

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.295 OF 1998

Kishor @ Balasaheb Ganpat Shinde	]	
Aged 36 years,	]	
Residing at Budhwar Peth, Karad,	]	
District – Satara.	]	.. Appellant

Versus

State of Maharashtra	]	.. Respondent
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None for the Appellant.

Mr.R.M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 07, 2021.

JUDGMENT :

The Appellant has preferred this Appeal challenging the judgment and order dated 9th January, 1998, passed in Special Case No.7 of 1992, convicting him for the offences punishable under Section 3(2)(c) punishable under Section 7(i)(a)(ii) read with Section 12 A(2) of the Essential Commodities Act. He is sentenced to suffer R.I. for two years and to pay fine of Rs.5,000/-, in default, to suffer further R.I. for six months.

2 The case of the prosecution is that on 16th April, 1992, information was received by P.I. More that one Kishor @ Bala Shinde (appellant) sells kerosene at higher rate near Prabhat Talkies at Karad. It was decided to conduct raid at the spot of incident. He instructed P.S.I. Rajendra Chavan (P.W.6) to effect raid. P.W.6 called two persons to act as panchas. Ananda More (P.W.1) and Shivaji Mane (P.W.2) acted as panchas. Ramchandra Waiker (P.W.3) was instructed to act as punter. He was given Rs.50/- to purchase kerosene. The punter approached the accused for purchasing the kerosene. He purchased 5 liters of kerosene. He gave Rs.50/- note to accused. Rs.25/- were returned to punter. Amount of Rs.25/- was seized. Note of Rs.50/- was found with accused. The accused had sold kerosene at the rate of Rs.5 liter, through price was Rs.2.65 per liter.

2 Charge was explained and read over to him. The accused pleaded not guilty. The proceedings were conducted by following summary procedure.

3 Prosecution has examined six witnesses. P.W.No.1 was Ananda Baburao More is the panch witness, P.W.No.2 is Shivaji Mane is another panch witness. P.W.3 is Ramchandra Waikar

acted as a punter, P.W.4 Mohan Bodare, P.W.5 Hambirrao Kumbhare and P.W.6 Rajendra Chavan were the policemen attached to Karad police station. After recording the evidence of statement of the appellant was recorded under Section 313 of Cr.P.C.

4 I have perused the evidence of the witnesses. The case of the prosecution is based on the evidence of three independent witnesses P.W.1, P.W.2 and P.W.3. It is alleged that information was received that the appellant is selling kerosene at higher price. P.W.3 had acted as punter. He was instructed to purchase kerosene from accused by using Rs.50/- note given to him. He did not support the prosecution case. In his examination-in-chief he stated that he do not know the accused. On 16th April, 1992, he was working on cycle shop. He was called at the police station and asked to sign some papers. He signed it. He did not go anywhere with the police. He did not purchase kerosene. He was declared hostile by the prosecution and cross-examined by learned APP. In the cross-examination, he denied all the suggestions. Thus, the independent evidence about the sale of kerosene at higher price to the punter is not of assistance to the prosecution. Two other independent witnesses to corroborate the

prosecution case that kerosene was being sold by the appellant at higher price were examined as panch witnesses, viz. P.W.1 and P.W.2. P.W.1 has deposed that he was called by the police to witness the panchanama. He do not know about its contents. He admitted his signature on the panchanama, but denied the contents of the panchanama. He was cross-examined by the prosecution. However, the exercise was futile as he did not support the prosecution case in any manner. P.W.No.2 Shivaji Mane is another panch witness. He has deposed that he was called by the police at Karad to witness panchanama. Other panch was also with him. His signature was obtained. At the request of learned APP, he was cross-examined. He denied all the questions put to him and did not support the prosecution case in any manner. Thus, the three independent witnesses examined by the prosecution to substantiate the charge against the applicant had not supported the prosecution case.

5 The prosecution relied on evidence of P.W.4, P.W.5 and P.W.6. P.W.4 was purportedly on duty and he had received information that the appellant is selling kerosene at high price. Panchas were called. Rs.50/- note as given to P.W.3. The accused was selling kerosene infront of his house. According to him, P.W.3

purchased 5 liters of kerosene and he gave note of Rs.50/-. Rs.25/- were returned to him. Rs.50/-, note was in possession of accused. Panchanama was prepared. Accused was arrested. Currency note was shown to him. However, it is not exhibited in evidence, through him. In the cross-examination he stated that the information was not noted down. The distance between the shop and the house of the appellant is about one kilometer. He do not know whether the accused gets kerosene for supplying it to ration card holders. The house of the appellant is about 150 feet away from the main road. They did not see the colour of the kerosene. P.W.5 was a head constable. He deposed that information was received that appellant is selling kerosene at higher rate. He also deposed that raid was arranged. The raiding party stood at some distance. The punter and the panch witnesses proceeded further. Punter purchased kerosene and gave Rs.50/- to accused. Kerosene was found stored. He lodged complaint. Accused sold kerosene at Rs.5/- per liter although rate was Rs.2.65 per liter. In the cross-examination, he deposed that before raid he was knowing the accused, and that he sells kerosene. He is required to sell kerosene to card holders. P.W. 6 was PSI. He reiterated the version of P.W.4 and P.W.5. Panchanama was exhibited through him. The accused had licence

to sell kerosene or retain for domestic purpose. He produced xerox copy of information about rate of kerosene published in newspaper. He conducted investigation. Note of Rs.50/- was shown to him. The note of Rs.50/-, allegedly recovered from accused and Rs.25/-, returned to P.W.3 were not adduced in evidence.

6 On analysing the evidence, it is apparent that the prosecution case does not inspire confidence. The appellant cannot be convicted for the said offence on the basis of the nature of evidence adduced by the prosecution. Charge was recorded under Section 3(1)(2) and 7 of Essential Commodities Act. The appellant was convicted for offence punishable under Section 3(2) (c) read with Section 7(1)(a)(11) of Essential Commodities Act. There are no witness to indicate that the appellant was selling kerosene to the card holders at higher price and/or to any other members of public. On receipt of information, the prosecution has arranged the punter P.W.3 and the entire case was based on his evidence. He is the person who purchased kerosene at higher price. P.W.4, P.W.5 and P.W.6 were standing at distance. Thus, the prosecution case that higher price was demanded by accused for sale of kerosene was depending upon conversation between

accused and P.W.3. The panch witnesses P.W.1 and P.W.2 has not supported prosecution case. The accused cannot be convicted on surmises. Benefit of doubt must be given to accused. P.W.6 has stated that the accused has stated that the accused has licence to sell kerosene. There is no other independent witness to show that appellant was selling kerosene at higher rate to card holders. Except news published in newspaper about rate of kerosene, no official document about rate is adduced in evidence. The balance amount allegedly returned to P.W.3 is not produced. Independent witnesses P.W.1, P.W.2 and P.W.3 has not supported prosecution case.

7 Learned APP submitted that the trial Court has assigned reasons for convicting the appellant, although the pancha witnesses and the punter were not supported the prosecution. There is no reason to disbelieve the evidence of P.W.4, P.W.5 and P.W.6. They were cross-examined and their evidence could not be disturbed in any manner. However, considering the nature of the evidence, and the fact that independent evidence is lacking which was necessary in the facts of the prosecution case, I am of the opinion that the prosecution has failed to establish the charge beyond all reasonable doubt.

This Appeal must succeed.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal No.295 of 998, is allowed;
- (ii) The judgment and order dated 9th January, 1998 passed in Special Case No.7 of 1992, is set aside and the appellant is acquitted;
- (iii) Criminal Appeal No.295 of 998, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)