

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2888 of 1999

- 1. Shyam Tiwari, S/o Bankelal Tiwari, aged about 42 years, R/o Ganjpara, Mahasamund, District Raipur
- 2. Ram Kumar Agase, S/o Shiv Kumar Agase, aged about 28 years, R/o Mahasamund, District Raipur

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Mahasamund, District Raipur

--- Respondent

For Appellants	:	Shri Suryakant Mishra, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

11.7.2018

- 1. This appeal is directed against the judgment dated 14.10.1999 passed by the Special Judge under the Essential Commodities Act (henceforth 'the EC Act'), Raipur in Special Sessions Trial No.38 of 1997 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 3 read with Section 7 of the Essential Commodities Act	Rigorous Imprisonment for 3 months and fine of Rs.200/- with default stipulation

- 2. Prosecution case, in brief, is that on 24.6.1997, Dhaneshram (PW2) made a written complaint (Ex.P7) to S.D.M., Mahasamund

alleging that Appellant Shyam Tiwari used to sell blue kerosene at his shop at the rate of Rs.8/- or Rs.9/- per litre. On this complaint, the S.D.M. instructed the Naib-Tahsildar and Food Inspector to investigate into the matter. The Food Inspector gave Rs.25/- to Dhaneshram (PW2) and directed him to purchase kerosene from the shop of Appellant Shyam Tiwari and after purchasing give a signal to the trap party. A necessary panchnama was also prepared. As directed, Dhaneshram (PW2) went to the shop of Appellant No.1, Shyam Tiwari. At that time, Appellant No.1 was not present at his shop. Appellant No.2, Ram Kumar Agase was available at the shop. Dhaneshram (PW2) purchased 3 litres of kerosene at the rate of Rs.8/- per litre and gave Rs.25/- to Appellant No.2, Ram Kumar Agase and thereafter gave a signal, as already instructed to him, to the trap party. The trap party reached the shop and seized the kerosene purchased by Dhaneshram (PW2). The trap party also seized 35 litres of kerosene kept in the shop. Next day, statement of Appellant No.1, Shyam Tiwari was recorded in which he stated that 40 litres of kerosene had been obtained by him from different Ration Cards of persons acquainted with him and the same was being sold by him. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Section 3 read with Section 7 of the EC Act.

3. In support of its case, the prosecution examined as many as 8 witnesses. Statements of the Appellants were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.

4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submits that Dhaneshram (PW2), who is allegedly the person on whose complaint, a search was conducted, has not supported the case of the prosecution. Other witnesses Sharad Kumar (PW3) and Suresh Kumar (PW4) have also not supported the case of the prosecution. Though Naib-Tahsildar Manoj Kedia (PW1) has supported the case of the prosecution, his statement is not reliable because none of the documents which were signed by him has been produced before the Trial Court. He further submits that even if for the sake of argument it is considered that any liquid was seized from the shop in question, the same was kerosene or blue kerosene is not established. Therefore, no offence under Section 3 read with Section 7 of the EC Act is proved. Hence, the Appellants deserve acquittal.
6. Learned Counsel appearing for the State/Respondent supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Dhaneshram (PW2) is the witness, allegedly, on whose complaint, the search was made. But, this witness has not supported the case of the prosecution and he has been declared hostile. Seizure

witnesses Sharad Kumar (PW3) and Suresh Kumar (PW4) have also not supported the case of the prosecution. They have also been declared hostile.

9. Food Inspector Nasir Kamal Khan (PW5) has stated that a written complaint (Ex.P7) was given by Dhaneshram (PW2) to the S.D.M. which was given to him for making inquiry. Thereafter, he recorded statement of Dhaneshram, prepared a panchnama and sent Dhaneshram with cash of Rs.25/- in the denominations of Rs.10/-, 10/- and 5/- to purchase kerosene from the shop of Appellant Shyam Tiwari. He has further stated that Dhaneshram purchased 3 litres of blue kerosene from the shop and thereafter he seized cash of Rs.25/- and 35 litres of blue kerosene from Appellant Ram Kumar Agase vide Ex.P3. He prepared a panchnama (Ex.P4). He has further stated that next day on 25.6.1997, he recorded statement of Appellant Shyam Tiwari vide Ex.P8 and seized 8 numbers of Ration Cards vide Ex.P6. Thereafter, he recorded First Information Report (Ex.P13). He has further stated that the Appellants did not have a licence for selling kerosene and they were selling kerosene without a licence. In paragraph 11 of his cross-examination, he has admitted that he had not sealed the seized kerosene container. He has further admitted that he had also not sent the seized kerosene for chemical examination.
10. The then Probationary Naib-Tahsildar Manoj Kedia (PW1) has supported the statement of Food Inspector Nasir Kamal Khan (PW5), but he has admitted that no document signed by him is available on record.

11. Food Inspector S.K. Mishra (PW6) is the witness of panchnama (Ex.P4) and seizure memo (Ex.P14). He has supported the panchnama and the seizure memo.
12. Jugal Kishore Sharma (PW7) and Ganeshlal (PW8) were salesman of different ration shops. They have only stated that their statements were recorded by someone, but they do not know what statement was recorded on their behalf.
13. On a minute examination of the above evidence, it is clear that except Naib-Tahsildar Manoj Kedia (PW1) and Food Inspector Nasir Kamal Khan (PW5), none of the prosecution witnesses has supported the case of the prosecution. Complainant Dhaneshram (PW2) has denied that any complaint was made by him and he has been declared hostile. From the statement of Manoj Kedia (PW1) and Nasir Kamal Khan (PW5), it is only established that some liquid had been seized from the shop of Appellant Shyam Tiwari, but the seized liquid was kerosene or blue kerosene, no evidence in this regard is available on record. Therefore, the offence alleged against the Appellants under Section 3 read with Section 7 of the Essential Commodities Act is not proved.
14. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
15. It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months in terms of the

provisions contained in Section 437A of the Code of Criminal Procedure.

16. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge