

Teepa @ Surendra Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-06-2014

Judge : B.D. Rathi

Appeal No. : Cr.R. No. 295 of 2009

Appellant : Teepa @ Surendra

Respondent : State of M.P.

Judgement :

This Criminal Revision under Section 397 of the Code of Criminal Procedure, 1973 is directed against the impugned judgment dated 13-04-2009 passed by learned Additional Sessions Judge, Shivpuri in Criminal Appeal No.04/2009 affirming the judgment of conviction and sentence dated 08-12-2008 passed by learned Judicial Magistrate First Class, Shivpuri in Criminal Case No.1020/2008 whereby the petitioner has been convicted under Section 3/7 of Essential Commodities Act and sentenced to undergo 1 year's RI with fine of Rs.2,000/- with default stipulation.

Brief facts in narrow compass are that on 14-09-2005 at about 7:40 pm, Station House Officer Police Station Dehat Shivpuri received an information that in the house of Ramesh Sharma there is illegal collection and sale of blue kerosene. On receiving this information, Station House Officer Police Station Dehat Shivpuri along with other police officials conducted a raid and since at the suspected shop lock was there, therefore, after preparing a Panchnama lock of the shop was

broken in which eight drums containing blue kerosene have been found present. The aforesaid shop was stated to be of petitioner. At the time of conducting of raid, petitioner was not present on the spot. Thereafter, crime No.262/2005 was registered at Police Station Dehat Shivpuri for the offence punishable under Section 3/7 of Essential Commodities Act. After investigation, charge-sheet was filed. On trial, learned Judicial Magistrate First Class, Shivpuri passed the order of conviction and sentence which was further confirmed by the appellate Court.

Learned counsel for the petitioner submitted that in the entire case, it was not proved by the prosecution that which control order was violated by the petitioner, therefore, the action of prosecution was contrary to law deserves to be quashed.

In order to appreciate the submission of the learned counsel for the parties, it would be appropriate to refer the provisions of Essential Commodities Act, which provides as under:

"7. Penalties (1) if any person contravenes any order made under Section 3 -

(a) he shall be punishable

(i) in the case of any order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine;

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other Conveyance used in carrying the commodity shall,

if the court so orders, be forfeited to the Government."

Thus, bare perusal of the Section 7(1) of the Essential Commodities Act, makes it crystal clear that when there is a violation of any "order" regarding any essential commodity, then the provisions of Essential Commodities Act, 1955 may apply.

This Court in the matter of Hema Bhadoriya Vs. State of M.P. reported in 2008 (1) EFR 198, has held that the criminal proceedings pending against the petitioner regarding inspection of petrol pump without mentioning violation of any order under Section 3 of Essential Commodities Act, accused cannot be prosecuted for the offence punishable under Section 3/7 of the Essential Commodities Act.

In the case of Shiv Kumar Vs. State of M.P. 2005 (4) MPLJ 117 it was held by this Court that first condition for prosecuting a person under section 7 is that there should be a contravention of the control order issued by the State Government under section 3 of the Essential Commodities Act. Any scheme framed under the executive powers by the State Government may not come within the purview of the control order and for that it would not be necessary that it should satisfy the provisions laid down under Section 3 of the Act. Therefore, in order to prosecute a person for violation of the terms and conditions of the scheme it is necessary for the prosecution to prove that the scheme is in the nature of control order and further to prove that the same has been issued under section 3 of the Essential Commodities Act and in the absence of such an evidence, any scheme framed under executive power cannot be fall within the purview of the Control Order and the person cannot be prosecuted and held guilty.

On perusal of entire record, it is clear that the prosecution has failed to prove that which control order was violated by the petitioner, therefore, conviction of petitioner is liable to be set aside, accordingly petition is allowed. Impugned judgment of conviction and sentence passed by learned Courts below are hereby set aside. Petitioner is discharged of the offence under Section 3/7 of Essential Commodities Act. Fine amount, if deposited, by the petitioner be refunded to him. Seized kerosene be forfeited in favour of State.

Copy of this order be sent to the trial Court.

