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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 355 of 2001

Babulal Mishra S/o Shri Paras Mishra, R/o village Basdei, PS Surajpur,
District Surguja, CG

---- Appellant

Versus

State of Chhattisgarh through PS Surajpur, District Surguja, CG

---- Respondent

For Appellant : Shri A. K. Prasad, Advocate
For Respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

11.11.2016

The present appeal has been preferred against the judgment of conviction dated 20.03.2001 passed by the Special Judge, Surguja, Amibkapur in Special Criminal Case No. 17/96. Vide the impugned judgment the appellant has been found guilty of having committed the offence under Section 3 read with section 7 of the Essential Commodities Act, 1955 (for short 'the Act') and sentenced to undergo rigorous imprisonment for 2 ½ years with fine of Rs.2,500/- with default stipulation.

2. The fact in brief is that the appellant is said to be a salesman at Govt. fair price shop, Basdei. One Shri R.P. Pandey appointed the appellant for lifting 80 quintal sugar and 20 quintal rice from Ware House, Bishrampur and to deliver the same to the salesmen of Govt. fair price shops of villages Onchdih, Basdei, Pidha, Sarma, Neora and Dumaria. It is alleged that though the appellant had taken the said quantity of sugar and rice from Ware House, Bishrampur but distributed only 50 quintals Sugar and 20 quintals rice to the salesmen of the Govt. fair price shops of the said villages. It is

the further allegation of the prosecution that 30 quintals of sugar was stocked by the appellant in the house of Dharampal PW-1 which was found during the course of raid by the Food Department. After investigation was complete, a special case in this regard was lodged before the Special Court Sarguja registered as Special Criminal Case No. 17/96. In all, the prosecution examined 10 witnesses and no witness was examined on the part of the defence. After conclusion of trial, the Court below vide impugned order dated 20.03.2001 found the appellant guilty of having committed the offence under Section 3 read with section 7 of the Essential Commodities act and accordingly, convicted and sentenced him for the said offence.

3. It is this order of conviction which has been assailed by the appellant in the present appeal.

4. Foremost of all counsel for the appellant submits that the issue involved in the present case is no longer *res integra* as it has been settled by a series of decisions by the Madhya Pradesh High Court and also in one of the decisions passed by this Court. The main contention of the counsel for the appellant in the instant case is that the allegation of the charge which has been levelled against the appellant is that of committing a breach of the conditions stipulated in Rule 6(2) of Madhya Pradesh Khadya Padarth Sarvajanic Nagrik Aapurti Scheme-1991. According to the counsel for the appellant, the said scheme is not a scheme or an order as has been ordered for invoking the provisions of the Essential Commodities Act rather it is an executive order issued by the State Govt. Since it is not a scheme framed under the provisions of the Essential Commodities Act, 1955, the present appellant could not have been charged for the offence under Section 3/7 of the Act and therefore the entire trial and the conviction of the appellant for the offence under Section 3/7 of the act is totally illegal and is liable to be set aside. In support of his contention counsel for the appellant refers to a

series of decisions of the MP High Court which are as under:

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| 2008 (2) M.P.H.T. 38 | - | Arvind Kumar Vs. State of Madhya Pradesh |
| 2005 (3) M.P.H.T. 466 | - | Shiv Kumar Vs. State of M.P. |
| 2000 (4) M.P.H.T. 363 | - | Sukhram Vs. State of M.P. |
| 2012 (3) M.P.H.T. 267 | - | Sayyad Mahmood Ahmed Vs. State of M.P. |
| 1990 J.L.J. 348 | - | Mohan v. State of M.P. |

5. Counsel for the appellant submits that dealing with the identical issue all these judgments hold that the scheme having not been framed under the provisions of Essential Commodities Act, it is only an executive order of the State Govt. Therefore, the provisions of the Essential Commodities Act cannot be made applicable for the offence or a breach of any of the conditions of the Scheme of 1991. In addition, counsel for the appellant also relied upon the recent decision of the co-ordinate Bench of this Court passed in Criminal Appeal No. 62 of 2000 dated 07.10.2016 wherein also the co-ordinate Bench has taken the same view relying upon the decisions of the MP High Court. Thus, prayed for setting aside of the impugned order and discharge of the appellant from the offence under Section 3/7 of the Act.

6. State counsel however opposes the appeal on the ground that the evidence on the part of the prosecution amply proves the prosecution case that the appellant had stocked 30 quintals of sugar in the house of PW-1 which would otherwise be distributed through the Public Distribution system. He further submits that the prosecution has proved the case so far as the stocking made by the appellant. Thus, State counsel prayed that the appeal does not warrant any interference and the same deserves to be set aside.

7. Some of the authoritative decisions of the Supreme Court as well as the other High Courts in this regard are as under:

The Supreme Court in the case of **Madhya Pradesh Ration Vikreta Sangh and others Vs. State of M.P.** reported in **(1981) SCC 535** has held

that the "Scheme" was not made in exercise of any power conferred by the order under Section 3 of E.C. Act Clause 2 (d) of the order only defines 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 Art. 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.

Relying upon the aforesaid judgment, the Madhya Pradesh High Court again in the case of **Mohan v. State of M.P.** reported in **1990 J.L.J. 348** in an identical set of facts held that there is no manner of doubt that the 'Scheme' is not an 'Order' u/s (3) of the Essential Commodities Act. That being so for breach of any clause of the 'Scheme', the State could not launch prosecution u/s 7 of the Act. The convictions of the appellants so also the prosecution of the applicants u/s 7 of the Act for the breach of any provision of the 'Scheme' cannot be sustained and must be held illegal, null and void. The conviction for abatement u/s 8 also cannot be sustained.

Further relying upon both the aforesaid two judgments, the Madhya Pradesh High Court again in the case of **Sukhram Vs. State of M.P.** reported in **2000 (4) M.P.H.T. 363** had allowed the appeal of the appellant and set aside the conviction itself holding as non-sustainable. Similar view was again taken by the High Court of Madhya Pradesh in the case of **Shiv Kumar Vs. State of M.P.** reported in **2005 (3) M.P.H.T. 466** wherein paragraph 7 it has been held as under:

"7.First condition for prosecuting a person under Section 7 is that there should be a contravention of the control order issued by the State Government under Section 3 of the



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Essential Commodities Act. Any scheme framed under the executive powers by the State Government may not come within the purview of the control order and for that it would not be necessary that it should satisfy the provisions laid down under Section 3 of the Act. Therefore, in order to prosecute a person for violation of the terms and conditions of the scheme it is necessary for the prosecution to prove that the scheme is in the nature of control order and further to prove that the same has been issued under Section 3 of the Essential Commodities Act and in the absence of such an evidence, any scheme framed under executive power can not fall within the purview of the control order and the person can not be prosecuted and held guilty."

Again in 2008 (2) M.P.H.T. 38 in the case of **Arvind Kumar Vs. State of Madhya Pradesh** in an identical set of facts relying upon the previous decisions referred to in the preceding paragraphs the High Court of Madhya Pradesh allowing the Appeal has set aside the conviction.

8. In the light of the aforesaid judicial pronouncements and on considering the rival submissions put forth by the counsel appearing on either side and on perusal of the record, this Court is in all respectful agreement with the decisions rendered by the Supreme Court and the High Court of Madhya Pradesh. The facts of the present case being similar and also under the same provisions of law those decisions would squarely be applicable in the case of the appellant also. This Court is also in full agreement with the decision of the Co-ordinate Bench of this Court in the case of Sanjeet Kumar Gupta @ Munna vs. the State of Chhattisgarh decided on 07.10.2016 in CRA No. 62 of 2000.

9. In view of the same, when prima facie, itself the appellant has been able to convince this Court of the non applicability of the provisions of Section 3/7 of the Act for the alleged breach of conditions stipulated in the scheme of 1991, in the light of the authoritative decisions relied upon by the appellant this Court need not go into the other grounds which have been raised in this appeal and the appeal is allowed only on this limited ground.

10. Accordingly, the present appeal is allowed. The judgment of conviction dated 20.03.2001 passed by the Special Judge, Surguja, Amibkapur in Special Criminal Case No. 17/96 is set aside and the appellant is acquitted from the offence under Section 3 read with section 7 of the Essential Commodities Act. The appellant is on bail. His bail bonds shall remain effective for a period of six months from today in view of the provisions of Section 437-A CrPC.

Sd/-
P. Sam Koshy
Judge

Bhola