

A.F.R

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1105 of 2000**

1. Bisahu Ram Sahu, S/o Late Adhariram Sahu, Aged about 38 years, R/o Village and Post Kandel, District Raipur.
2. Arun Kumar Sahu, S/o Rewa Ram Sahu, Aged about 20 years, R/o Village Kandal, P.S. Arjuni, Tahsil Dhamtari, District Raipur.

**---- Appellants****Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station  
Arjuni, Tahsil & District Raipur (M.P.) (Now C.G.)

**---- Respondent**


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| For Appellants       | :- | Shri Adil Minhaj, Advocate. |
| For Respondent/State | :- | Shri Vivek Singhal, P.L.    |

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**SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant****Judgement on Board****09-03-2017**

1. This appeal has been preferred against the judgement of conviction and order of sentence dated 11-04-2000 passed by Special Judge, Raipur, District Raipur in Special Criminal Case No.05 of 1998 convicting the appellants for offence punishable under Section 3/7 of the Essential Commodities Act (for short 'E.C. Act') and sentencing them to undergo RI for 4 months and to pay fine of Rs.250/- each with default stipulation.

2. Case of the prosecution in brief is that Food Inspector Ram Kishore Shukla (PW-1) along with Food Inspector T.R. Deshmukh (PW-4) conducted inspection of the shop styled as Ghanshyam Traders on 20-01-1998 in the village Kandel. Appellant No.1 was found present in the shop. On inspection, 20 bags of Swarna Paddy were found inside the shop and 19 bags were kept stored in the verandah of the shop. It was told by appellant No.1 that the paddy was purchased from villagers. It was also stated by appellant No.1 that

the purchase and sale of paddy was made from their shop. Further, balance and measuring weights were also found. The inspection panchnama (Ex. P-3) was recorded on the spot. The articles i.e. bags of paddy, measuring weights and a receipt book of the Krishi Upaj Mandi Samiti were seized vide Ex. P-4 which were handed over on 'supurdnama' vide Ex. P-5.

3. Another raid was conducted on the same day at the residence of appellant No.1. In total 55 bags of paddy were found stored in his place of residence. It was told by the villagers that appellant No.1 does the business of purchase and sale of paddy. A panchnama (Ex. P-6) was recorded on the spot. Articles found were seized vide seizure memo Ex. P-7 which were handed over on 'supurdnama' to appellant No.1 vide Ex. P-8. A map was prepared vide Ex. P-9. Statements of the appellants were recorded. A report was submitted to the Collector (Food Section) Raipur vide Ex. P-11 by Ram Kishore Shukla (PW-1). The Collector, Raipur Vide order Ex. P-12, gave sanction for prosecution. A written complaint Ex. P-13 was lodged in the police station Arjuni against both the appellants, on the basis of which FIR (Ex. P-14) was recorded and offence under Section 3/7 of the E.C. Act was registered against the appellants. In their further investigation, spot map (Ex. P-15) was prepared and statements of witnesses were recorded. On completion of investigation, the appellants were charge-sheeted.

4. The appellants were read out the substance of accusation. The appellants denied committing any such offence. The prosecution examined as many as 8 witnesses. On examination under Section 313 of the Cr.P.C., appellant No.2 Arun Kumar Sahu denied all the incriminating circumstances appearing against him and stated that he was not present at the time of inspection and he is ignorant about the allegations made by the prosecution.

He pleaded innocence and false implication in the crime in question. Appellant No.1 Bisahu Ram Sahu admitted that Ram Kishore Shukla (PW-1) along with his team came for inspection and during inspection, bags of paddy were recovered from his shop and from his place of residence. Balance and measuring weights were also recovered. He admitted about the seizure and supurdnama of the paddy bags and other articles. He denied the incriminating evidence appearing against him and submitted that he is a cultivator of the paddy and the paddy which was recovered from his possession, was the product of his own agricultural field. He pleaded innocence and false implication in the crime in question. Three witnesses were examined in defence. The impugned judgement was passed, by which the appellants were convicted and sentenced as mentioned above.

5. The grounds in appeal are that the trial Court has passed an erroneous judgement by giving incorrect finding of conviction. The appellants discharged their burden to defend themselves by bringing evidence that they are agricultural land owners and the paddy being the product of their fields was exempted from the control order under this Act. The appellants did not commit any act which was contrary to Madhya Pradesh Scheduled Commodities Dealers (Licencing and Restriction on Hoarding) Order, 1991. This burden has not been discharged by the prosecution, hence the conviction of the appellants is bad in law and a prayer has been made to set aside the impugned judgement.

6. It is submitted by the learned counsel for the appellants that defence has been discharged by examining the witnesses and production of documents showing that the appellants are farmers of their own agricultural land and it was probable to believe that the paddy found in their possession could have

been the product of their own agricultural fields. Further, it is also submitted that the prosecution against the appellants has been launched by filing of charge-sheet by Police Station Arjuni of erstwhile district Raipur. No cognizance could have been taken against the appellants on the basis of this charge-sheet as this prosecution was made contrary to the provisions of Section 11 of the E.C. Act and therefore prayed that the appellants may be acquitted.

7. Learned State counsel has opposed the grounds raised in appeal and the arguments advanced on behalf of learned counsel for the appellants. It is submitted that the prosecution has proved its case beyond reasonable doubt.

8. The question for determination in this appeal is, whether the prosecution against the appellants was legally tenable and whether the appellants succeeded in defence to prove that the paddy in possession of appellant No. 1 could have been the agricultural product from their own fields.

9. Ram Kishore Shukla (PW-1) has stated that he along with Shri T.R. Deshmukh (PW-4) conducted the raid in shop of appellants on 20-01-1998. The appellant Bisahu Ram Sahu was found present. Appellant No.2 Arun Kumar Sahu was not present at the time of inspection. Appellant No.1 admitted that the retail purchase and sale of paddy is done by him. He further conducted inspection on the shop and the residence of the appellants during which the bags of paddy found were seized vide Ex. P-4 and P-7 and handed over to appellant No.1 on supurdmana. This statement is also supported by T.R. Deshmukh (PW-4) and Banauram Sahu (PW-6). Since it is admitted by appellant No.1 that he was in possession of 39 bags of paddy kept in shop and 55 bags of paddy kept in his place of residence and hence there is no further

need to examine the admissibility of the evidence in this respect that appellant No.1 was found in possession of the paddy bags as mentioned above.

10. The only contention of the appellants in this case is that the paddy bags, which were found in their possession was in fact the product of their own agricultural fields and this fact has to be examined. Ramkishore Shukla (PW-1) in his cross-examination has admitted that the shop of the appellants styled as Ghanshyam Traders was granted license for sale of medicines and fertilisers. He further stated that he was not told by appellant No.1 that he is the owner of 15 – 20 acres of agricultural land. He further admitted that any person having in his ownership of 20 acres of land can keep the quantity of paddy which was found in possession of the appellants. Ramkumar Sahu (PW-2) and Shivnandan (PW-3) are the witnesses of seizure and Supurdnama. T.R. Deshmukh (PW-4) in his cross-examination has admitted that farmers keep paddy stored with them and they take them for sale to Mandi according to their convenience. He denied the knowledge about the appellants being owners of agricultural land. Inspector Ashok Kumar Jain (PW-5) and Sub Inspector Komal Diyawar (PW-7) have conducted the investigation.

11. Banauram Sahu (PW-6) in his cross-examination has stated that he has no knowledge that the appellants are the owners of 14-15 acres of agricultural land. He admitted that the farmers keep product stored in their house.

12. Ramdas (DW-1) has stated that he knows that appellant No.1 is a farmer and he takes two crops in his fields. He also has a business of selling medicine and fertiliser. His statement about appellant No.1 being a farmer is not rebutted in his cross-examination. Kheduram (DW-2) has stated similarly. Patwari, Pannalal Thakur (DW-3) has stated that the appellants are the

farmers. Revenue documents have been exhibited in proof of ownership of agricultural lands of the appellants.

13. The suggestions given to the prosecution witnesses about the appellants being agricultural land owners were neither accepted nor denied. Only ignorance was expressed by the witnesses whereas the defence evidence had been sufficient to establish that the appellants are agricultural land owners. The documents produced on vide Ex. D-1, copy of Record of Rights show that appellant No.1 is agricultural land owner in Village Kandel. Ex. D-2 and Ex. D-3 are also certified copies of Record of Rights which show entries of agricultural land of the family members of the appellants. After bringing this evidence, the burden was shifted towards the prosecution to deny this version of defence, however no effort was made in this direction by the prosecution. Under these circumstances, on the basis of the evidence, especially the evidence of defence witnesses, it is found that the appellants had put forth a probable theory that the paddy found in their possession could have been the product of their own agricultural fields. In this regard, the law is well settled that if two views are possible, then the view in favour of the accused has to be followed and the accused persons are to be extended benefit of doubt. In the present case, the appellants have succeeded to establish likewise.

14. 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 upon 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.

15. No doubt, the prosecution was launched in this case by filing of charge-sheet against the appellants by Police Station Arjuni, hence, it cannot be regarded as complaint under Section 200 of the Cr.P.C. by a public servant. There is no document on record to give this impression that a request has been made to the Court having jurisdiction to take cognizance in the offence and initiate the proceedings against the appellants. Under these circumstances, it is amply clear that the charge-sheet filed against the appellants was clearly under the provision of Section 173 of Cr.P.C. which is not contemplated in the provisions of Section 11 of the E.C. Act, 1955.

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

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

18. It is submitted by learned counsel for the appellants that in compliance of the impugned judgement, the amount of sale proceeds of seized paddy has been deposited. In compliance of the impugned judgement, if the appellants produce copy of the receipt showing the amount deposited by them, consequent to the result of the appeal, the appellants are entitled to refund of the amount so deposited by them in compliance of the impugned judgement.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
**Judge**