

**Arvind Kumar Vs. State of Madhya Pradesh**

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**Court :** Madhya Pradesh

**Decided On :** Feb-06-2008

**Reported in :** 2008CriLJ1712; 2008(2)MPHT38

**Judge :** S.C. Sinho, J.

**Appellant :** Arvind Kumar

**Respondent :** State of Madhya Pradesh

**Advocate for Pet/Ap. :** Shri. Sakalle

**Disposition :** Appeal allowed

**Judgement :**

**S.C. Sinho, J.**

1. Special Sessions Judge, Sagar in Special Case No. 3/92 recording conviction of appellant under Section 3/7 of the Essential Commodities Act, 1955 for violating the provision of Section 6(5) and (12) of the Madhya Pradesh (Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, 1991 (hereinafter referred to as 'Scheme' only) and sentenced to imprisonment for a period of 3 months and to pay fine of Rs. 2,000/- and in default of fine to suffer R.I. for a period of 3 months. Being aggrieved appellant has preferred this appeal under Section 374(2) of Cr.PC.

2. It is undisputed that appellant was working as Assistant Manager/ Salesman in Seva Sahakari Sanstha Naryawali (Sagar). On 2-5-1992 an inspection was made by Shri Dharam Das (P.W. 1) Dy. Registrar Co-operatives alongwith Food Officer Shri Mishra and Food Inspector Rajendra Kumar Shrivastava (P.W. 2) and others. Appellant was working there as Assistant Manager-cum-Salesman. On inspection they found that the stock of 1 quintal of Sugar and 31 kg of Kerosene oil was not distributed to the customers and it was found missing from the shop. Therefore appellant violated the Clause 6 (5) and (12) of the 'Scheme'. Appellant was prosecuted for violating the provisions of the 'Scheme' and they found that appellant has distributed the said 1 quintal of Sugar and 31 kg of Kerosene oil not to real customers because on register the Ration Cards numbers or signatures of customers were missing.

3. Appellant was prosecuted for the violation of the provisions of the 'Scheme'. During trial Dharmdas (P.W. 1) Dy. Director Co-operatives, Rajendra Kumar Shrivastava (P.W. 2) Food Inspector, (P.W. 7) Vimal Kumar Jain, Bhagwandas Pandey (P.W.8) and R.C. Patele (P.W. 9) Co-operative Officials were examined and they have found that the accused appellant has sold 1 quintal of Sugar and 31 litres of Kerosene oil to such persons whose cards numbers were not mentioned in the distribution register nor the signatures of the customers were obtained in the register. Rajendra Kumar Shrivastava (P.W. 2) has prepared Exh. P-1 Panchanama and further seized Article A register of sale of Kerosene oil, Article B register for Sale of other commodities and Article C stock register for Kerosene oil and all other items. As seizure memo Exh. P-2 these registers were seized from R.K. Shrivastava by Nanehelal Aharwar (P.W. 6) Sub Inspector Naryawali in presence of Suryabhan Tiwari (P.W. 5) Head Constable. These facts are further testified by Vimal Kumar Jain (P.W. 7), Bhagwandas Pandey (P.W. 8) and R.C. Patele (P.W. 9). After considering the evidence Special Court found that the appellant was guilty for violating the provisions of the aforesaid 'Scheme' and convicted and sentenced him as aforesaid.

4. The only contention of Shri Sakalle, learned Counsel for the appellant was that this 'Scheme' is not covered under Section 3/7 of E.C. Act therefore appellant cannot be convicted for breach of Clause 6 (5) and Clause (12) of the 'Scheme'.

There cannot be any prosecution of appellant because this 'Scheme' is not formulated under Section 3 of the E.C. Act and not a part of M.P. (Foodstuff Distribution Control) Orders, 1960, there cannot be any punishment under Section 7 of the E.C. Act, 1955 hence the whole trial was illegal and without jurisdiction therefore appellant cannot be convicted.

5. I have heard both the Counsels at length.

6. The validity of the 'Scheme' was considered in AIR 1981 SC2001, Madhya Pradesh Ration Vikreta Sangh and Ors. v. State of M.P., and it was held that the 'Scheme' was not made in exercise of any power conferred by the order under Section 3 of E.C. Act Clause 2 (d) of the order only defines the expression of 'Government Scheme' and it does not confer any power to make scheme. The definition itself postulates that the 'Scheme' is one which is made in exercise of its Executive Power. The Executive Power of the State is provided in Article 162 of the Constitution extends to the matter with respect of which the legislature of the State has power to make laws. It was the duty and burden of the prosecution to prove the nature of 'Scheme', and whether the 'Scheme' for violation of which appellant has been convicted is framed under the provisions of Section 3/5 of the E.C. Act.

7. It will be fruitful to reproduce Shiv Kumar v. State of M.P. 2005 (II) MP Weekly Note No. 86, where it is held:

Section 3 of the Essential Commodities Act confers power on the Central Government as well as on the State Government to provide for regulations for prohibition, production, supply and distribution of essential commodities and Section 7 of the Act provides penalties for contravention of any order made under Section 3. 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 fall within the purview of the control order and the person cannot be prosecuted and held guilty.

In the case of *M.P. Ration Vikreta Sangh, Jabalpur and Ors. v. State of M.P. and Anr.* 1981 J.L.J. 564 it has been held that the scheme was not made in exercise of any powers conferred by the Act. Division Bench held that the scheme was not made in exercise of powers conferred under Section 3 read with Section 5 of the Essential Commodities Act and was made only in exercise of executive powers of State. It was also pointed out that the aforesaid decision was affirmed by the Apex Court in appeal in the case of *M.P. Ration Vikreta Sangh Society v. State of M.P.* AIR 1981 SC 2001. Similar view has been taken by this Court in the cases cited above. Therefore, when any scheme framed is covered under Section 3/5 of the Essential Commodities Act the case can be taken for its violation but if the scheme is not framed under the authority of the Act and it is only framed under the executive powers of the State Government, accused cannot be prosecuted for the violation of executive orders of the State Government.

8. This view is further fortified in *Gyarsi v. State of M.P.* Criminal Appeal No. 179/92 reported in 2007(1) M.P.H.T. 125 and *Mohan v. State of M.P.* 1990 J.L.J. 348 and *Maniram v. State of M.P.* 1993 Vol. 1 Short Note 120.

9. For the reasons above this appeal is allowed the conviction of the appellant under Section 3/7 of the Act for breach of Sections 6(5) and 12 of the Madhya Pradesh (Khadya Padarth) Sarvajanic Nagrik Purti Vitran Scheme, 1991 so also the sentences passed thereunder are hereby set aside. Fine if paid be refunded to appellant.