

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.825 of 2000**

- Om Prakash Sahu, S/o Late Hiralal Sahu, aged about 50 years, Occupation-Business R/o Idgah Bhatha, Mangal Bazar, Raipur, Police Station-Azad Chowk, Raipur, District-Raipur, M.P.(now Chhattisgarh)

---- Appellant**Versus**

- State of Madhya Pradesh(now Chhattisgarh), through- Food Controller, Raipur, Police Station District-Raipur.

--- Respondent

 For the Appellant : Smt. Indira Tripathi, Advocate.

For the State/Respondent : Shri Vivek Singhal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****07/03/2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Special Sessions Judge, Raipur in Special Sessions Trial No.35/1997 vide order dated 14.03.2000, whereby appellant has been convicted under Section 3 read with Section 7 of Essential Commodities Act, 1955 and sentenced to undergo RI for 4 months with fine of Rs.250/-, in default of payment of fine to further undergo RI for 1 month.
2. The case of prosecution is this that Food Inspector Sanjay Sharma PW/1 along with Food Inspector Sanjeev Kumar Thakur PW/6, Gopal

Prasad Chourasiya PW/7 and Manohar Lal PW/3 inspected the factory of appellant where the Namkeen and Sev was manufactured. He saw three big stoves being utilized for manufacturing the items Namkeen and Sev and the used fuel was blue coloured kerosene oil. A panchnama Ex.P/2 was recorded on the spot and kerosene oil in total 35 liter was found and stored in several containers, the report Ex.P/4 was submitted to the Collector (Food Controller) and sent a memo Ex.P/3 to Superintendent of Police, Raipur to register the offence and to do the needful. Superintendent of Police, Raipur forwarded memo as Ex.P/10 to P.S.-Gudiyari. On the basis of these memos, PS-Gudiyari lodged FIR Ex.P/11, registering the offence under Section 3 read with Section 7 Essential Commodities Act, 1955 against the appellant. Blue coloured kerosene oil, which was seized on the spot by the raiding party vide Ex.P/8 were seized by the Investigating Officer vide Ex.P/7 and handed over. Spot map Ex.P/9 was prepared. Statements of witnesses were recorded under Section 161 of Cr.P.C. On completion of investigation, appellant was charge-sheeted.

3. Trial Court read out the substance of accusation under Section 3 read with Section 7 of the Essential Commodities Act, 1955 against the appellant, appellant denied the charge. Prosecution examined as many as 10 witnesses. On examination under Section 313 of Cr.P.C., appellant denied all the incriminating evidence against him, pleaded innocence and false implication. No evidence was led in defence. Impugned judgment was passed in which appellant was convicted under the Sections charged and sentenced with RI for 4 months and

fine of Rs.450/- with order to further undergo RI for 1 month, in default of payment of fine.

4. The grounds in this appeal are these, that the trial Court has erroneously convicted the appellant and the conviction is against the facts and contrary to the law. No independent witness was examined by the prosecution. It was not proved that the seized article kerosene was prohibited for use under the Act, no case was made out of the prosecution, hence, conviction is illegal and prayer has been made for setting aside the impugned order.
5. Learned counsel for the appellant submits that the appellant has been falsely implicated by one Shahida Begam, who was arrayed as a witness of prosecution but not examined in the trial. Tainted kerosene oil found on the spot was an article of Public Distribution System had to be specifically proved by the prosecution, but has not been proved. The order of the Government which has been made the basis of prosecution has not been produced and brought to the notice of the Court, even then the Court below has erroneously presumed the existence of such order and passed order accordingly. No FSL examination was conducted to find out the chemical composition of the oil which was used as fuel in the stove found in the factory. Hence, this is also not proved that the seized article was kerosene in all respects, therefore, appellant was entitled for benefit of doubt.
6. Question for determination is, "whether prosecution has proved its case ? Food Inspector Sanjay Sharma PW/1 has stated that he

inspected the factory of appellant and found the stove use for manufacturing Namkeen and Sev. He found that the fuel used in the stove was blue coloured kerosene, which is an article of Public Distribution System, sold in retail by Government through ration shops and the appointed hawkers, the articles were seized. In cross examination, he has stated that no sample was taken on the fuel oil from the spot.

7. Manohar Lal PW/3 has stated that he was present at the time of inspection and on inspecting the fuel oil, it was found to be smelling like kerosene, but he has stated that the Namkeen was manufactured in diesel stove and he found black coloured fuel oil in the stove and he is unable to state that this oil was kerosene or diesel and he was unable to identify by the smell as well. Food Inspector Sanjeev Kumar Thakur PW/6 has supported the statement of Sanjay Sharma PW/1, he has admitted in his cross-examination that the kerosene oil seized from the spot was not sent for any chemical examination. The seized fuel oil and containers were handed over on *Supurdnama* to Anil Jaggi PW/4, the owner of fair price shop.
8. Gopal Prasad Chourasiya PW/7 was also present there and he has stated that he did not see the colour of fuel oil. Anil Jaggi PW/4 received the seized kerosene with containers on *Supurdnama*. Dilip Kumar Agrawal PW/5 witnessed the seizure of the kerosene of blue colour vide seizure memo Ex.P/7. In cross examination, he has admitted that all the kerosene oil handed over on *Supurdnama* to Anil Jaggi PW/4 has been sold out. Food controller Arvind Kumar Pateriya

PW/2 has stated that on the basis of report of the proceeding, he forwarded the memo Ex.P/3 along with report Ex.P/4, on the basis of which, offence was registered.

9. S.I. Baldeo Singh PW/8 recorded the FIR Ex.P/11 and investigated the case. Constable Rajesh Kumar Thakur PW/9 helped in the investigation. S.I. R.P. Pandey PW/10 gave notice to the appellant to give intimation, as to how he came into the possession of alleged kerosene oil, to which, reply was given by appellant vide Ex.P/13. The contents of reply have not been stated in his deposition. Hence, there is no evidence in this respect what was the reply of appellant to the query made by investigating officer.
10. On close scrutiny of the evidence by prosecution, the facts established are only that on inspection of the establishment of the appellant, it was found that the manufacturing of Namkeen and Sev was being done on stove by use of some oil, which was identified by some of the witnesses as kerosene and that was of blue colour. This oil was prohibited for distribution and use in commercial activities had to be specifically proved and established by the prosecution. Only oral statement have been made by the prosecution witnesses in this respect.
11. The kerosene (Restriction on use fixation of material price) Order 1993, is an order passed by the State Government. The trial Court passing the impugned judgment has considered this submission that the said order was not produced and proved, before the Court and held that order had been published in Gazette which is judicial notice. Neither

that gazette is produced or attached with the record of the trial court, hence, it is difficult to find that on what basis this approach has been taken by the trial Court. Section 57 of the Evidence Act provides for the fact judicially noticeable, this order is not covered by any of the provision enumerated from serial No.1 to serial No.13. The provision itself provides that if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so. Without production of such document the order 1993 of the State Government the only statement made by few of the prosecution witnesses, that the fuel oil used in the factory was prohibited by that order cannot be held.

12. After due consideration and the finding arrived at that the prosecution has failed to prove its case beyond reasonable doubt that the kerosene oil found in possession of the appellant was strictly speaking a commodity of public distribution system. Hence, for these reasons, the appellant is entitled for benefit of doubt.
13. On the basis of foregoing reasons, this appeal is allowed and the conviction and sentence passed by the trial Court against the appellant is set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge