

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2064/2000****Reserved on 4-12-2018****Delivered on 8-1-2019**

(Arising out of judgment of conviction and order of sentence dated 25-7-2000 passed by the Special Sessions Judge, Raipur, MP (now CG) in Spl. Criminal Case No. 4/1998)

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Premnarayan Gupta, aged about 25 years, son of Dhumanlal Gupta, Occupation Shopkeeper, R/o. Dhimer Tikur, PS Arjuni, distt. Raipur MP (now CG)

Appellant

VERSUS

State of Madhya Pradesh (now Chhattisgarh), through Food Inspector, Dhamtari, P.S. Arjuni, Distt. Raipur, MP (now CG).

Respondent

 For Appellant : Mr. Chandresh Shrivastava, Adv.
 For Respondent : Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 25-7-2000 passed by the Special Sessions Judge, Raipur, MP (now CG) in Spl. Criminal Case No. 4/1998 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction u/S. Section	Sentence	Fine sentence
3/7 of the EC Act	RI for 3 months	Rs. 500/-, in default of payment of fine RI for 1 month

2. This is admitted by the appellant that he was running grocery shop at village Dheemartikur. On 29-12-1997, P.W. 1 Food Inspector Ram Kishore Shukla had inspected his grocery shop. He did not have the licence required under Madhya Pradesh Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (hereafter

called as 'Order 1991'). Said Food Inspector had seized paddy by seizure vide Ex. P-2 from him. He had handed over the seized paddy to him on supurdnama vide Ex. P-3.

3. In brief the prosecution story is that said Food Inspector had found that appellant had stored 37 bags, each bag contained 70 kg paddy. During inquiry, it was found that he was purchasing the paddy from villagers and used to store it and thereafter sell it to local dealers. Said Food Inspector prepared inquiry panchnama. Thereafter he submitted the inquiry report to Collector Raipur who ordered him to lodge the FIR against the appellant. He wrote a letter to SO Arjuni to lodge the FIR against the appellant. On 19-2-1998, an FIR was lodged against the appellant. After completion of the investigation a charge sheet was filed against him under Section 3/7 of the Essential Commodities Act, 1955 (hereafter called as 'Act of 1955').

4. Trial Court explained the particulars of the offence punishable under Section 3 read with Section 7 of the Act of 1955 to appellant. He abjured allegations levelled against him and faced trial. To bring home the charge, the prosecution examined as many as 6 witnesses. He examined one witness on his defence. After conclusion of trial, the trial Court convicted and sentenced him as aforesaid.

5. Being aggrieved, the appellant has preferred this criminal appeal raising various grounds.

6. Counsel for the State submitted that aforesaid conviction and sentence are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that no interference is called for by this Court.

7. Counsel for the appellant argued that alleged Order 1991 is not

the part of the case, thus this Court cannot look into the same.

8. As per the provision of Section 57 of the Evidence Act, this Court can take judicial notice of aforesaid Order 1991. Thus this Court disallows the aforesaid argument of counsel for the appellant.

9. It would be pertinent to mention the provisions of Section 2(e) of the Order 1991 which reads as under :-

“2(e) “Dealer” means a person who is engaged or intends to engage in the business of purchase, sale or storage for sale of any one foodgrain specified in Schedule – I in quantity of 10 quintals or more at any one time and in respect of all foodgrains taken together in quantity of 50 quintals or more at any one time, and in addition to the Sugar 10 quintals, all kinds of pulses 10 quintals, edible oils including hydrogenated vegetable oil i.e. vanaspati 5 quintals, edible oilseeds 30 quintals, and Gur 10 quintals or more at any one time, whether on one's own account or in partnership or in association with any other person or as commission agent or Adhatiya (not including Kachha Adhatiya) or miller and whether or not in conjunction with any other business, but does not include a person who -

- (i) Stores any schedule commodities produced by him by personal cultivation; and
- (ii) does not engage in the business of purchase or sale of foodgrains.”

