

Ramsahay Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-27-2012

Appellant : Ramsahay

Respondent : The State of M.P.

Judgement :

1 Cr.A. No.133 of 1996 HIGH COURT OF MADHYA PRADESH : JABALPUR
BEFORE : TARUN KUMAR KAUSHAL, J.CRIMINAL APPEAL No.133 OF
199.APPELLANT: Ramsahay, aged 46 years, S/o Laxmanlal Namdeo, R/o
Rangraj Muhalla Naogaon, P.S Naogoan, Distt- Chhatarpur (M.P) Versus
RESPONDENT: The State of Madhya Pradesh

***** For Appellant : Shri Y.P
Sharma, Advocate. For Respondent : Shri R.S. Shukla, Panel Lawyer.

JUDGMENT

27/06/2012 This appeal has been preferred against the judgment dated 03/01/1996 passed by Special Judge, Chhatarpur in Special Case No.9/94 (EC Act), convicting the appellant under section 3(2)(c) read with Section 7(1)(a) (ii) of the Essential Commodities Act, 1955 (in short Act of 1955) for black marketing of kerosene oil and sentenced to 6 months R.I. and fine of Rs.2000/-.

2. Facts of the case, in short, are that 16/06/1994 at about 1.30 p.m, (PW-4) made a complaint to Mahesh Kumar Sharma, Food Inspector (PW-2) that appellant has

sold 5.500 litres of Kerosene to him in Rs.30/-. Appellant was a private dealer for free sale distribution of kerosene. In presence of Govind (PW-1) Panchnama Ex.P-1 was prepared by Food Inspector (PW-2). Signature of appellant was also obtained on Ex.P-1. Statements of Govind (PW-1) and Malla (PW-4) were recorded to that effect by PW-2. In fact, prescribed rate of kerosene was Rs.2.75 paisa per litre and appellant has charged excess amount from Malla (PW-4), thereby he was found to be guilty of contravention of provision of Clause 4,5 and 6(3) of Kerosene (Market Price Determination) 2 Cr.A. No.133 of 1996 Order 1970. Memorandum Ex.P-5 was also prepared by Food Inspector (PW-2) addressed to Collector Chhatarpur. On receiving report dated 29/07/1994 at Police Station- Naogoan, a case at Crime No.174/1994 under section 3/7 of Act of 1955 was registered against the appellant.

3. After completing investigation, police Naogoan submitted a charge sheet in the court of Special Judge. Having followed the procedure of summary trial, substance of alleged offence has been prepared and plea of the accused was recorded. Appellant pleaded not guilty and entered into trial. Statements of Govind (PW-1), Mahesh Kumar Sharma, Food Inspector (PW-2), Dharmraj Singh Raghuvanshi, ASI (PW-3), Malla (PW-4), and K.L. Berle, Assistant Food Inspector (PW-5) were recorded.

4. After appreciating aforesaid evidence, trial Court has convicted the appellant as above.

5. This appeal has been preferred by the appellant on the ground that appreciation of evidence is not proper. Evidence of Malla (PW-4) is suffering from material contradictions and omissions. Conviction has been based on insufficient discrepant evidence. Conviction is bad in law. Sentence is harsh. On the other hand, learned Panel Lawyer supported the finding of conviction and sentence both.

6. On careful perusal of evidence of Malla (PW-4) it is revealed that he purchased 5 litres of Kerosene oil from the appellant. Appellant took Rs.30/- from him. Prescribed rate of kerosene at that time was Rs.3/- per litre. In cross-examination, he has admitted that he did not remember how much payment he has made to the

appellant. In re-examination he has admitted that while appellant was caught, he refunded Rs.15/- to him. He further stated that while appellant took Rs.30/- from him he assured to give such amount back while he will receive some loose change. It is pertinent to note that statement of Malla (PW-4) was recorded in one go only. He has given different version regarding 3 Cr.A. No.133 of 1996 the amount of money taken by appellant in Chief examination, cross-examination and re-examination.

7. Govind (PW-1) punch witness, did not support the prosecution and has been declared hostile. He has signed on the papers under the influence of PW-2 in the impression of renewal of the dealership. Though K.L. Berle, Assistant Food Inspector (PW-5) proved price list of the Kerosene Ex.P-11 showing the rate to be Rs.2.70 paisa per litre, but in Ex.P-1 Panchnama PW-2 did not mention the prescribed rate and also did not mention the fact that how much excess amount has been charged by the appellant.

8. In view of the fact that independent witnesses Govind (PW-1) did not support the prosecution and Malla (PW-4) has complainant is giving discrepant version in his statement recorded in the trial court in one go, evidence of PW-2 is required to be appreciated very carefully. It is true that there is no rule that evidence of Inspector should be corroborated but as a matter of precaution great careful appreciation of evidence is required.

9. Signature of the appellant on Ex.P-1 Panchnama is obtained in top corner only and there is no thumb impression of Malla (PW-

4) on it. Amount charged by the appellant for sale of kerosene has not been recovered from the appellant.

10. On perusal of evidence and particularly Panchnama Ex.P-1 it is not prima facie established that how much excess amount has been received by the appellant and no record of sale of kerosene on the spot and cash received by him was recovered. Merely on the basis of oral complaint made by Malla (PW-4) case was prepared against the appellant. PW-4 did not support the prosecution with full force in the trial Court. In such situation, on the basis of evidence of Food

Inspector (PW-4) alone contravention of Control Order cannot be said to be proved beyond doubt.

11. PW-4 is giving discrepant version in his cross-examination, re-examination regarding excess amount taken by the appellant. Panch witness PW-1 did not support the prosecution and was 4 Cr.A. No.133 of 1996 declared hostile. Sole testimony of Food Inspector (PW-2) in this situation is not sufficient to establish charge under section 3/7 of the Act of 1955. Conviction is not maintainable and is hereby set aside. Appeal is allowed. Appellant is acquitted. (Tarun Kumar Kaushal) Judge tarun/

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