

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 409 of 2003**

1. Ashok Kumar Agrawal S/o Late Jhanduram Agrawal, aged about 37 years, Occupation -Agriculture, R/o Silphili, P.S. Shankargarh, District Surguja.
2. Narendra Narayan Singh @ Bhagi Singh, S/o Late Ramdeni Singh, aged about 50 years, Occupation- Agriculture, R/o Ramanujganj, District Surguja (C.G.).
3. Krishna Gupta S/o Late Sita Sao, aged about 38 years, Occupation – Agriculture, R/o village Chaki, Tehsil Ramanujganj, District Surguja.
4. Birju Gupta S/o Banarsi Sao, aged about 40 years, R/o Village & Tehsil Ramanujganj, District Surguja.
5. Pradeep Kumar S/o Tapeswar Ram Gupta, aged about 21 years, R/o Dhangaon (Sandsa), Tehsil Ramanujganj, District Surguja.
6. Ramlal S/o Jhokhu Sao, aged about 36 years, R/o Ramchandrapur, Tehsil Ramanujganj, District Surguja.
7. Ramnath S/o Late Deogan Sao, aged about 38 years, R/o Ramchandrapur, Tehsil Ramanujganj, District Surguja.

---- Appellants**Versus**

1. State of Chhattisgarh, through District Magistrate, Ambikapur, District Surguja (C.G.).

---- Respondent**CRA No. 410 of 2003**

1. Bajrang Lal Agrawal S/o Ghudamal Agrawal, aged about 64 years,
2. Rajendra Kumar Agrawal S/o Ghudamal Agrawal, aged about 55 years,
3. Kanhaiyalal Agrawal S/o Ghudamal Agrawal, aged about 50 years,

All R/o Village Ramanujganj, District Surguja (C.G.).

---- Appellants**Versus**

1. State of Chhattisgarh through District Magistrate, Ambikapur, District Surguja (C.G.).

---- Respondent

For Appellants	:	Shri Gurudev Sharan, Advocate
For Respondent/State	:	Shri Pawan Kesharwani, P.L.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

13/09/2019

- 1) Since both these appeals filed under section 454 of Code of Criminal Procedure, 1973 arise out of the common judgment of conviction and order of sentence dated 10/02/2003 passed by Special Judge, Surguja (Ambikapur) (C.G.) in Special Case No. 73/96, they are heard together and are being disposed of by this common judgment.
- 2) By the judgment, impugned accused/appellant Kanhaiyalal Agrawal was convicted and sentenced as under:-

Conviction	Sentences
U/s. 3/7(i)(b) of Essential Commodities Act, 1955	R.I. for 1 year & fine of Rs. 2,000/- in default of payment, additional R.I. for 1 month

- 3) No one appeared on behalf of the appellants, when the matter is called. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.
- 4) Shri Gurudev Sharan, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Gurudev Sharan, Advocate to argue the matter on behalf of the appellants. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- 5) By the judgment impugned the Trial Court directed that after

expiry the period of appeal of the seized articles stand confiscated in favour of the State under section 7(1)(b) of the Essential Commodities Act, 1955 and if the said commodities have already been sold by the Collector or Food Department the sale consideration be deposited with the Treasury.

- 6) CRA No. 409/2003 has been filed by the appellants for disbursement of the sale amount in their favour which has been deposited with Bank after sale of the seized food grains belonging to them. Likewise CRA 410/2003 has been filed by the appellants including the accused Kanhaiyalal Agrawal for the same purpose.
- 7) Learned counsel for the appellants submit that the commodities seized from the accused/appellant Kanhaiyalal Agrawal belong to the appellants who are agriculturist by profession. While conducting raid by the Food Department alongwith Police the commodities belonging to the appellants were wrongly seized by them whereas the said commodities have no nexus with the crime in question. Since the items seized are perishable, the same were sold by the Collector and the sale amount has been deposited with the Bank. He submits that the appellants being owner of the said articles as mentioned in para 3 of the memo of appeal are entitled to receive the sale consideration in proportion of the quantity of food grains belonging to them.
- 8) On the other hand learned counsel for the State supports the impugned judgment and opposes the contention of the appellants. He submits that as per the impugned judgment accused /appellant Kanhaiyalal Agrawal was convicted and sentenced by the Trial Court and as per para 25 of the impugned judgment disposal of the seized articles or the sale consideration has to be done in accordance with the decision of the appellate authority. However, the appellant herein have no where mentioned whether any appeal was filed against the said judgment by the accused or do as attend finality for want of challenge. Therefore, the appellants have suppressed the

material fact and have approached this Court with unclean hands.

- 9) Heard counsel for the parties and perused the material available on record.
- 10) It is not in dispute that the appellants/claimants namely Ashok Kumar Agrawal, Narendra Narayan Singh @ Bhagi Singh, Krishna Gupta, Birju Gupta, Pradeep Kumar, Ramlal, Ramnath, Bajrang Lal Agrawal and Rajendra Kumar Agrawal never filed any application before the Trial court for claiming the property seized by the Police which they are claiming in the present appeal. There is even no evidence to show that the property being claimed by the appellants belong to them. As per prosecution case the entire commodities were seized from accused Kanhaiyalal Agrawal after Stock Register verification by the concerned Food Inspector. At that point of time no claim was made by the appellants/claimants during trial.
- 11) It is noteworthy to mention here that the appellants (in CRA No. 409/2003) had earlier filed writ petition W.P. No. 1683/1996 before High Court of M.P., Jabalpur for the same purpose wherein an order was passed on 27/06/1996 thereby rejecting the interim relief on the ground that nobody appeared to support the interim relief. A certified copy of memo of said writ petition and order dated 27/06/1996 are available on record however, there is no other order available on record to show the final outcome of the said writ petition. From the details taken from the Internet of the said writ petition it is seen that the same was dismissed by this Court vide order dated 04/08/2005. A Copy of the said document is being attached with this file.
- 12) Thus from the material available on record it is found that no application was filed by the appellants/claimants for claiming the seized commodities either before the Trial Court or the appropriate authority having jurisdiction under Essential Commodities Act, 1955 for confiscation of the property. Though a writ petition filed by the appellants for the same purpose has

already been dismissed by the Co-ordinate Bench of this Court on 04/08/2005 but the appellants have neither stated about the same in their memo of appeals nor have filed copy of the said order. Thus the appellants have approached this Court by suppressing the material facts with unclean hands. Therefore, considering the facts and circumstances of the case, the fact that no such claim was ever raised by the appellants before the Trial Court during trial or thereafter before the appropriate authority and their conduct that they have approached this Court by suppressing the material fact, both the appeals being without any substance are liable to be dismissed and are accordingly dismissed.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant