

ORISSA HIGH COURT
CUTTACK

CRIMINAL APPEAL NO.231 OF 1990

From the judgment dated 25.08.1990 passed by Sri Gade Narasimham, Special Judge, Koraput, Jeypore in T.R. Case No.10 of 1989.

Bhaskar Chandra Sahu Appellant

Versus

The State of Orissa Respondent

For appellant : M/s M.K. Mishra,
U.C. Pattnaik and
P.K. Das.

For respondent : Mr. P.K. Pattnaik,
Addl. Government Advocate.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of judgment : 07.01.2009

PRADIP MOHANTY, J. This criminal appeal is directed against the judgment and order dated 25.08.1990 passed by the learned Special Judge, Koraput, Jeypore in T.R. Case No.10 of 1989 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.1000/-, in default to undergo rigorous imprisonment for one month.

2. The case of the prosecution is that on 07.02.1989 at about 4.00 P.M. the Supply officials raided the house of one Butu Raut in village Kenduguda. By then, the house was under the occupation of Bhaskar Chandra Sahu, who opened the door of the house as directed by P.W.1. Eleven bags and three bamboo baskets (Dollis) of paddy were found stored in that house, which, on weighment, 24 quintals and 80 K.Gs. As the accused/appellant failed to produce any licence or permit to store such quantity of paddy, the Supply officials, after preparation of seizure list, seized the said paddy belonging to the accused/appellant, and kept the same in the zima of the accused/appellant. The accused/appellant also gave a voluntary statement (Ext.2).

3. Plea of the accused/appellant is that he was not a resident of village Kenduguda. He had been to that village on the previous day, i.e., 06.02.1989 to see his brother-in-law Raghu Nath Sahu. The Supply Inspector seized the paddy from somebody's house and forcibly obtained his signature in spite of his protest. The entire paddy belongs to Butu Raut, who is a cultivator.

4. In order to prove its case, prosecution has examined three witnesses. P.W.1 is the Supply Inspector, P.W.2 is the Assistant Supply Inspector and P.W.3 is an independent witness. It also proved four documents in evidence. Defence has examined one witness, namely, Butu Raut, who is the owner of the house in question and a cultivator. It also proved in evidence two R.O.Rs. Learned Special Judge, who tried the case, by his judgment dated 25.08.1990 convicted the accused/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.1000/-, in default to undergo rigorous imprisonment for one month.

5. Mr. B.K. Mishra on behalf of Mr. Manoj Mishra, learned counsel appearing for the appellant submits that the paddy was seized from the house of Butu Raut. He further submits that the trial court has committed gross illegality by holding that the accused/appellant has a grocery shop in village Kenduguda and such finding is not based on any evidence on record, except the bald statement of P.W.1 without being corroborated by any documentary evidence or any independent witness. He submits that at the time of seizure, 10 to 15 persons were present, as admitted by P.W.3 in his cross-examination, but not a single witness has been examined by the prosecution nor has anybody put his signature in the seizure list, which violates the provisions of Section 100 Cr.P.C. He also submits that P.W.3 does not belong to village Kenduguda but he belongs to a village, which is situated at a distance of 30 K.Ms. from that village. P.W.3 has admitted that he had some political work in that village and therefore he had come to that village. He also admitted that he did not put his signature in Ext.1. Learned counsel further submits that the court below has committed illegality in not accepting the evidence of D.W.1, as all the witnesses of the prosecution admit that the house belongs to D.W.1 and the Supply Inspector also admits that D.W.1 is a cultivator.

6. Mr. Pattnaik, learned Addl. Government Advocate vehemently contends that there is no illegality committed by the trial court in convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act, particularly when there is ample material on record to substantiate such conviction. Accused/appellant was found in possession of 20 quintals and 80 K.Gs. of paddy and he voluntarily made a statement in regard to that vide Ext.2. Therefore,

accused/appellant squarely comes under the definition of 'dealer' under the Essential Commodities Act and no licence was there at the time of demand.

7. Perused the LCR and different provisions of the Essential Commodities Act and Section 100 of the Cr.P.C. P.W.1, the Supply Inspector, in his cross-examination admits that the accused is a resident of village Haradali, which is more than 30 K.Ms. away from the spot. Though he states that the accused has a grocery shop in Kenduguda, but he has not checked or visited that shop. He also admits that Butu Raut is a cultivator. P.W.2, the Assistant Supply Inspector, corroborates the statement of P.W.1. P.W.2 in his examination-in-chief has stated that out of three bamboo baskets of paddy, Butu Raut claimed one basket of paddy, but P.W.1 did not state about this fact. P.W.3, the seizure witness, has corroborated the statement of P.Ws.1 and 2. At the same time, he has admitted that he belongs to Nabarangpur and that 10 to 15 local persons were present at the time of seizure. In his cross-examination, he also admits that he has signed on the weighment chart, seizure list and in the zimanama. But on perusal of Ext.1, the weighment chart, it is found that it does not contain the signature of this witness (P.W.3). In Ext.1, signature of other two persons are there but they have not been examined by the prosecution. In Ext.1, no signature has been put by the Officers effecting the seizure, i.e., P.Ws.1 and 2. Ext.2 is the statement of the accused. It was recorded on 07.02.1989 in presence of P.W.3 and one Amar Kumar Nag. The prosecution for reasons best known to it has withheld said Amar Kumar Nag. No signature of P.Ws.1 and 2 are there in Ext.2. The zimanana appears to have been executed in presence of two independent witnesses, but the prosecution has not examined those persons. Prosecution has not produced a single scrap of paper with regard to possession of the

house by the accused/appellant or storage of rice by him in that house. The house owner has been examined on behalf of the accused/appellant as D.W.1. He has admitted that he had claimed the rice. P.W.1 has admitted in his evidence that the house owner is a cultivator. D.W.1 also produced two R.O.Rs. marked Exts.A and B. From Exts.A and B it reveals that at the relevant time D.W.1 was in possession of more than 16 acres of land. Nothing has been elicited from the cross-examination by the prosecution to disbelieve the evidence of D.W.1.

8. For all these reasons, this Court is of the opinion that the prosecution has not been able to prove that at the relevant time the accused/appellant was a dealer and was in possession of the rice in question. Therefore, there is no contravention of Clause-3(1) of the Rice Paddy Control Order by the accused/appellant. As such, the judgment and order of conviction is bad in law and liable to be set aside.

9. In the result, the appeal is allowed and the judgment of conviction and sentence passed by the trial court is set aside.

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PRADIP MOHANTY, J.

Orissa High Court,Cuttack,
 7th January, 2009/**GDS**