

HIGH COURT OF CHHATTISGARH AT BILASPUR**ACQA No. 91 of 2009**

State of Chhattisgarh, through the District
Magistrate Korea, Chhattisgarh.

---Appellant

Versus

Ram Krishna Sharma S/o Kamla Prasad Sharma, Aged
about 37 years, R/o Village Nagar, P.S.
Baikunthpur, District Korea, Chhattisgarh.

--- Respondent

For Appellant/State	:-	Mr. Jitendra Pali, Dy. A.G.
For Respondent	:-	Mr. D.N. Prajapati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/01/2021

1. The appellant/State filed the charge-sheet against the respondent/accused alleging that he, working as a salesman in the Government Fair Price Shop, Jagatpur Lamps, chinddand, obtained 50 quintals rice, 110 quintals wheat and 44 quintals sugar as well as 400 litres kerosene oil between the period of 29/01/1997 to 08/02/1997, but that was not kept available for distributing to the ration card holders rather the aforesaid commodities were sold by him in

the open market place in violation of paragraphs 6(2), 6(3) and 6(5) of the M.P. (Food Grains) Public Civil Supply Scheme, 1991 and paragraph 3(2) of the Kerosene Control Order, 1993 read with Section 3 and 7 of the Essential Commodities Act, 1955. The respondent/accused abjured his guilt and entered into defence.

2. Learned Special Judge, Sarguja (Ambikapur) vide impugned judgment dated 30/11/2005 acquitted the respondent/accused from the aforesaid charges holding that the Scheme of 1991 is an executive scheme and it is not in violation of the order issued by the Central Government under Section 3 and 7 of the Essential Commodities Act and even if it is concluded that the respondent/accused has violated paragraphs 6(2), 6(3) and 6(5) of the Scheme of 1991, but then too he cannot be held guilty for offence punishable under Sections 3 and 7 of the Essential Commodities Act. The respondent/accused was also acquitted for the violation of paragraph 3(2) of the Kerosene Control Order, 1993 on the ground that the kerosene oil obtained by him was distributed to the ration card holders in the presence of the Sarpanch.

3. Questioning the impugned judgment of acquittal, the instant acquittal appeal has been filed by the State in which leave was earlier granted.

4. Mr. Jitendra Pali, learned Deputy Advocate General appearing for the appellant/State, would submit that learned Special Judge is absolutely unjustified in acquitting the respondent/accused of all the charges by recording a finding which is perverse and contrary to the record.

5. Mr. D.N. Prajapati, learned counsel for the respondent/accused, would support the impugned judgment of acquittal and would submit that the instant appeal deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions and perused the records.

7. The first charge levelled against the respondent/accused is that he has violated paragraphs 6(2), 6(3) and 6(5) of the M.P. (Food Grains) Public Civil Supply Scheme, 1991. Learned Special Judge has clearly recorded a finding that the violation of the Scheme of 1991 is not related with the violation of the order issued by the Central Government under Section 3

and 7 of the Essential Commodities Act, as such, the petitioner cannot be charged with offence punishable under Sections 3 and 7 of the Essential Commodities Act for which he placed reliance upon the decision rendered by the Supreme Court in the matter of **M.P. Ration Vikreta Sangh Society v. State of M.P.**¹ in which Their Lordships of the Supreme Court have held that the Scheme of 1981 was issued by the State Government in exercise of the executive powers conferred under Article 162 of the Constitution.

8. Reverting to the facts of the present case in light of the aforesaid legal proposition, the Scheme of 1991 has been issued by the State Government under Paragraph 4 of Madhya Pradesh Food Staffs (Distribution) Control Order, 1960 and the said scheme is said to have been violated. The violation of the said scheme issued under the Control Order cannot be said to be the violation of the Control Order, as such, it cannot be said to be in violation of the order issued by the Central Government under Section 3 of the Essential Commodities Act and learned Special Judge has rightly acquitted the

¹ AIR 1981 SC 2001

respondent/accused for offence punishable under Section 7 of the Essential Commodities Act by recording the aforesaid finding in which I do not find any perversity.

9. Now, coming to the next charge levelled against the respondent/accused that he has violated paragraph 3(2) of the Kerosene Control Order, 1993.

10. Learned Special Judge has clearly recorded a finding that 400 litres of kerosene oil which was obtained by the respondent/accused was distributed by him in the presence of the Sarpanch as the ration card was not in force then and a clear cut finding has been recorded in this regard in the impugned judgment that the kerosene oil was distributed to the consumers and the beneficiaries have not deposed against the respondent/accused complaining that the kerosene oil has not been distributed to them. As such, I do not find any illegality in the finding recorded by the Special Judge acquitting the respondent/accused of all the charges.

11.The instant appeal deserves to and is accordingly dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet