

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No. 385 of 2001

1. Shiv Kumar Singh, son of Jhandu Singh Rajput, aged about 43 years, Jila Sahkari Kendriya Bank, Pratappur, District-Sarguja (Chhattisgarh).
2. Bhaiyalal, son of Ramdas, aged about 21 years, resident of Dadankara, P.S. Pratappur, District Sarguja (Chhattisgarh).

---- Appellants

Versus

- State Of Chhattisgarh, Through Station Incharge P. S. Pratappur, District Sarguja (Chhattisgarh).

---- Respondent

For Appellant No. 1. : Shri Sacheen Singh Rajput
 For Appellant No. 2. : Shri Sanjeev Kumar Verma, Advocate

For Respondent/State : Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, JJudgment On Board14/11/2019

This appeal arises out of the judgment of conviction and order of sentence dated 18.04.2001 passed by Special Judge, Surguja (Ambikapur) in Special Criminal Case No. 163/96. By the impugned judgment, the appellants/accused stand convicted & sentenced as under:

Conviction	Sentence
Under Section 3/7 of the Essential Commodities Act, 1955 (to Bhaiyalal, son of Ramdas)	Rigorous imprisonment for two years & six months with fine of Rs. 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment of three months.
Under Section 3/7 of the Essential Commodities Act, 1955 (to Shiv Kumar Singh, son of Jhandu Singh Rajput)	Rigorous imprisonment for 2 years & six months with fine of Rs. 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment of 3 months.

2. Brief facts of the case are that a PDS shop was being appellant No. 1- Shiv Kumar Singh, who was working as Assistant Chief observer in District Cooperative Centre Bank Ltd., Ambikapur (Sarguja) was given additional charge of lead Manager of Government Fair Price Shop, Davankara whereas appellant No. 2- Bhailal was working as Salesman in the said Co-operative Fair Shop. Food Inspector – Ram Pal Singh (PW-12), upon due physical verification of stock register and distribution register found 9.06 quintal rice excess in the said shop as the said shop ought to have 53.44 quintal of rice whereas found illegally 62.50 quintal of rice vide Ex.P-13. Food Inspector Shri Ram Pal Singh (PW-12) has further verified the stock register and distribution register and found that the ration cards have been issued in favour of various ration card holders i.e. Sitaram, Rajveer, Mohan, etc. but there is no foodgrain distributed in their favour as per the

stock register. Thus, they have committed the offence under clause 6(2) of M.P. (Khadyapadartha) Sarvajanic Nagrik Poorti Vitram Scheme, 1991 (henceforth "Scheme, 1991"). Statements of all the aforesaid witnesses were recorded and, in which, it has been found that as per Distribution Register the food grain was not distributed to the ration card holders. Therefore, a report (Ex. P/13) was submitted by Food Inspector-Ram Pal Singh, to the District Magistrate thereafter the District Magistrate had given the permission for lodging of the FIR against the accused persons. FIR (Ex.P-8) was lodged at Police Station, Pratppur under the crime No. 101/96 against both the accused persons. The stock Register seized vide seizure Ex. P/10. As per Ex.P/13, 9.06 quintal of rice excess stock was found in the Fair Price Shop. As per Ex. P/5, Shyam Sundar Pandey, Manager of the aforesaid Fair Shop has recovered 62 ½ quintal of rice on the same date i.e. 06.06.1996.

3. After usual investigation, charge sheet was filed under Section 3/7 of Essential Commodities Act (hereinafter referred to as "EC Act, 1995") against the accused/appellants. After filing of charge sheet, learned Trial Court framed charge against the accused under Section 3/7 of the EC Act, 1955.

4. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses namely- Krishnaram(PW-1), Shyam Sunder Pandey (PW-2), Dhaniram (PW-3), Modarram

Nikunj (PW-4), Suraj Prasad (PW-5), Misla Prasad (PW-6), Narayan Prasad Jaiswal (PW-7), Jagannath Singh (PW-8), K.M.S. Khan (PW-9), Shambhunarayan Ram (PW-10), Mahesh Prasad Gupta (PW-11) and Rampal Singh (PW-12). Statements of accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Two defence witnesses namely Amrit Singh (DW-1) & Dashrath Singh (DW-2) have also been examined on behalf of the accused/appellants.

5. Accused No. 1- Shiv Kumar Singh has taken a specific defence that he is only the authority to issue the foodgrain on the cash credit basis but the Cooperative Society, who was running the PDS shop has no sufficient funds and due to non availability of sufficient fund in the District Cooperative Bank and as per Rules and Regulation of the Co-operative Society, it was not his (appellant No. 1) duty to obtain the foodgrains but the said duty was imposed upon the society or persons concerned who were running the shop for distribution of foodgrains or other articles.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

7. Learned counsel appearing for the accused /appellant No. 1

submits that as per the document marked as Ex. P/24, duty of appellant No. 1- Shiv Kumar is mentioned as Observer on behalf of the bank and there is no duty imposed upon the appellant No. 1 as mentioned under clause 6(2) of the Scheme, 1991. It is also admitted by the prosecution witnesses that the villagers obtained foodgrains from the Fair Price Shop but the entry to this effect was made in the ration cards after some time due to crowd and some other reasons. Therefore, non-examination of the material witnesses of this case, who are ration card holders of the Fair price Shop, is fatal for the prosecution and, therefore, the accused/appellant No. 1 may be acquitted of the charges levelled against him.

