

HIGH COURT OF MADHYA PRADESH JUDICATURE
AT JABALPUR

PRESENT :
HON'BLE SHRI JUSTICE **G.S. Solanki**

Criminal Appeal No. 2585/1997

Sheel Chandra Jain S/o Dharam Chand Jain
Vs.
State of Madhya Pradesh

Criminal Appeal No. 2559/1997

Shikher Chandra S/o Sunderlal Jain
Vs.
State of Madhya Pradesh

Shri S. Tripathi, learned counsel for the
appellant.

Shri R.K. Kesharwani, learned Panel Lawyer for
the State.

Date of hearing: 23/06/2011
Date of Judgment: 23/06/2011

J U D G M E N T

Being aggrieved, the appellants have preferred these appeals against the impugned judgment dated 5/11/1997 passed by the learned Special Judge, Tikamgarh in Special Case No. 5/92 by which appellants have been convicted under Section 3/7 of the Essential Commodities Act, 1955 and sentenced each of them to undergo SI for 15 days with fine of Rs.5,000/-, with default stipulations.

2. The aforesaid appeals arose out of the same judgment and order, therefore, they are being disposed of by this common judgment.

3. Prosecution case in short is that on 11.4.1994 Virendra Singh (PW4), Station House Officer, Chhatarpur was conducting an investigation in relation to Crime No. 38/92. He saw that a truck was going towards Baldeogarh, Tikamgarh, he tried to stop the same but it was not stopped then Virendra Singh chased the said truck and after overtaking it stopped near a village Kannpur. On checking, he found 96 bags of wheat loaded in the truck. It is further alleged that one motorcycle No. MP-16-4480 was also loaded on the said truck and on interrogation driver Dharmendra Shukla told that the same was belonging to appellant Sheel Chandra.

4. During investigation it was found that 96 bags of wheat was purchased by Sheel Chandra from Badamalhara. It is also found that both appellants Sheel Chandra and Shikher Chandra were not having any license as required under M.P. Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order 1991 (hereinafter to be referred as "Order 1991").

5. Offence was registered against the appellants and other co-accused and they were charge-sheeted before the Special Judge, Tikamgarh. Learned Special Judge framed the charges against the

appellants under Sections 3/7 of the Essential Commodities Act. Appellants abjured the guilt and pleaded that they have been falsely implicated. Rajendra Kumar Jain (PW1) was examined as defence witness of the appellants.

6. On completion of trial and on appraisal of evidence on record, trial court convicted the accused as mentioned hereinabove. Hence this appeal.

7. Learned counsel for the appellants submitted that the trial Court committed illegality in appreciating the evidence on record in its proper perspective. He further submitted that prosecution has failed to prove the fact that appellants purchased the alleged wheat, therefore they cannot be said to be engaged in the business of purchase and sale of food grains and fallen under the definition of dealer, therefore prays for setting aside the conviction and sentence recorded against them.

8. On the other hand, learned Panel Lawyer justified and supported the impugned judgment and finding of the trial Court.

9. I have heard the learned counsel for the parties and perused the impugned judgment, evidence and other material on record.

10. Virendra Singh (PW4) deposed that on 12/4/1992. He seized a truck near Kannpur and

prepared a seizure memo Ex.P/2. He further deposed that truck was loaded with 96 bags of wheat. He also deposed that he arrested the driver and made Panchnama Ex.P/3. Thereafter he released the aforesaid truck and wheat on supradnama of Rajendra by Ex.P/4 and appellants Sheel Chandra and Shikher Chandra were arrested by him vide arrest memo Ex.P/7 and P/8 respectively. He further deposed that he took the information from the Food Department. Food Officer, District Tikamgarh informed him vide memo Ex.P/6 that appellants are not having any license regarding business of food grains.

11. Witness Omprakash @ Munna (PW1) deposed that appellants Sheel Chandra and Shikher Chandra were used to come his village Kudila for purchasing the wheat. He further deposed that Sheel Chandra purchased 13 bags of wheat from him, but he was unable to explain that after purchasing wheat, the same was sent to whom. Other witness Ghansu (PW2) has not supported the prosecution case. He was declared hostile.

12. On careful scrutiny of evidence of sole witness Om Prakash (PW1), it reveals that 13 bags of wheat were purchased by Sheel Chandra which were not find place in Ex.D/1. He further stated that police has not recorded his statement Ex.D/1. In the circumstances, trial court committed illegality in placing reliance on the testimony of this witness He

further admitted that he did not see that appellant Shikher Chandra was dealing with the business of food grains. In these circumstances, the prosecution failed to prove the vary fact that appellants were dealing with purchasing of food grains (wheat).

13. Further, Virendra Singh (PW4), who seized the wheat is also failed to depose anything regarding ownership of wheat, he only deposed omnibus statement that on inquiry accused persons informed him that wheat belonged to Seth (businessman) of Badamalhara. No doubt, according to Section 3 of the Order 1991, no dealer shall carry on business as a dealer without obtaining a license under this order but in this case prosecution failed to prove the vary fact that appellants were engaged in dealing with purchase and sale of wheat. In these circumstances, trial Court failed to appreciate the evidence on record in its proper perspective. Therefore, conviction recorded by him is unsustainable in the eyes of law.

14. In the result, the appeal is allowed. Conviction and sentence recorded by the trial Court is hereby set aside. Appellants are acquitted to the charges as alleged against them.

15. A copy of this judgment be placed in Criminal Appeal No. 2559/97.

(G.S. Solanki)
JUDGE