10. It would be pertinent to mention the provisions of Section 3(i) of the Order 1991 which reads as under :-

“3. Licensing of Dealers.- (i) No dealer shall carry on business as dealer without obtaining a licence under this order.”

11. P.W. 1 R.K. Shukla says in para 2 of his statement given on oath that in the inquiry he had found that 37 bags each containing 70 kg paddy, were stored in the shop of the appellant.

12. As per the inquiry panchnama P.W. 1 R.K. Shukla had found that

37 bags total quantity 25.90 quintals of paddy were present in the shop of appellant.

13. As per the seizure Ex. P-2, P.W. 1 R.K. Shukla had seized 37 bags total quantity 25.90 quintals paddy from the shop of the appellant.

14. Counsel for the appellant vehemently argued that said witness had not weighed the paddy which were allegedly contained in bags. He drew my attention in para 11 of the cross-examination of said witness wherein he had told that he had not weighed the paddy on spot, he had mentioned the quantity of 70 kg in each bag as informed by appellant.

15. In supurdnama Ex. P-3 it has been mentioned that the appellant had received 37 bags containing 25.90 quintals paddy. At the time of preparation of Ex. P-3, appellant had not objected in writing that allegedly each of 37 bags does not contain 70 kg paddy. He had also not made the complaint in writing to the higher officers of said witness to this effect that allegedly 70 kg paddy was not kept in each of those 37 bags. He had also not initiated any legal proceedings in this regard. In these circumstances, this Court finds that appellant does not get any help from the aforesaid statement of para 11 of said witness. Thus, this Court is not impressed with the aforesaid argument of the counsel for the appellant.

16. There is no such evidence on record on strength of which it can be said that aforesaid statement of para 2 of P.W. 1 Ramkishore Shukla, alleged inquiry panchnama Ex. P-4, alleged seizure Ex. P-2 are not simple, not natural, not normal in the reference that P.W. 1 R.K. Shukla had allegedly found 37 bags in the shop of the appellant, each bag was containing 70 kg paddy which were seized. In this

circumstance and looking to the concerned admitted facts, this Court believes on the aforesaid statement of para 2 of P.W. 1 R.K. Shukla, Ex. P-2, Ex. P-4 in that reference.

17. It would be pertinent to mention the provisions of Section 10-C of the Act of 1955 which is extracted below :-

“10C. Presumption of Culpable Mental State.

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation : In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”

18. Counsel for the appellant strenuously argued that alleged seized paddy was agricultural produce of his own field. He drew my attention in para 6 of P.W. 1 R.K. Shukla wherein he had stated that he does not know that the appellant does farming or not. In para 4 of his statement P.W. 6 Nandkumar had stated that appellant has 3 acres of agricultural land wherein he sows paddy. In para 1 of his statement, D.W. 1 Ramesh Kumar Tiwari had stated that in village Dheemartikur, the appellant has 100 acres land wherein he sows paddy.

19. The aforesaid quantity of paddy was found in the shop of the appellant, instead of his house. He had not made any complaint in writing to the superior officers of the said Food Inspector that he was

knowing that said paddy is the agricultural produce of his own field, even then he took action against him for such reason. Moreover, P.W. 4 Mehattar says in para 3 that earlier appellant used to sell paddy, this statement does not appear unnatural. Moreover, the appellant has not initiated any legal proceeding in this regard. In these circumstances, appellant does not get any help from the aforesaid statement of para 6 of PW. 1 R.K. Shukla, Para 4 of P.W. 6 Nandkumar, para 1 of D.W. 1 Ramesh Kumar Tiwari. Consequently, this Court disallows the aforesaid argument of counsel for the appellant.

20. Looking to the aforesaid facts and circumstances of the case, this Court presumes under Section 10-C of the Act of 1955 that there was existence of the culpable mental state of appellant.

