

CRIMINAL APPEAL No.185 of 1993

(Against the judgment and order dated 25.6.1993 passed by Special Judge, P.C. Act, Rohtas at Sasaram in G.R. No. 783/1996 of 1986/1990)

MUNSHI CHOUDHARY @ MUNSHI PRASAD SINGH----- (Appellant)

Versus

STATE OF BIHAR ----- (Respondents)

For the Appellant : Mr. Arun Kumar Tripathy, (Amicus Curiae)

For the State: Mr. Anand Mohan Mehta, (A.P.P.)

P R E S E N T

THE HON'BLE MR. JUSTICE KISHORE KUMAR MANDAL

Kishore K. Mandal, J.

The present appeal arises out of and is directed

against the judgment and order dated 25.6.1993 passed by Sri Kapileshwar Prasad, Special Judge, E.C. Act, Rohtas at Sasaram in G.R. No. 783/1996 of 1986/1990 whereby the sole appellant has been found guilty and convicted under section 7(1)(a)(ii) of the Essential Commodities Act and has been sentenced to undergo R.I. for 3 months. The appellant has also been imposed a fine of Rs. 500/- with default clause.

No one appeared on behalf of the appellant. I have gone through the records of the case with the assistance of Sri Arun Kumar Tripathy who appears amicus curiae and also heard Sri Anand Mohan Mehta, learned A.P.P..

The aforesaid trial germinated out of Rajpur (Nasriganj) P.S. case no. 81/1986 instituted on the basis of a written report (Ext.-3) lodged by Sri Nilmani Upadhyay, Supply Inspector, Nokha, (P.W.-1). The prosecution case briefly stated is that on 4.4.1986, a team of

officials under the supervision of then Assistant District Supply Officer, Sasaram namely Mr. A.K.Ghosh (P.W.-4) went to inspect the shop of the accused Munsu Prasad Singh who was a licensee (Licence no. 39/85 of village Mathurapur) under Bihar Trade Articles (Licences Unification) Order 1984 (hereinafter to be referred as the Unification Order) for the Gram Panchayat Nokha Siyawak within Nokha Circle. It is the prosecution case that as they reached there, it was disclosed to them by the local people that the accused Munsu Prasad Singh used to store the allotted sugar and kerosene oil for black marketing in his other house situated at Rajpur bazaar within Nasriganj circle and from there, he used to deal with the articles. On receipt of such information, the team set out for the said bazar where the house of the accused was located. It is further the prosecution case that the house of the petitioner was searched and in course whereof 620 kg. of levy sugar was found and the same was seized in presence of two witnesses and entrusted on zimanama to one of the seizure list witness Markandey Singh (P.W.-2). On these allegation/facts, it was found that the accused (appellant) had violated the condition of licence granted under the provisions of the Unification Order and as such written report (Ext. 3) was lodged .

The police investigated the case and thereafter charge sheet was filed leading to the order taking cognizance dated 7.2.1989 and hence the trial.

At the trial, the prosecution got examined as many as 4 P.Ws. P.W. 1 is the informant of the case, P.W. 2 Markandey Singh is a witness of zimanama (Ext. 2), P.W. 3 Satya Narain Singh is another witness on seizure and P.W. 4 Mr. A.K.Ghosh is another witness on seizure of the articles.

In order to discard the allegation, the appellant also adduced oral evidence and as many as 3 D.Ws were examined in the shape of D.W. 1 Ram Rahasya Chaudhary, D.W. 2 Gupteshwar Singh and D.W. 3 Awadh Bihari Pandey.

Learned Amicus Curiae placed the evidence adduced on behalf of the prosecution as well as the evidence adduced on behalf of D.Ws..

From perusal of those evidence on record, the following facts appear to have been established:

- (i) the appellant was a licensee under the Unification order for a particular place namely Mathurapur under Gram Panchayat Siyawak.
- (ii) 620 kgs of levy sugar was recovered/seized from the house of the appellant situated in a different circle at Rajpur bazar Nasriganj.
- (iii) The appellant did not produce any document to show that any information was given to the Licensing authority regarding such storage of articles at place different from the place of business.

From the evidence adduced by the prosecution, it definitely appears to this Court that the alleged sugar was found stored in the house of the appellant and was recovered therefrom. P.Ws 1 and 4 have fully supported the said factum

This Court further finds that even the D.Ws who appeared on behalf of the defence have accepted this fact that the appellant was a licensee and the levy sugar was found and recovered/seized from his house at Rajpur which was not the place of business incorporated in the licence.

The evidence on behalf of the defence has, however, tried to explain the reason for such storage. According to them, the road to the shop of the licensee was in bad shape, hence such storage was made.

On conspectus of the evidence brought on record, this Court is of the view that the prosecution has been able to prove beyond doubt that the appellant (the licensee) had acted in contravention of the terms and conditions of the licence issued to him under the Unification Order as no information was given and approval sought from the licensing authority for storage of trade articles at a different place. The appellant is, therefore, liable to be punished under the provisions of Law for which he has been punished by the learned Trial Court.

Learned Amicus Curiae has then submitted that the appellant has been fighting this litigation since last more than 20 years and as such lenient view should be taken so far as imposition of punishment is concerned. On the contrary, learned A.P.P. brought to the notice of the Court the provisions under which the appellant had been convicted and submitted that the Act provides a minimum sentence of 3 months.

In this case, the learned Trial Court has convicted the appellant for a period of 3 months only. It is true that a fine has also been imposed with default clause. Both the parties could not bring to the notice of the Court that the appellant had remained in custody for some time during the pendency of the case/trial/appeal.

Considering the facts and circumstances of the case and for the reasons noted above, this Court finds no merit in the appeal and it is, therefore, dismissed. However, considering the time consumed in

the litigation, the fine imposed on the appellant, apart from the substantive sentence, is hereby set aside.

(Kishore K. Mandal, J)

The Patna High Court,
Dated, 23rd January, 2008
NAFR/ (pkj)

