

CRIMINAL APPEAL No.123 OF 1993

Against the judgment of conviction and sentence dated 27.4.1993 passed by Sri Damodar Prasad, Special Judge, Motihari in Trial No. 148 1993 (E.C.Case No. 19 of 1990).

Hasnain Ahmad Appellant
Versus
The State of Bihar Respondent

For the appellant : Mr.Satish Kumar Sinha
For the State : Mr.A.H.M.Rahman,Addl.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S.K.Sharma,J.

The sole appellant has filed this appeal against the judgment dated 27.4.1993 passed by Special Judge, Motihari in Trial No. 148 of 1993 (E.C.Case No. 19 of 1990) by which he has been found guilty under Section 7 (1)(a)(i) of the Essential Commodities Act for contravention of terms and conditions of the licence granted under Bihar Trade Articles Licences Unification Order,1984 and has been convicted and sentenced thereunder to undergo rigorous imprisonment for three months.

The prosecution case is that the District Supply Officer, East Champaran, Motihari and Marketing Officer, Motihari town inspected the business premises of the appellant which was situated in Mohalla Balua Tal, P.S. Motihari

town. He was a retail dealer of coal for an area of Raja Bazar Mohalla. His licence number was 9 of 1985 and he was authorized to deal in coal. According to prosecution, at the time of inspection of business premises, the appellant was not present, rather one Motilal Sah was present. On being demand, Motilal Sah produced relevant documents of coal. Counter foils of cash memo and sale register were seized for the purpose of verification of the same. On verification on 24.7.1990 it was found that the coal was sold to one Bharat Sah at the rate of Rs.125/- per quintal vide cash memo no. 835 dated 3.5.1990 but cash memo was not issued. Further it was detected that Dhurub Sah of the said place purchased 2 quintals of coal at the rate Rs.125/- per quintal but the cash memo was issued for two quintals of coal at the rate of Rs.75/- per quintal. Further it was detected that Baltu Manjhi purchased 2 quintals of coal for his master at the rate of Rs.125/- per quintal. Later on, cash memo was issued in the name of Baltu Sah at the rate of Rs.75/- per quintal on 3.5.1990. Similarly, Nagina Singh and others also purchased coal at different rate i.e. Rs.75/-

,Rs.130/- and Rs.150/-per quintal but they were not granted proper receipts, rather some receipts were shown to have been issued at the rate of Rs.75/- per quintal on different dates. Further allegation was that the stock register and cash memoes were not maintained and coal was sold in black market which is the violation of Bihar Coal Control Order, 1956 and Bihar Trade Articles Licences Unification Order,1984. So it was alleged that the appellant and Motilal Sah are entitled to be prosecuted for committing offences under Section 7 Essential Commodities Act. The case was registered and after completion of investigation, charge sheet was submitted and trial proceeded against this appellant and one Motilal Sah who was present in the business premises of the appellant at the time of alleged raid. After trial, accused Motilal Sah was found not guilty and he was acquitted of the charge. The appellant was found guilty and convicted and sentenced, as stated above.

In order to prove the case, the prosecution has examined three witnesses. P.W.1 is Vidhya Nand Jha, Supply Inspector who is the informant of the case. According to him, he along

with District Supply Officer and Marketing Officer inspected the business premises of the appellant and found that the cash memoes were not properly maintained. He has proved some cash memoes, sale registers and statements (Exts. 1,2,3,4 and 5). P.W.2 is Sushil Kumar Das, Marketing Officer. He has stated that he along with P.W.1 inspected the shop of the appellant and found certain discrepancies. He also stated that some consumers stated before him that the coal was sold at the rate of Rs.120 to 125/- per quintal but the cash memoes were issued at the rate of Rs.75/- per quintal. In his cross-examination, this witness has stated that the statements of consumers were not recorded in his presence. P.W.3 Devendra Paswan is the Investigating Officer of this case who has proved formal F.I.R. as Ext.6.

P.Ws. 1 and 2 are the person who were associated with raid. The definite case of the prosecution is that the appellant sold coal at inflated rate and cash memoes were issued at the reduced rate i.e. at the rate of Rs.75/- per quintal. This fact was brought to the notice of P.Ws. 1 and 2. So they inspected the shop of the

appellant and found irregularities. P.W.3 Devendra Prasad is the Investigating Officer of the case. He in his evidence has stated that he examined a number of witnesses who were named in the first information report but they stated that no statement was given by them before P.W.1. In support of the same, they have given affidavited statements. The Investigating Officer in his cross-examination has stated that a number of witnesses whose names are given in the first information report have stated that they have got coal at the scheduled rate i.e. at the rate of Rs.75/- per quintal and no witness has come before the Investigating Officer to say that he purchased the coal at the inflated rate.

The case of the prosecution was that the coal was sold in black market at the inflated rate. This fact has not been supported by any witness before the Investigating Officer. Thus the witnesses whose name are given in the first information report have belied the case of the prosecution by stating that they had purchased the coal at the prescribed rate i.e. at the rate of Rs.75/- per quintal. The case of the defence was that he sold the coal at the rate which was

fixed by the Government.

It was the duty of the prosecution to prove that the coal was sold at the enhanced rate. The prosecution has not produced any such witness though the name of some witnesses have been mentioned in the written report, rather the Investigating Officer has recorded statements of many persons including two persons whose name have been given in the written report as P.Ws.1 and 2 and those witnesses have stated before the Investigating Officer that they have purchased coal at the prescribed rate.

In view of the above discussions, it is apparent that no independent witness has come on behalf of the prosecution to support its case, rather the witnesses whose name are mentioned in the written report have given different version before the Investigating Officer which goes against the case of the prosecution.

Another fact which is apparent from bare perusal of the record that the occurrence is of 20.7.1990 at 4.30 P.M. and the case was lodged on 30.7.1990 and for such delay , there is no explanation. The prosecution case also suffers from non-examination of independent witnesses and

the evidence of the Investigating Officer has demolished the entire case of the prosecution.

Taking into consideration the entire facts and circumstances of the case, I am of the view that the judgment of conviction and sentence of the appellant suffers from illegality and is fit to be set aside.

In the result, this appeal is allowed and judgment of conviction and sentence of the appellant is set aside. The appellant is also discharged from the liability of his bail bonds.

(**Shyam Kishore Sharma, J.**)

Patna High Court, Patna
The 24th January, 2008
Tahir/- (NAFR)

