appellant was based only upon the statement of the Food Inspector, Sanjay Sharma (PW-1). According to the Counsel for the Appellant, the conviction and sentence could not have been imposed upon the Appellant in the absence of any independent witness to support the case of the prosecution. He further submits that the Complainant has not been able to establish his case as there has been no bills in respect of sale of kerosene oil to him by the Appellant produced or obtained during the course of investigation. Lastly, the Counsel in the alternative makes a prayer that taking into consideration the fact that the offence in the instant case was of 1997 and the judgment of conviction also is of the year 2001 as such it has

been almost 19 years from the date of offence and 16 years from the date of conviction and at the time of the trial the age of the Appellant was 60 years and now in due course of time he has already crossed more than 75 years of age, no fruitful purpose would be served if the Appellant is now sentenced to undergo the sentence imposed upon him as per the judgment of the Court below.

5. According to the Counsel for the Appellant, though Section 7 of the Act prescribes a minimum sentence of 3 months but the Proviso to sub-Section 7(2) clearly enunciates that in a given case for adequate reasons the Court can reduce the sentence even below three months. He further refers to the provisions of Section (2B) and submits that the Legislature has by incorporating the said provisions of Section (2B) has categorically held that in the event if the act of the concerned person does not cause substantial harm to the general public or to any individual the same can be an adequate on special reason for awarding a lesser sentence between 3 months and 6 months, as the case may be, under the Act. In addition, he relies upon a decision of the Supreme Court rendered in the case of **Anil Kumar Vs. State of Haryana** [2011 (14) SCC 699] wherein the Supreme Court had reduced the sentence and enhanced the fine amount.

6. Learned Counsel for the State however opposing the appeal submits that the nature of offence levelled against the Appellant is a serious act inasmuch as the Appellant was found in possession of certain article which he was not supposed to sell firstly from the provisional store that he was running and secondly the kerosene oil which was seized from the possession of the Appellant again was not available to be sold in an open market but could have been sold only under the PDS Scheme. Thus, the act on the part of the Appellant being serious, the appeal deserves to be rejected.

7. Having considered the rival contentions put forth on behalf of either side and on perusal of the records what clearly reflects is the fact that except for the departmental witnesses there is no single evidence which could be adduced by the prosecution to support its case inasmuch as the independent witnesses including the Complainant himself have turned hostile and have not supported the case of the prosecution. Likewise, what further reflects from the records is the fact that there is no iota of evidence in respect of sale of kerosene oil by the Appellant to the Complainant, Sajjad Ahmed as there was no bill or receipt provided by the Complainant in this regard so as to establish the said charge. Further, from the materials available an inference can be drawn that at best it would be a case where the Appellant would have been found to have stocked 148 liters of blue kerosene oil in the shop but there is no evidence of having sold the same to any of the persons or for that matter to the general public.

8. True it is that the prosecution is able to establish the presence of 148 liters of blue kerosene oil from the shop of the Appellant and therefore to that extent the case of the prosecution stands established. But, since there is no evidence in respect of sale of kerosene oil by the Appellant to any general public and the Complainant himself having not proved the same, yet the fact that he was found to be in possession of 148 liters of blue kerosene oil itself is sufficient to establish the charge under the Act. Thus, in the opinion of this Court so far as the conviction of the Appellant for the offence under Section 3/7 of the Act is concerned the same deserves to be and is accordingly confirmed.

9. However, considering the fact that the Appellant as on date is aged more than 75 years of age, the date of offence in the present case was almost 19 years ago, the present appeal is pending before this Court for more than 15 years and last but not the least considering the provisions of

Section (2B) of the Act except for the fact that the Appellant was found in possession of 148 liters of blue kerosene oil and that there has been no allegation charged or for that matter any allegation of any act committed by the Appellant which caused substantial harm to the general public or for that matter any individual, in the peculiar facts and circumstances of the case, this Court of the opinion that the sentence imposed upon the Appellant deserves to be reduced and the same is accordingly reduced to the period already undergone by the Appellant. However, the fine amount imposed upon the Appellant stands enhanced from Rs.500/- to Rs.5000/- which shall be deposited within 15 days from the date of receipt of certified copy of this order before the concerned Trial Court.

10. With the aforesaid modification in the sentence, the appeal stands dismissed.

Sd/-

(P. Sam Koshy)
Judge

/Sharad/