

HONOURABLE JUSTICE G. SRIDEVI
CRIMINAL REVISION CASE No.1269 of 2016

JUDGMENT:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the judgment, dated 16.05.2016, passed in CrI.A.No.7 of 2015 on the file of the Principal District and Sessions Judge, Ranga Reddy District at L.B.Nagar, wherein the learned Sessions Judge, confirmed the conviction and sentence imposed for the offence under Section 7 of the Essential Commodities Act, 1955 by the learned VIII-Metropolitan Magistrate, Cyberabad at Rajendranagar, against the revision petitioner/A-1 in C.C.No.218 of 2011 dated 11.02.2015.

It is the case of the prosecution that on 24.05.2010 the District Supply Officer (Civil Supplies) Department, Chevella Division, Ranga Reddy District, received a credible information relating to illegal storage of kerosene meant for Public Distribution System. Thereafter, on the same day at 11.00 hours the officials of Vigilance and Enforcement Department, Hyderabad City Team-2, DSO, Ranga Reddy District, ASOs of Chevella East Division and Saroornagar, along with Tahsildar, Shamshabad Mandal, rushed to J.J.Shukla Function Hall,

Shamshabad and found illegal storage of 7540 litres of PDS Kerosene at down stairs of Maisamma Temple Premises of J.J.Shukla Function Hall and the said stock was held by the revision petitioner/A-1 in violation of Control Orders APPP (L&Rs) Order, 1980 and the Kerosene (Restriction on use and fixation of Ceiling Price) Order, 1993 without any valid licence and a case under Section 6-A of the Essential Commodities Act, 1955 has been booked and the stock was seized. After completion of the investigation the police filed charge sheet against the accused, which was taken on file as C.C.No.218 of 2011 for the offence punishable under Section 7 of the Essential Commodities Act, 1955. The case against accused No.4 (Shareef) was split up and numbered as C.C.No.156 of 2015.

The prosecution has examined P.Ws.1 to 7 and got marked Exs.P1 to P4 to prove the guilt of the accused. On behalf of the accused, neither oral nor documentary evidence was adduced.

On appraisal of the entire evidence, both oral and documentary, the trial Court found the revision petitioner/ A-1 guilty of the offence under Section 7 of the Essential Commodities Act and accordingly convicted and sentenced the revision petitioner/A-1 to undergo rigorous imprisonment for a period of four months and to pay a fine of Rs.3,000/-, in

default, to suffer simple imprisonment for three months. The trial Court acquitted accused Nos.2, 3 and 5 to 7. Aggrieved by the said conviction and sentence, the revision petitioner/A-1 preferred CrI.A.No.7 of 2015 before the Court of the Principal District and Sessions Judge, Ranga Reddy District at L.B.Nagar. By its judgment, dated 16.05.2016, the learned Sessions Judge confirmed the conviction and sentence recorded by the trial Court. Challenging the same, the revision petitioner/A-1 preferred this Criminal Revision.

Heard the learned Counsel for the revision petitioner/A-1 and learned Additional Public Prosecutor for the State.

Learned Counsel for the revision petitioner/A1 submitted that the learned trial Court as well as the appellate Court erred in placing reliance on the highly interested and discrepant testimony of P.Ws.1 and 2, who are the official witnesses. The appellate Court ought not to have considered the evidence of P.W.3, who is none other than the planted witness and no document was filed to show that the alleged kerosene was handed over to P.W.3 and no proof of document was filed by him for selling the seized kerosene and depositing the sale proceeds by way of challan. The appellate Court erred in accepting and considering the case of the prosecution without

legal appraisal. The appellate Court ought not to have appreciated the evidence of prosecution witnesses and failed to consider the cross-examination of prosecution witnesses by the defence Counsel. The appellate Court ought to have considered the fact that the prosecution case failed to examine the owner of J.J.Shukla Function Hall and its employees, who are the material witnesses, where the alleged illegal storage of P.D.S. Kerosene was found. The prosecution failed to examine the independent witnesses as the alleged scene of offence is situated in Shamshabad Village and Mandal and busy locality. The appellate Court ought not to have considered Ex.P1, which is alleged confession and seizure panchanama as P.Ws.4 and 5, in whose presence the alleged confession and seizure was made, did not support the prosecution case as such there is no weight on Ex.P1 in the eye of law and the exact quantities of seized kerosene in each barrel was not mentioned. The appellate Court ought not to have considered the evidence of P.W.7 and Ex.P4, the sample sent for analysis to P.W.7 as the same were not proved. The appellate Court ought not to have considered Exs.P1 to P4. Apart from the above, he further submitted that the revision petitioner/A-1 was not identified and there is no record from whose possession the alleged stock

was seized and no seizure was made from the possession of the revision petitioner/A-1. It is also submitted that there are material contradictions in the evidence of both PWs.1 and 2.

Per contra, supporting the judgments of the Courts below, the learned Additional Public Prosecutor appearing on behalf of the respondent-State submits that both the Courts evaluated the entire evidence and came to a right conclusion that the revision petitioner/A-1 was responsible for the commission of offence and, therefore, the conviction and sentence passed by the Courts below was justified and no interference is called for.

I have perused the entire evidence of the witnesses and the material available on record. The evidence of P.W.1, the then Assistant Supply Officer, Chevella Division, Rangareddy District, is that, on 24.05.2010, on the credible information received by their District Supply Officer by name Boravelli Narsimha Reddy (L.W.2), he along with L.W.2 and another District Supply Officer by name C.Tanuja (L.W.3) proceeded to J.J.Function Hall, Shamshabad at about 11.00 A.M. and found 34 drums in the cellar containing blue kerosene, which was supplied by the Government of India for Public Distribution System through Fair Price Shops. They have also found the revision petitioner/A-1 in the said premises. Having observed

the six accused present in the trial Court, he wrongly identified one Yousuf (A-5) as the revision petitioner/A-1. P.W.1 again stated that because of lapse of time, he did not remember him exactly and he did not identify the revision petitioner/A-1. He further stated that since no licence for possessing the said kerosene drums was produced, he seized the same under a cover of panchanama (Ex.P1-attested Xerox copy of seizure panchanama) prepared by L.W.3 in the presence of P.Ws.4 and 5. Hence, non identification of the revision petitioner/A-1 in the trial Court by P.W.1 is fatal to the case of the prosecution.

P.W.2, the District Supply Officer, stated in his evidence that on receipt of information of illegal storage of blue kerosene, he along with P.W.1 and L.Ws.3 to 5 rushed to the Function Hall and found 34 drums of kerosene in the cellar of the Function Hall, which was said to be in possession of the revision petitioner/A-1. According to this witness, the revision petitioner/A-1 has confessed that he purchased the said kerosene from the public at Rs.25/- per litre and sold the same at Rs.32/- per litre and basing on the said confessional statement, they have seized the kerosene under cover of panchanama (Ex.P1). However, in the cross-examination, he admitted that subsequent to the said seizure, he never met the

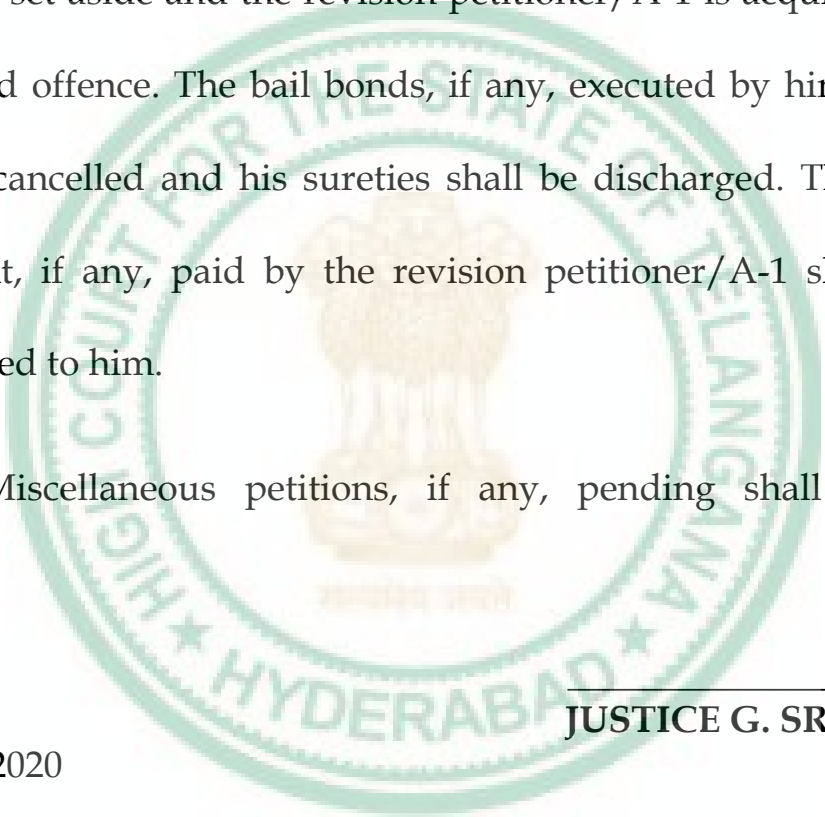
revision petitioner/A-1 and the police have not conducted any Test Identification Parade for identification of the revision petitioner/A-1. However, he denied the suggestion that he has identified the revision petitioner/A-1 in the Court Hall at the instance of police. He also admitted that in Ex.P1, they have not disclosed the instrument used for the measurement of seized kerosene. It is pertinent to mention here that P.Ws.4 and 5, in whose presence the alleged seizure panchanama (Ex.P1) was made, turned hostile and did not support the case of the prosecution. Therefore, there is no material on record to show that the alleged seizure of kerosene was made from the possession of the revision petitioner/A-1. No independent witness was examined by the prosecution to prove its case. There is no iota of evidence available on record to show that from whom the said kerosene was purchased by the revision petitioner/A-1. Further, there are material contradictions in the evidence of P.Ws.1 and 2. A perusal of the entire evidence amply shows that the prosecution has miserably failed to prove the guilt of the revision petitioner/A-1 beyond reasonable doubt. Both the trial Court as well as the appellate Court have not properly appreciated the evidence on record and have

given the findings on false assumption of facts, which are not sustainable and hence the same are liable to be set aside.

For the reasons stated above, Criminal Revision Case is allowed. The conviction and sentence imposed on the revision petitioner/A-1, by the Courts below, for the offence punishable under Section 7 of the Essential Commodities Act, 1955, are hereby set aside and the revision petitioner/A-1 is acquitted of the said offence. The bail bonds, if any, executed by him shall stand cancelled and his sureties shall be discharged. The fine amount, if any, paid by the revision petitioner/A-1 shall be refunded to him.

Miscellaneous petitions, if any, pending shall stand closed.

03.02.2020
Gsn.

A large, faint, circular watermark seal of the High Court for the State of Telangana, Hyderabad, is centered in the background. It features the court's name in English and Telugu, along with the state emblem of India in the center.
JUSTICE G. SRIDEVI