21. After appreciation of the evidence discussed herebefore and concerned admitted facts, this Court finds that prosecution has succeeded to prove beyond reasonable doubt that the appellant was a 'dealer' and was engaged in the business of purchase, sale or storage for sale of paddy in quantity which was not less than 10 quintals.

22. Counsel for the appellant vehemently argued that in the case in hand, complaint case has not been filed by concerned Food Inspector, instead of it a charge sheet has been filed by police officer, this is violation of Section 11 of Act of 1955. He placed reliance on a decision of this Court in the matter of **Bisahu Ram Sahu -v- State of Madhya Pradesh** [2017 LawSuit(Chh)] 132, para 14 and 15 of which are relevant and quoted below:-

“14. The legality of prosecution and trial is also under challenge. Section 11 of the E.C. Act, 1955 provides that no Court shall take cognizance of any offence punishable under this Act except upon

a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the IPC. Thus, it is the requirement of this provision that the prosecution should have been initiated on the basis of a written complaint filed by the public officer who conducted the raid and seizure.

15. No doubt, the prosecution was launched in this case by filing of charge-sheet against the appellants by Police Station Arjuni, hence, it cannot be regarded as complaint under Section 200 of the Cr.P.C. by a public servant. There is no document on record to give this impression that a request has been made to the Court having jurisdiction to take cognizance in the offence and initiate the proceedings against the appellants. Under these circumstances, it is amply clear that the charge-sheet filed against the appellants was clearly under the provision of Section 173 of Cr.P.C. which is not contemplated in the provisions of Section 11 of the E.C. Act, 1955.”

23. It would be appropriate to reproduce the provision of Section 11 of the Act of 1955 which reads thus :-

“11. Cognizance of offences

No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Sec. 21 of the Indian Penal Code (45 of 1860) or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not.

Explanation : For the purposes of this section and Sec. 12-AA. "recognized consumer association" means a voluntary consumer association registered under the Companies Act, 1956(1 of 1956) or any other law for the time being in force. ”

24. In the matter of **Satya Narain Musadi and others -v- State of Bihar** [(1980) 3 SCC 152], Hon'ble Apex Court observed in para 7, relevant portion of the same is as under :-

“7. Section 11 of the Act precludes a Court from taking cognizance of the offence punishable under the Act except upon a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. The question is, if such police officer investigating into an offence which the Act has declared as cognizable submits a report in writing under Section 173(2) disclosing an offence under the Act and requesting for proceeding further into the matter, would it satisfy the requirements of Section 11 for taking cognizance of the offence so disclosed. Undoubtedly the police officer submitting the report would be a public servant within the meaning of Section 21 IPC and his report has to be in writing as required by Section 173(2). It must disclose an offence of which cognizance can be taken by the Magistrate. Apparently Section 11 would stand fully complied with.”

25. It is also relevant to mention the provision of Section 10 -A of the Act of 1955 which reads as under :-

“10A. Offences to be Cognizable and Bailable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 63] every offence punishable under this Act shall be cognizable and non-bailable. ”

26. Section 10-A has been inserted in the Act of 1955 by amendment on 30-12-1967. In the case in hand, the date of alleged offence is 29-12-1997. Thus, it is very clear that on the date of alleged offence the police officer was competent to investigate the offence without obtaining the permission from competent Court.

27. Looking to the provisions of Section 10-A and 11 of the Act of 1955 and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Satya Narain Musadi** (Supra), this Court finds that a Court shall take cognizance of any offence punishable under the Act of 1955 only when a report in writing of the facts constituting such

offence is made by a public servant as defined in Section 21 of the IPC or any person aggrieved or any recognized consumer association whether such person is a member of that association or not. Because the offences punishable under the Act of 1955 are cognizable since 30-12-1967, thus any police officer may investigate such offences without obtaining the permission of the court and may file a report under Section 173(2) of the Cr.P.C., disclosing the facts constituting the offence punishable under the Act of 1955. In such a situation it would be deemed that requirements of Section 11 of the Act of 1955 have been complied with.

28. In the case in hand charge sheet has been filed by S.O., PS Arjuni who is also public servant as defined in Section 21 of the IPC wherein such facts have been mentioned in writing to the effect that offence punishable under Act of 1955 has been committed by the appellant. Moreover, in the letter Ex. P-7 written by said Food Inspector to the SO Arjuni facts have been mentioned in writing which indicates that appellant had committed offence punishable under the Act of 1955. In these circumstances and looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Satya Narain Musadi** (supra), this Court finds that appellant does not get any help from the observations made by this Court in the matter of **Bisahu Ram Sahu** (supra), thus this Court does not give any weightage to the aforesaid argument of the counsel for the appellant. Consequently, this Court reaches to the conclusion that there is no violation of Section 11 of the Act of 1955, rather the provisions of Section 11 of the Act of 1955 have been followed.

29. After appreciation of the evidence discussed herebefore this

Court finds that prosecution has succeeded to prove the charge punishable under Section 3/7 of the Act of 1955 against the appellant beyond reasonable doubt. Thus, this Court finds that trial Court has not committed any illegality in convicting the appellant for the offence punishable under Section 3/7 of the Act of 1955. Hence this Court affirms the aforesaid conviction of the appellant.

30. Counsel for the appellant urged that 21 years have passed from the date of incident, at that time, the appellant was aged 25 years old, now he is in mainstream of the society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 21 years of the incident.

31. Counsel for the appellant placed reliance on a decision of Hon'ble Supreme Court in **R. Sundararajan; S Chinnasamy -v- Seed Inspector, Coimbatore** [2006 LawSuit(SC) 1235], para 24 of which is relevant and quoted below :-

“24. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.”

32. Counsel for the appellant further placed reliance on a decision of this Court in **Gopal Prasad -v- State of Madhya Pradesh** [2015 LawSuit (Chh) 230], relevant portion of para 12 and 13 are quoted

below :-

“12. On considering the entire facts and circumstances of the case, I am of the view, prima facie that, this is a fit case where lenient view may be taken so that the appellant may not commit any likewise offence in future.

13. Consequently, the appeal filed by the appellant is partly allowed. Judgment of conviction awarded by the trial Court under Section 3 read with Section 7 of the EC Act is hereby affirmed. So far as the quantum of sentence is concerned, the substantive jail sentence of 3 months awarded to the appellant by the trial Court is modified to the extent that the appellant is sentenced for till rising of the Court and sentence of fine of Rs 500 awarded by the trial Court is enhanced up to Rs 5000.”

33. As per the provisions of Section 7(1)(a)(ii) of the Act of 1955, minimum imprisonment of 3 months has been provided however Court may on the adequate and special reason impose a sentence of imprisonment for a term of less than 3 months.

34. In the case in hand, about 21 years have passed after the incident. At the time of incident, appellant was aged about 25 years, now he is about 46 years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 21 years of the incident. More over, he was found with 16 quintals paddy in excess quantity which is not the huge quantity. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **R. Sunderrajan** (supra) and decision of this Court in **Gopal Prasad** (supra), this Court is of the opinion that cause of justice would be sub-served, if RI of 3 months is reduced to the sentence for the period till rising of the Court and fine of Rs. 500/- is enhanced to Rs. 15,000/-.

35. Consequently, the appeal is partly allowed. The sentence of the appellant for RI for 3 months is reduced to the period till rising of the Court and fine of Rs. 500/- is enhanced to Rs. 15,000/- (Rupees fifteen thousands only), in default of payment of fine, to further undergo RI for 3 months.

36. The appellant is directed to surrender before the trial Court within a month from today at 11.00 AM for undergoing the sentence till rising of the Court and for depositing the fine amount. The fine amount deposited earlier by the appellant shall be adjusted in the fine amount of Rs. 15,000/-.

37. The appellant is reported to be on bail. His bail bonds shall continue as per requirement of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge