

ORISSA HIGH COURT
CUTTACK

CRIMINAL APPEAL NO.125 OF 1990

From the judgment dated 21.04.1990 passed by Sri G. Narasimham,
Special Judge, Koraput, Jeypore in T.R. Case No.19 of 1988.

Babula Patra Appellant

Versus

The State of Orissa Respondent

For appellant : M/s H.B. Swain and
S.S. Swain.

For respondent : Addl. Standing Counsel.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of judgment : 17.12.2008

PRADIP MOHANTY, J. This criminal appeal is directed against the judgment and order dated 21.04.1990 passed by the learned Special Judge, Koraput, Jeypore in T.R. Case No.19 of 1990 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act and sentencing him to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month.

2. The case of the prosecution is that on 24.10.1987, the appellant was found in possession of 13 quintals and 9 K.Gs. of

coarse paddy in the weekly market at Bobia. He had no licence or permit in support of such possession. The Supply Inspector, Kotpad, detected the stock of such paddy with the accused and seized the same along with weighing scale and weighing instrument from the possession of the accused. Thereafter, he launched prosecution

3. Plea of the appellant was that he has cultivable land and the paddy in question is the yield of his land. He brought that paddy to the weekly market in a cart for the purpose of sale. The weighing scale and the instruments belong to Madan Chand Jain, an authorized purchase agent of that area. Said Madan Chand Jain had left the weighing instruments in question in village Chiliguda and as per his instructions, the appellant collected the same at Chiliguda while going to the weekly market in a cart. He specifically pleaded that his signatures on the statements and on Market Receipt were obtained on coercion.

4. In order to prove its case, prosecution examined two witnesses including the Supply Inspector and proved three documents in evidence. Defence examined three witnesses and proved in evidence a sale deed (Ext.A). Learned Special Judge, who tried the case, by his judgment dated 21.04.1990 convicted the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act for contravention of Clause -3(1) of the Orissa Rice and Paddy Control Order, 1965 and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for one month.

5. Mr. Swain, learned counsel for the appellant submits that the appellant does not come under the definition of 'dealer' and there is no contravention of Clause-3(1) of the Orissa Rice and Paddy Control Order, 1965. He further submits that in the instant case, prosecution report has not been exhibited by the

prosecution and only seizure list has been proved. The trial court has not considered the evidence of the defence witnesses as well as Ext.A. Lastly he submitted that the learned Special Judge is not competent to take cognizance under the above sections when the prosecution report was filed by the Supply Inspector.

6. Mr. Mishra, learned Addl. Standing Counsel vehemently opposes the above submission on the ground that the learned Special Judge is competent to take cognizance under the Essential Commodities Act and the Sessions Judge, Jeypore has been designated as Special Judge under the Essential Commodities Act. Evidence of P.Ws.1 and 2 is very clear and cogent. Prosecution has proved that the present appellant is a dealer and weighing articles were seized from the possession of the appellant.

7. Perused the LCR, more particularly the deposition of the witnesses and the exhibits. In the instant case, the prosecution report, which was submitted by the Supply Inspector (P.W.1), has not been proved by him. The only statement of P.W.1 is that he saw the accused along with the paddy and the weighing instruments. He also admitted in cross-examination that he did not see the present appellant purchasing the paddy. P.W.2 is the Market Guard. He proved the seizure list (Ext.1). D.W.1 stated that Madan Chand Jain came to his village and left the weighing scale and weighing instruments in his house with the instruction to send the same to the present appellant. When the appellant came with two carts load of paddy, this D.W.1 loaded the weighing scales and instruments in the said cart. D.W.2, Madan Chand Jain, who was a purchasing agent, has corroborated the statement of D.W.1. D.W.3 proved that the appellant had some paddy fields and he had purchased the land under Ext.A for consideration of Rs.400/- from Chandramani

Gouduni. He also specifically stated that the seized paddy was the yield of the land of the appellant.

8. In order to prove a case under Clause-3(1) of the Orissa Rice and Paddy Control Order, 1965, onus is on the prosecution to prove that the accused is a 'dealer'. In the instant case, prosecution has failed to prove that the accused was a dealer at the relevant time. It has also failed to prove the sale and purchase of any paddy by the accused-appellant. On the contrary, the defence has proved that the seized weighing instruments belong to D.W.2. None of the prosecution witnesses had seen the accused purchasing the seized paddy. On the contrary, the defence has proved that the accused-appellant had some land and the seized paddy was the yield of his land. Prosecution has not seized Ext.3 from the possession of the accused-appellant. In the seizure list (Ext.1), nothing has been mentioned about the seizure of Ext.3, i.e., receipt of the Market Committee, Jeypore. From the cross-examination of the defence witness, nothing has been elicited by the prosecution to support its case. In view of the above, the prosecution has failed to establish a case beyond all reasonable doubt for conviction under Section 7(1)(a) (ii) of the Essential Commodities Act. Therefore, the judgment and order of conviction is bad in law and is liable to be set aside.

9. In the result, this Criminal Appeal is allowed and the order of conviction and sentence passed against the appellant is set aside.

.....
PRADIP MOHANTY, J.

Orissa High Court, Cuttack,
 December 17, 2008/**G.D.Samal**

