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IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

CRIMINAL APPEAL NO. 1093 /98

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF  
CRIMINAL PROCEDURE.

APPELLANT

: Nirmal Kumar,  
son of Ram Pratap Agrawal,  
aged about 30 years,  
Resident of Bramha Road,  
Ambikapur, District Sagar (MP).

-Versus-

RESPONDENT

: The State of Madhya Pradesh

540

2-5-98

by Shri. Sanjay Sharma

Advocate

Rto. A. R.

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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**Single Bench : Hon'ble Shri Manindra Mohan Shrivastava, J.**

**Criminal Appeal No.1093 of 1998**

**APPELLANT**

Nirmal Kumar

**Versus**

**RESPONDENT:**

The State of M.P. (now  
Chhattisgarh)

**Appearance:**

Shri Sunil Tripathi, counsel for the appellant.

Shri Bhaskar Payashi, Panel Lawyer for the State.

**J U D G M E N T**

(Delivered on 30<sup>th</sup> January, 2015)

1. This appeal is directed against the judgment of conviction and order of sentence dated 1<sup>st</sup> May, 1998 passed by learned Special Judge, Sarguja (Ambikapur), in Special Criminal Case No.91/1991, whereby and whereunder the appellant has been held guilty of contravention of Rule 3 (2) of the Madhya Pradesh Khaddyan Vyapari (Anugyapan Aadesh), 1965 and Rule 3 (2) of the Madhya Pradesh dale, khane Yogya tel beej and khane yogya tel ka Vyapari Anugyapan Aadesh, 1977, punishable under Section 3/7 of the Essential Commodities Act, 1955 and sentenced to undergo as under:

<b>Conviction</b>	<b>Sentence</b>
3 (2) of the Madhya Pradesh Khaddyan Vyapari (Anugyapan Aadesh), 1965	S.I. for 4 months and fine of Rs.1,000/-, in default of payment of fine, further S.I. for 1 month
Rule 3 (2) of the Madhya Pradesh dale, khane yogya Tel Beej and khane yogya Tel ka Vyapari Anugyapan Aadesh, 1977	S.I. for 4 months and fine of Rs.1,000/-, in default of payment of fine, further S.I. for one month

2. Prosecution case is that the appellant is a Trader holding Licence under Madhya Pradesh Khaddyan Vyapari (Anugyapan Aadesh), 1965 and Madhya Pradesh dale, Khane Yogya Tel Beej and khane yogya Tel ka Vyapari Anugyapan Aadehs, 1977, for trading in essential commodities. On 9.4.1990, the business premise of the appellant was inspected by the Food Inspector R.K.S. Thakur (P.W.4) along with Dy. Collector Prakash Jangde (not examined) and one B.R. Mandavi (P.W.1), SDM. According to the prosecution, upon inspection of the Stock Register and final verification of the stock, discrepancies were found and quantity of foodgrains/essential commodities was found to be less than what was actually recorded in the stock register. It was also found that 8.5 quintal of *rahar dal* was found stored in respect of which there were no entries made in the stock register. A panchnama in Ex.P-4 was prepared and food grains were also seized vide Ex.P-3 and then given on *superdnama* to the appellant vide Ex.P-3. The matter was reported to the Collector vide Exx. P-5 and, thereafter, a complaint was filed in the Court for prosecution. Learned trial, Court, relying upon the evidence led by the prosecution held the appellant guilty of commission of offence alleged against him and sentenced as described above.

3. Assailing correctness and validity of the judgment of conviction ad order of sentence, learned counsel for the appellant argues that the prosecution has failed to prove contravention of provision relating to maintenance of stock register beyond all reasonable doubt. He submits that in so far as *rahar dal* is concerned, the same was brought for sale but as the deal could not materialize, the same was taken back. He submits that at the time when this was going on, the raiding party arrived at. He submits that the intending seller Shrawan Prasad Gupta (D.W.1) has stated in his evidence that he had brought *rahal dal* for sale, but the deal could not be finalized. Therefore, he had removed *rahal dal* from the shop. It is next contended that the shortage which have been found as recorded in the *Panchnama* are only on

the basis of certain assumptions without there being any actual weighment done by any scientific method. He also submits that where shortage of stock entails penal consequences resulting in conviction, which involves imprisonment of a person, conviction, only on the basis of assumption with regard to shortage of stock without actual weighment done and proved by the prosecution, is impermissible in law. He submits that the appellant has also duly explained that the date on which the raid was conducted, the records were left to be reconciled as the business of the day was not over and this has been admitted by the Food Inspector R.K.S. Thakur (P.W.4) that as a part of business practice, the records are reconciled and final entries are made in the stock register at the end of the day. In the present case, the raid was conducted much prior to the closure of the day of business, therefore, small shortage, if at all, were only because of that reason.

4. On the other hand, learned counsel for the State has supported the judgment passed by the Court below. He submitted that the raid was conducted by the Food Inspector- R.K.S. Thakur (P.W.4) with two responsible officers and shortage were found in respect of number of food grains, upon physical verification when compared to the entries made in the stock register. In addition, 8.5 quintal of *rahal dal* was also found at the spot in respect of which no entries were made. He further submits that even though there is no record of actual weighment, on the basis of number of gunny bags, the weighment was done, which is usual practice and, therefore, no fault can be found only on this ground.

5. I have considered the rival submissions made by learned counsel for the parties and perused the records.

6. Panchnama in Ex.P-4 records the stock of food grains which only talks in terms of gunny bags without there being any entries with regard to weighment, if nay, done. In the seizure memorandum (Ex.P-3), the quantity has been mentioned and there also, there is no special indication as to whether any weighment was done. Moreover, different items of food grains

contained in gunny bags found shown to be of different weight. This, therefore, shows that on the basis of number of gunny bags, exact weighment could not be arrived at.

7. Food Inspector R.K.S. Thakur (P.W.4) in his cross-examination has stated that he had not prepared any panchnama of weighment. He has denied suggestion that there was no weighment, but at the time, he was unable to disclose the name of person who had carried out weighment. There is no record of weighment produced before the Court. Food Inspector R.K.S. Thakur (P.W.4) having emphatically stated that he got the weighment done, the burden was on the prosecution to produce before the Court the records of weighment. However, no such records have been produced. This raises serious doubt with regard to the quantity of food grains arrived at upon physical verification.

8. Food Inspector R.K.S. Thakur (P.W.4) in para-11 of his testimony admitted that as a matter of usual practice, entries in the register are made in the evening and many a times because of some other reasons, the weight is reduced. According to the prosecution, the raid was conducted at about 3:00 p.m. That means the raid was made before closure of the day of business. The seizure memo (Ex.P-3), itself records the time as 4:00 p.m. in the afternoon, which means that raid was already conducted. The appellant's submission therefore that before he made entries with regard to sale and purchase made during that day, the raid was committed and, therefore, he had neither any occasion to make those entries nor he was permitted to do so, appears to be plausible and probable and cannot be ruled out. In so far as verification of stock of *rahal dal* is concerned, the appellant has come out with the defence that the same was brought by the seller to his premise as sales practice, but as the deal could not strike, the same was taken back. This statement has been corroborated by the testimony of Shrawan Prasad Gupta (P.W.1), who has stated that he had brought *rahal dal*, but as deal could not strike he had taken the same back.



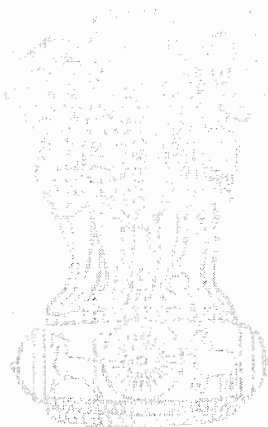
9. In view of the above consideration, it has to be held that the prosecution has failed to prove violation beyond doubt so as to entail conviction of the appellant for the alleged contravention.

10. Accordingly, the appeal is allowed. Impugned judgment of conviction and order of sentence against the appellant is hereby set aside. Appellant is acquitted of the charges. As the appellant is already on bail, he need not surrender. Bail bonds stands discharged.

Sd/-  
Manindra Mohan Shrivastava  
Judge

Praveen

CHHATTISGARH HIGH COURT



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