**Shiv Kumar Vs. State of M.P.**

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**SooperKanoon Citation** : sooperkanoon.com/504968

**Court** : Madhya Pradesh

**Decided On :** May-20-2005

**Reported in** : 2005(3)MPHT466

**Judge** : A.K. Gohil, J.

**Acts** : Essential Commodities Act, 1955 - Sections 3, 5 and 7

**Appeal No.** : Criminal Appeal No. 74/2000

**Appellant** : Shiv Kumar

**Respondent** : State of M.P.

**Advocate for Def.** : R.P. .Johri, Public Prosecutor

**Advocate for Pet/Ap.** : Lokendra Gupta, Adv.

**Disposition** : Appeal allowed

**Judgement** :

**A.K. Gohil, J.**

1. Appellant has been convicted under Section 3/7 of the Essential Commodities Act, 1955 for violating the provision of Section 6 (3) of the M.P. (Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, 1991 (hereinafter referred to as 'Scheme' only) and sentenced to imprisonment till rising of Court and fine of Rs. 1000/-

against which he has filed this appeal.

2. As per prosecution story allegation against the appellant was that P.W. 1 Shiromani Dohre, Asst. District Food Officer on 22-9-97 had inspected one Government control shop being run by Seva Sahkari Samiti Amola and appellant was working as salesman thereon and he found that the kerosene oil was not being distributed to the customers as per the prescribed rates. Neither the Ration Card numbers were mentioned in the distribution register nor the signatures of the customers were obtained in the said register. The stock register and rate list was not exhibited on the shop and therefore appellant violated the Clauses 6 (3) (5), 7 (4), 9(1) and 12 of the Scheme.

3. Appellant was prosecuted for violating the provisions of the scheme. During trial A. W. 1 Asst. District Food Inspector Shiromani Dohre was examined and he has admitted that accused was selling the kerosene on prescribed rate and he had not taken any excess amount from the customers. He has also admitted that he had seized the stock register from the shop and he had not found any illegality therein and on the entrance of the shop price list and stock list was exhibited but he had stated that in the distribution register ration card number was not mentioned nor the signatures of the consumers were obtained. He had found that to one customer Harishankar kerosene oil was given eight times. Name of father of Harishankar has not been mentioned nor his signatures have been obtained and the names of ration card holders have also not been mentioned in the register. Ration cards Ex. P-2 to Ex. P-10 were also seized and after considering the evidence Trial Court found the appellant guilty of violating the provisions of the aforesaid scheme and convicted and sentenced him as aforesaid.

4. Sole contention of learned Counsel for the appellant is that violation of the scheme is not covered under Section 3/7 of the Essential Commodities Act, 1955 and for that appellant can not be punished by jail sentence and fine sentence as he has not violated any provisions of the control order. His further contention is that scheme is not the part of control order. He submitted that findings of the Trial Court to this extent are illegal and the impugned order is liable to be set aside. In support of his contention he placed reliance on a catena of decisions in the cases

of M.P. Ration Vikreta Sangh Society v. State of M.P. : [1982]1SCR750 , Santosh Kumar v. State of M.P. [1995(l)MPWN29], Phoolchand v. State of M.P. [1994(1)MPWN 17], Vishnu Prasad v. Stale of M.P. [1993(1) MPWN 103] and Maniram v. Slate of M.P. [1993(1) MPWN 120].

5. In reply learned Counsel for respondent/State supported the judgment.

6. Sole question for consideration before this Court is whether the scheme is made in exercise of any power conferred by Section 3 read with Section 5 of the Essential Commodities Act or was made in exercise of executive powers of the State. Whether the scheme framed by the State Government is at par with the control order or having the force of the Control Order as defined under Section 3 of the Essential Commodities Act. It was the burden on the prosecution to prove the nature of scheme and whether the scheme for violation of which appellant has been convicted is covered under Section 3 of the Essential Commodities Act or not. I have examined the evidence on record. Prosecution has not produced any scheme on record nor P.W. 1 has stated anything in his statement about the nature of scheme. No efforts have been made by the prosecution to prove whether the scheme has been framed under the executive order of the State Government or has been framed following the provisions of Section 3/5 of the Essential Commodities Act.

7. Section 3 of the Essential Commodities Act confers power on the Central Government as well as on the State Government to provide lor 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 can not fall within the purview of the control order and the person can not be prosecuted and held guilty.

8. In the case of M.P. Ration Vikreta Sangh, Jabalpur and Ors. v. State of M.P. and Anr. (1981 JLJ 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. : [1982]1SCR750 . 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 can not be prosecuted for the violation of executive orders of the State Government.

9. During the course of arguments learned Counsel for respondent could not satisfy that the scheme of 1991 has been framed under Section 3 of the Essential Commodities Act, 1955 and no material is available on record to prove the same. Therefore, in the absence of any such evidence on record, the conviction of the appellant under Section 3/7 of the Essential Commodities Act can not be sustained and the same is liable to be set aside.

10. In the result, this appeal is allowed. Conviction and sentence passed against the appellant is set aside.