

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1172 of 2002

- 1. Madhu Sudan Agrawal, son of Late Jagdeesh Agrawal, aged about 60 years, resident of Sangam Press, P.S. Kotwali, Durg, Tahsil and District Durg, Chhattisgarh
- 2. Nirmal Singh Chandrakar, son of Top Singh Chandrakar, aged 42 years, present address Madhu & Co., Mahalaxmi Rice Mill, Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh

--- Respondent

For Appellants	:	Shri Praveen Dhurandhar, Advocate
For Respondent	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

28.6.2018

- 1. This appeal is directed against the judgment dated 28.10.2002 passed by the Special Judge under the Essential Commodities Act, Durg in Special Criminal Case No.52 of 1991 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Essential Commodities Act	Rigorous Imprisonment for 3 months and fine of Rs.2,000/- with default stipulation

- 2. Prosecution case, in brief, is that Mahalaxmi Rice Mill is run by the Appellants and they are partners of a Firm, namely, Madhu Sudan and Company. It is alleged that on 17.3.1989, the Appellants without paying levy of rice, got loaded 130 bags of rice in a truck bearing registration No.MTG 1836 and sent the same to M/s Nand

Kishore Khandelwal and Company, Nagpur. Ananta and Manikrao were drivers of the said truck and Ganesh was cleaner of the truck. The truck was stopped and checked by police on Bagnadi Check Post, District Rajnandgaon. During checking of the truck, it was found that 130 bags of rice were kept in the truck, but the *bilti* (bill) was for 130 bags of *kanki*. The said bags were seized. Offence was registered. On completion of the investigation, a charge-sheet was filed against all the accused persons including the present Appellants for offence punishable under Sections 3 and 7 of the Essential Commodities Act and Section 417 of the Indian Penal Code. Vide order dated 31.7.1999, the Trial Court discharged accused Ananta, Manikrao and Ganesh and framed charges only against the present Appellants under Section 3 read with Section 7 of the Essential Commodities Act.

3. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellants submits that he confines his arguments to the sentence part only. He further submits that though for the offence punishable under Section 7 of the Essential Commodities Act minimum punishment is of 3 months, for special reasons punishment can be imposed for lesser than 3 months. He further submits that the incident is of the year 1989. The Appellants are facing the *lis* for the last 29 years and they have no known criminal antecedent, therefore, they may be released on probation. Reliance has been placed on **2005 Cri.L.J. 3367 (Surendranath Subodhi v. State of Orissa)** and **1988 (2)**

MPWN Note 66 (Narayandas v. State of M.P.).

5. Learned Counsel appearing for the State/Respondent supports the impugned judgment of conviction and sentence.
6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. In the instant case, the charge-sheet was filed on 31.12.1991. The impugned judgment was delivered on 28.10.2002. The appeal is pending before this Court since 13.11.2002. The Appellants are facing the *lis* for the last 29 years. They have no known criminal antecedent. Looking to the facts and circumstances of the case, I am of the considered opinion that no purpose would be served by sentencing the Appellants to suffer the rigorous imprisonment imposed upon them by the Trial Court. It has been informed on behalf of the Appellants that they have already paid the amount of fine imposed upon them by the Trial Court. Under such circumstances, I find that it is a fit case where the Appellants can be released on probation of good conduct under Section 4 of the Probation of Offenders Act.
8. Resultantly, the appeal is allowed in part. The conviction imposed upon the Appellants under Section 7 of the Essential Commodities Act is affirmed. The sentence of fine imposed upon them is also affirmed, but their sentence of rigorous imprisonment is set aside and they are directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act for a period of two years on each of them entering into a bond for a sum of

Rs.20,000/- with a surety for the like sum to the satisfaction of the Special Judge/Trial Court for their appearance and suffering sentence if called upon during the aforesaid period of two years. During the said period of two years, they shall maintain peace and good conduct.

9. 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