8. Learned counsel for the accused/appellant No. 2 submits that on record accused No. 2- Bhaiya Lal is working as Salesman in the aforesaid Society as part-time worker under the direction of the Branch Manager of the Society and appointed as a clerk on 10.09.1996 as per resolution passed by the Society vide document marked as Ex. D2-C; and the said fact is established by Dashrath Singh (DW-02), who is Society Manager of Davankara Lamps Co-operative Society. When the accused/appellant No. 2 - Bhaiyalal was working as part time worker in the Society the embezzlement in the Society had already taken place and due to this reason the bank limit was restrained by the bank, therefore, the accused/appellant No. 2 may be acquitted of the charges

levelled against him.

9. Learned counsel for the State, while supporting the impugned judgment, submits that there was no enmity between the appellants and the Food Inspector Ram Pal Singh (PW 12), the said Food Inspector had performed his official duty by verifying the stock register and distribution register and found 9.06 quintal rice excess than the declared stock in the Fair Price Shop and 66 ½ bags of rice were recovered from the possession of accused appellant No. 2 – Bhaiyalal as he was working as salesman in the said Fair Price Shop. He also submits that as per stock Register and rations cards of the concerned persons vide Articles 'A' to 'D' placed before the Court, the learned Special Judge, Sarguja is absolutely justified in convicting and sentencing the accused/appellants as aforementioned.

10. I have heard learned counsel appearing for the parties and perused the impugned judgment.

11. Learned counsel for the appellant has submitted a document concerning the duties of the manager of *Adim Jati Seva Shahkari Samiti* dated 02.11.1997. The said document is not disputed by the State counsel. Hence the same is taken on record.

12. Shyam Sunder Pandey (PW-2), Lamps Manager, has admitted in paragraph 1 of his statement that from the year 1993 till March, 1997, he was working as Society Manager in the

aforesaid Society and his duty was to obtain foodgrains from the Co-operative Department as mentioned in the sub-Rule 2 of Scheme, 1991 and distribute the same to the Fair Price Shops and during that period no fraud was reported in the said Society and he has not made any allegation regarding the fraud against Shiv Kumar Singh & Bhaiyalal at the relevant point of time as they are not concerned with the Scheme, 1991.

13. So far as accused/appellant No. 2- Bhaiya Lal is concerned, it is an admitted position on record that accused Bhaiya Lal is working as Salesman in the aforesaid Society as part-time worker under the direction of the Branch Manager of the Society and appointed as a clerk on 10.09.1996 as per resolution passed by the Society vide document marked as Ex. D2-C; and the said fact is established by Dashrath Singh (DW-02), who is Society Manager of Davankara Lamps Co-operative Society. He (Dashrath Singh) states that prior to working in the Society as a part-time worker, Bhaiyalal was not working in any of the post in the said Society.

Shyam Sundar Pandey(PW-2), who was working as Lamps Manager in the said Society has stated that during enquiry he has not made any persons as accused. When the Accused/appellant No. 2 - Bhaiyalal was working as part time worker in the Society the embezzlement in the Society had already taken place and due to this reason the bank limit was restrained by the bank.

14. Bank Account (Ex. D/2) of the Society shows that an amount of Rs. 4, 78,000/- is balance against the Society, but in the month of April, no food supply was made to the society from the concerned bank due to non-availability of the fund in the Society and the prosecution witnesses have failed to prove the aforesaid facts by leading cogent and clinching evidence that why the food supply was stopped to the concerned Society.

Food Inspector Ram (PW-12) has admitted in para 24 of his statement that when he conducted enquiry in shop of the concerned Society, the stock was counted in the form of bags. The said stock was not weighed by the enquiry Officer, therefore, 9.06 quintal rice was found excess than the declared stock. If the stock was weighed properly by the concerned enquiry Officer- Ram Pal Singh, the actual stock could have been verified.

15. It is also not disputed by both the parties that all the ration card holders were neither produced before the trial Court nor examined during trial, therefore it is very difficult to say whether the entry and their thumb impressions mentioned in the stock Register are correct or not and whether the foodgrains distributed to the ration card holders or not.

16. As per document marked Ex. P/24, appellant No. 1- Shiv Kumar Singh is Assistant Observer in District Corporative Central Bank, Ambikapur and he is not running the said shop situated at Village- Dadamlara and he was only the Observer of 6 - 7

societies as stated by Dashrath Singh (DW-2), who was Manager of the said Bank and only released the order of foodgrains when the Society have fund.

Amrit Singh (DW-1) has specifically stated in para 2 & 3 of his statement that due to some embezzlement in the Society, the transaction of the society was stopped, therefore, the society had no fund and due to which in the month of April, supply of food grain was stopped from the concerned Society this fact is also proved by Shyam Sunder Pandey (PW-02), who was Lamps Manager of that society. He stated in paragraph 8 of his statement that they were not in a position to ask regarding distribution of food grain in accordance with law, therefore, they did not give any demand note to the appellant No. 1/ Lead Manager for supply of food grains.

Furthermore, Dhaniram (PW-3) has not supported the case of the prosecution and turned hostile. He stated that many times the villagers had taken food grains from the society without any entry in the ration card to this effect. He specifically admitted in paragraph 4 that many times without making entry in the ration card, Bhaiyalal supplied the foodgrains and subsequently he used to make the entry in the ration card.

17. Suraj Prasad (PW05) & Mislal Prasad (PW-06), who were witnesses to the seizure memo vide Exs. P/4 to P-6 have not supported the case of the prosecution and have turned hostile.

18. Narayan Prasad Jaiswal (PW 7), Cooperative Development Officer, in his statement has admitted the fact that from the month of March to June, no foodgrain was supplied to the concerned society and lead manager. He also admits in paragraph 4 of his statement that due to lack of fund in the society, no food grain was supplied to the concerned society but he has not verified whether any fund is available with the society or not.

19. Jagannath Singh (PW-8) has also admitted in paragraph 5 of his statement that in the society amount of Rs. 4,70,000/- is embezzled and Rs. 27,000/- to Rs.28,000/- remained in the bank and only on the basis of that amount, the rotation was made by the concerned Society for purchasing the foodgrains.

20. K. M. S. Khan (PW-09), Sub Inspector, who registered the FIR vide Ex. P/8 did not verify stock register and distribution register. He also admits in paragraph 9 & 10 of his statement that he did not verify the entire documents placed before him and only on the basis of documents submitted by the enquiry Officer, he lodged the FIR, as such, he is not able to establish the case of the prosecution.

21. Shri Krishna Ram (PW10), Food Inspector stated in his evidence that he made a written complaint (Ex.P-12), and on the basis of the said complaint (**Ex. P/19**), FIR (Ex. P/8) has been registered against the accused/appellants. He also stated in paragraph 11 of his statement that he did not have any personal

knowledge about the stock register and distribution register of the said Society and only on the basis of enquiry report, he submitted his report about the breach of the "Scheme, 1991" in the aforesaid Society.

22. In view of the aforesaid analysis, it is apparent that Rampal Singh (PW12) is the star witness and he admitted in paragraph 24 of his statement that he did not verify the entire stock and also not weighed the stocks in the Society. In paragraph 20 of his deposition, he admitted that he did not verify the fact as to why the foodgrains were not supplied to the concerned society. He is unable to explain whether any funds is available in the society or not. He stated that statements of ration card holders were recorded but they were not produced before the Court for their examination.

23. The particular charge framed against the appellant No. 1- Shiv Kumar Singh was that while he was discharging the duties of Lead Manager of Government Fair Price Shop, Gram Panchayat, Davankara, he did not supply foodgrains (wheat & rice) for four months which being in violation of the "Scheme of 1991" is an offence under Section 3 (7) of the "EC Act, 1995". Likewise, the charge framed against the accused/appellant- Bhaiyalal was that he being a salesman in the said fair price shop did not properly maintain the stock register and that 9.06 quintal rice was found in excess which amounts to violation of the Scheme, 1991 and as

such it is an offence under Section 3(7) of the “EC Act, 1995”. However, from the evidence of the prosecution witnesses as discussed above it is clear that the foodgrains were not being supplied to the society due to non-availability of fund and considering the nature of job of appellant- Shivkumar Singh, he was to supply foodgrains only after receipt of cash credit limit whereas affairs of the society were to be managed by Branch Manager of the society and the appellant being in-charge of Lead Manager of the society was working under the directions of the Branch Manager of the society which is evident from the document concerning the duties of *Adim Jati Seva Shahkari Samiti* filed by the counsel for the appellant which has already been taken on record. As such the particulars of the charges framed against the Shivkumar have not been proved by the prosecution by adducing any cogent and reliable evidence. Similarly from the evidence of the prosecution witness {ration card holder, Krishnaram (PW01) & Dhaniram (PW03)} it is clear that they were being regularly supplied foodgrains from the said fair price shop by appellant -Bhaiyalal who was working in the capacity of salesman under the directions of the Branch Manager of the society. These witnesses have not supported the prosecution case and have been declared hostile. However, other ration card holder whose thumb impression mentioned in the entry register have not been examined by the prosecution in support of

its case. In the circumstances, prosecution has also not proved the particular charge framed against this appellant. Consequently, this criminal appeal deserves to be allowed by setting aside the impugned judgment of conviction and order of sentence.

24. Resultantly, the appeal is allowed. The appellants are reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge