

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 565 of 2010**

- Jairam @ Lambu, S/o. Ramdhari Sao, Aged about 22 years,
R/o. Hall Mukam Tatibandh, PS Amanaka, District Raipur CG

---- Applicant**Versus**

- State Of Chhattisgarh, Through Police Station Amanaka, Raipur
(CG)

---- Respondent

For Applicant	: Shri Rahil Kochar, Advocate
For Respondent/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****21/08/2019**

Present revision arises out of judgment and order dated 23.10.2010 passed by the Ninth Additional Sessions Judge (FTC) Raipur in Cr.A. No.18/2010 whereby the learned court below has affirmed the judgment of conviction and order of sentence awarded by the Judicial Magistrate First Class, Raipur vide its judgment dated 19.2.2010 in Cr. Case No. 598/2006 for the offence under Section 3/7 of the Essential Commodities Act and sentenced him to undergo RI for six months and to pay fine of Rs. 100/- with default stipulation.

2. Brief facts of the case are that on 15.11.02, Sanjay Dubey, Food Inspector and Constable C.B.Singh received a secret information about selling of blue kerosene oil by the applicant. On receiving this

information, the police party reached the spot. Applicant was carrying 60 litres of blue kerosene oil in his bicycle for sale and he was not having the license or permit for selling, transporting or possession of the aforesaid kerosene oil. The kerosene oil was seized along with the bicycle and FIR was registered against the applicant/accused under Section 3/7 of the Essential Commodities Act. After investigation, charge sheet was filed and charges were framed accordingly.

3. So as to prove the guilt of the accused/applicant, prosecution has examined as many as six witnesses. Statement of the accused/applicant was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 19.02.2010 Judicial Magistrate First Class has convicted the accused/applicant for the offence under Section 3/7 of the Essential Commodities Act and sentenced him to undergo RI for six months and to pay fine of Rs. 100/- with default stipulation. This order was appealed by the applicant and in the appeal learned appellate court has affirmed the conviction and sentence of the applicant. Hence, the present revision.

4. Counsel for the applicant submits that both the courts below have committed grave error of law and fact in holding the guilt of the accused/applicant. He submits that the conviction of the applicant is bad and the prosecution has failed to prove the basic ingredients of the offence beyond reasonable doubt. He further submits that the statement of the prosecution witnesses are full of contradictions and

omissions and there is improvement in the same to implicit reliance on such kind of testimony. Prosecution has utterly failed to prove that the seized kerosene oil of 60 liters was found in his possession. He submits that the independent witness Ramchandra PW-6 has not supported the prosecution case. He submits that neither the seized kerosene oil was measured, nor the sample was sent for its chemical examination and the sample was taken by the food inspector and no evidence has been adduced by the prosecution to establish that the blue kerosene oil was meant for public distribution. He has placed reliance in the matter of **Ram Singh Vs. State of Madhya Pradesh (2009 (III) MPJR 38)** and **Siddhmuni Yadav Vs. State of Madhya Pradesh and Amarkumar Verma Vs. State of Madhya Pradesh and Others (Cr.A. No. 1936 of 2003 & M.Cr.C. No. 8267 of 2003)**.

5. On the other hand, counsel for the State supported the impugned judgment.

6. Heard counsel for the parties and perused the material available on record.

7. Both the witnesses Chandrabahadur (PW-1) and Sanjay Dubey (PW-2) have admitted that they have not measured the kerosene oil and the sample was not sent for chemical analysis. It has been held in the matter of **Ram Singh Vs. State of Madhya Pradesh** which is as under:

“7. The prosecution fully rests upon the P.N.Kaushal (PW-4), the seizing officer who only proved the fact that on the basis of secret information, when the police party reached near the village Arlavada, at that time, a matador came there whose registration No. was MOB

6603 which was being driven by the appellant accused and in his matador, three drums were found which contained kerosene oil. On enquiry, the appellant/accused explained that he had brought this kerosene oil from Devas and had not produced any valid license of permit for its possession and transportation for the aforesaid oil. This was seized as per seizure memo Ex.P-3. On perusal of the seizure memo

Ex.P-3 it is not apparent that after seizure, the total container of the kerosene oil was measured by the seizing officer, on which basis, total quantity of the seized kerosene may be found to be 600 liters as mentioned in the seizure memo Ex.P-3. It is also apparent that only on the basis of fact that all three containers (drums) are having capacity of 200 liters on which basis only inference can be drawn by the seizing officer that these three drums contained 600 liters kerosene. This appears to be hypothetical explanation of the seizing officer, whereas he ought to have weighed the quantity from the petrol pump authorized for it, then only, the total seized quantity can be ascertained. This appears to be material lacuna in the prosecution case for which the appellant/accused is entitled to get benefit.

8. It is also apparent that after seizure of the concerned kerosene oil no sample has been sent for its chemical examination to the authorized laboratory of the Indian Oil Corporation concerned. The concerning seizing officer P.N.Kaushal (PW-4) has stated that sample had also been taken out but no examination report was produced and proved by the prosecution, on which basis it may be conclusively found proved that the seized article is kerosene oil as defined under the Kerosene Control Order. This appears to be material lacuna in the prosecution case of which benefit ought to be given to the appellant/accused."

8. Thus, the findings of the Court that the applicant was in illegal possession of kerosene oil was accordingly found to be unsustainable in the eye of law. The applicant, therefore, could not be convicted for violation of any provision and his conviction and sentence is liable to

be set aside. In one of the case of Hon'ble Apex Court, it has been held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of reasonable doubt. (Reported in **V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762**)

9. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

10. In the light of above discussions and reasons I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt under Section 3/7 of the Essential Commodities Act and the accused person deserved to be acquitted of the charge leveled against him. Hence he is acquitted from this case and thereby set at liberty.

Sd/-

(Rajani Dubey)
Judge