

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1103 of 2000**

1. Mahesh alias Mahat Ram Sahu aged about 32 years son of Punit Ram Sahu resident of village Kandel Police Station Arjuni District Raipur

2. Punit Ram son of Late Charan Sahu aged about 60 years resident of village Kandel Police Station Arjuni District Raipur

---- Appellant**Versus**

State of M.P. Through Police Station Arjuni Tahsil and District Raipur M.P.
(now Chhattisgarh)

---- Respondent

For Appellant	: Shri Adil Minhaj, Advocate.
For Respondent/State	: Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****22/02/2017**

1. This appeal has been preferred against the judgment dated 11.4.2000 passed in Special Sessions Trial No.6 of 1998 by the Special Judge, Raipur convicting the Appellants under Section 3/7 of the Essential Commodities Act, 1955 (hereinafter referred to as 'E.C. Act, 1955') (Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991) and sentenced them to undergo rigorous imprisonment for four months and fine of Rs.250/- each with default stipulation.

2. The facts of the prosecution case in brief are that Food Inspector, Tilak Ram Deshmukh (PW1) alongwith Food and Civil Supply Inspector- Ram Kishore Shukla (PW4) raided and inspected the shop run by the Appellants in village Kandel under the jurisdiction of Police Station Arjuni, District Dhamtari. The shop was styled as 'Mahesh Traders'. On search of the shop, 22 bags of swarna paddy, each bag having a weight of 78 Kgs. were found

stocked in the shop. One tractor trolley bearing registration No. MP23/G/9796 was found outside the shop having a load of 80 bags of paddy, each bag having a weight of 75 Kgs. Balance and measuring weights of 100 Kgs., 20 Kgs., 10 Kgs., 5 Kgs., 2 Kgs. and 1 Kg. were also found on the place of inspection. Alongwith this, 75 empty gunny bags were also found. All these articles were seized vide Exhibit P/1 by Tilak Ram Deshmukh (PW1) and handed over on *supurdnama* to Appellant No.2- Punit Ram vide Exhibit P/2. One inspection *panchnama* was separately recorded as Exhibit P/3.

3. Statement of Appellant No.2- Punit Ram, who was found on the spot was recorded in which he has stated that the paddy stored in the shop and loaded in the tractor trolley had been purchased and stocked for sale. Information of the proceeding was given to Collector (Food Section) vide Exhibit P/5. Vide order dated 2.2.1998 (Exhibit P/6) of the Collector, Raipur, a written complaint (Exhibit P/7) was given in Police Station Arjuni which was within the district Raipur at that time. On the basis of this written complaint, First Information Report (Exhibit P/8) was recorded and offence under Section 3/7 of the E.C. Act, 1955 was registered against Appellant No.1. Investigation was conducted and on completion of the investigation, Appellants were charge sheeted.

4. Substance of acquisition was read out to the Appellants by the trial Court. The Appellants denied commission of offence. The Prosecution examined as many as nine witnesses. On examination under Section 313 CrPC, the Appellants denied all the incriminating evidence against them, pleaded innocence and false implication. They have submitted that they have a shop for sale of agricultural medicines. They have admitted the seizure of paddy from their possession and claimed that the paddy was a product of their own agricultural fields. Two witnesses were examined in defence. Impugned judgment was passed by the trial Court by which the Appellants

have been convicted and sentenced as aforesaid.

5. The grounds in this appeal are that the Court below has passed an erroneous judgment of conviction against the Appellants without any basis. The Appellants were neither purchaser of paddy nor they were hoarding them. Hence, their case was not covered under the (Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991. On the contrary, it was proved that the paddy found in possession of the Appellants was from their own agricultural fields. Hence, the Appellants were entitled for acquittal. In the alternative, it is prayed that the sentence awarded is excessive, especially when the entire paddy seized was ordered to be confiscated which may be taken into consideration.

6. Learned Counsel for the Appellants submits that there is no denial that 102 bags of paddy were found in possession of the Appellants. The prosecution has failed to prove the fact that the paddy in possession of the Appellants was obtained by purchase. There is no evidence of prosecution that the Appellants purchased and hoarded the paddy found in their possession. The defence evidence has demonstrated that the Appellants are agriculturists, hence, it is common for them to have paddy in their possession. Further, it is argued that the sanction order (Exhibit P/6) is not a proper order in accordance with law. It is also argued that the initiation of prosecution against the Appellants was not in accordance with Section 11 of the E.C. Act, 1955 as there is a specific bar for taking cognizance in the provisions and as such, the whole trial stands vitiated.

7. Learned Counsel for the State has opposed the grounds raised in appeal and the arguments advanced on behalf of Learned Counsel for the Appellants. It is submitted that the case of the prosecution is well supported by the statements of Food Inspector- Tilak Ram Deshmukh (PW1), Food and Civil Supply Inspector- Ram Kishore Shukla (PW4), Police Inspector- Ashok

Kumar Jain (PW6) and Sub-Inspector- Komal Diyawar (PW8). Hence, there is no scope for interference in the impugned judgment.

8. Considering the grounds in appeal and arguments advanced by both the sides, the question which arises in this appeal is whether the initiation of prosecution against the Appellants is in accordance with Section 11 of the E.C. Act, 1955 and whether prosecution has proved its case against the Appellants beyond all reasonable doubts. The evidence before the trial Court is perused.

9. It is not disputed that Food Inspector- Tilak Ram Deshmukh (PW1) alongwith Food and Civil Supply Inspector- Ram Kishore Shukla (PW4) inspected the shop of the Appellants styled as 'Mahesh Traders' on 20.1.1998 and found both the Appellants in possession of 102 bags of swarna paddy stored in the shop and loaded at tractor trolley which were seized vide seizure memo Exhibit P/1. Thus, there is no need to discuss the evidence of seizure of this article.

10. The allegation of the prosecution was that the Appellants were purchaser and hoarders of paddy. In this respect, Tilak Ram Deshmukh (PW1) has stated that he took down the statement of Appellant No.2- Punit Ram who stated that 80 bags of paddy loaded in tractor trolley had been purchased from one Hemant Sahu (PW7) at the rate of Rs.445/- per quintal and the remaining 25 bags of paddy found in the shop were also purchased from different sellers. In cross-examination, the suggestion of defence was denied that Punit Ram stated that the paddy found was from his own agricultural fields in village Kandel.

11. Food and Civil Supply Inspector- Ram Kishore Shukla (PW4) has supported the statement of Tilak Ram Deshmukh (PW1). In cross-examination, he has not admitted any of the suggestion given by the

defence. Police Inspector- Ashok Kumar Jain (PW6) has recorded the FIR (Exhibit P/8) on the basis of written complaint (Exhibit P/7) given by Tilak Ram Deshmukh (PW1) and Sub-Inspector- Komal Diyawar (PW8) has conducted the remaining investigation.

12. Radheshyam Sahu (PW2) is a witness of seizure (Exhibit P/1). He has not given any statement about the source of article paddy found in possession of the Appellants in his examination-in-chief. In cross-examination, he has admitted that the Appellants are agricultural land owners in village Kandel and they grow paddy in their fields. Gopi Sahu (PW3) is also a witness of seizure (Exhibit P/1). He has not supported the case of the prosecution and declared hostile.

13. Jagdevram Sinha (PW5) stated that the Appellants have a shop for sale of agricultural medicines and utensils. They have no other business. The prosecution has declared this witness hostile and cross-examined but he has not admitted any of the suggestion given by the prosecution. In cross-examination by the defence, he has admitted that the Appellants are cultivators. Hemant Sahu (PW7) has not supported the case of the prosecution at all, hence, declared hostile and cross-examined by the prosecutor. He denied all the suggestions given by the prosecution. In cross-examination by the defence, he has stated that the Appellants are cultivators and have 15-16 acres of lands in their ownership. They have a shop only for sale of agricultural medicines. He has categorically denied that he had sold 80 bags of paddy to the Appellants. Mohan Pandey (PW9) is also a witness of seizure (Exhibit P/1). In cross-examination, he has admitted that the Appellants are agriculturists.

14. Ramdas (DW1) is neighbour of the Appellants. He has stated that the Appellants run a shop for sale of agricultural medicines and fertilizers. They do not have any other business for sale of paddy. This statement has

remained un rebutted in cross-examination. Pannalal Thakur (DW2) is Patwari of village Kandel. He has stated that Appellant No.2- Punit Ram and his brother Somnath are agricultural land owners. Exhibits D/1, D/2 and D/3 (record of rights) display the lands owned by Punit Ram and his brother Somnath. He stated further that the Appellants have no other business for sale of paddy. His statement is also un rebutted in cross-examination.

15. On consideration of the evidence adduced by the prosecution and defence, in conclusion, it is found that the Appellants were in possession of 102 bags of paddy on the date of incident when Tilak Ram Deshmukh (PW1) raided and seized the same. The question for determination that the paddy found in possession of the Appellants was purchased and hoarded has not been proved beyond reasonable doubt.

16. The statements of Food Inspector- Tilak Ram Deshmukh (PW1) and Food and Civil Supply Inspector- Ram Kishore Shukla (PW4) are based on the statements made by Appellant No.2- Punit Ram and Hemant Sahu (PW7). Punit Ram has taken a stand of denial whereas Hemant Sahu has very clearly not supported the case of the prosecution.

17. In this situation, the defence evidence and the admission of prosecution witnesses that the Appellants are land owners and agriculturists, putforth a probable theory that the paddy found in possession of them could have been the product of their own agricultural fields. In the light of these circumstances, it is clear that two views are possible in this case and as per the principle in this regard, the view in favour of the Appellants has to be followed.

18. The legality of prosecution and trial is also under challenge. Section 11 of the E.C. Act, 1955 provides that no Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts

constituting such offence made by a person who is a public servant as defined in Section 21 of the IPC. Thus, it is the requirement of this provision that the prosecution should have been initiated on the basis of a written complaint filed by the public officer who conducted the raid and seizure.

19. Food Inspector- Tilak Ram Deshmukh (PW1) reported about the seizure and search to the Collector vide report Exhibit P/5. Thereafter, by order of the Collector (Exhibit P/6), a written complaint (Exhibit P/7) was submitted in Police Station Arjuni. On the basis of the same, FIR (Exhibit P/8) was registered. Charge-sheet filed in this case cannot be regarded as complaint because it is a final report under Section 173 CrPC.

20. Section 11 of the E.C. Act, 1955 expressly bars taking of cognizance if the prosecution is initiated otherwise than as directed under the provisions of Section 11 of the E.C. Act. Hence, there had been a technical flaw in prosecuting the Appellants as per the reasoning mentioned hereinabove.

21. On the basis of the reasons and findings given as aforementioned, the appeal succeeds and same is allowed. The impugned judgment of conviction and order of sentence against the Appellants is hereby set aside.

22. It is submitted by Learned Counsel for the Appellants that in compliance of the impugned judgment, the amount of sale proceeds of seized paddy has been deposited. Copy of the receipt of deposit has been produced which is taken on record. Consequent to the result of this appeal, the Appellants are entitled to refund of the amount so deposited by them in compliance of the impugned judgment.

Sd/-
(Rajendra Chandra Singh Samant)
Judge