

Bichitrananda Behera Vs. State

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Court : Orissa

Decided On : Jul-21-1995

Reported in : 1995(II)OLR510

Judge : A. Pasayat, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7; Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973; Orissa Baby Food Licensing Order, 1966; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 313(4)

Appeal No. : Criminal Appeal No. 179 of 1985

Appellant : Bichitrananda Behera

Respondent : State

Advocate for Def. : N. Prusty, Addl. Govt. Adv.

Advocate for Pet/Ap. : H.M. Dhal, Adv.

Disposition : Appeal dismissed

Judgement :

A. Pasayat, J.

1. In this appeal, judgment of conviction and sentence of the learned Special Judge, Cuttack relating to an offence punishable under Section 7 of the [Essential](#)

[Commodities Act, 1955](#) (in short, 'the Act') is the subject-matter of challenge.

2. Prosecution version as unfolded during trial is as follows :

The articles stored in the business premises of the appellant (hereinafter referred to as 'accused') were checked, it was noticed that the quantity as reflected in the stock register maintained and in Board were at variance with the actual stock required to be maintained under the Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973 (in short, 'the Order'). Prosecution alleged that there was violation of the provisions of Clause 10 of the Orissa Baby Food Licensing Order, 1966 (in short, 'the Baby Food Order'), and condition No. 4 of the licence issued under Clause 5 of the aforesaid Order, in addition to violation of Clause 3(1) of the Order. A seizure list was prepared and the discrepancy related to, according to the prosecution, both Amulspray and Madhuspray. In support of the accusations, four witnesses were examined, and documents were brought on record. On consideration thereof, and the evidence adduced by the accused in support of his plea of innocence, learned Special Judge found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for three months, and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for 15 days more.

3. In support of the appeal Mr. H. M. Dhal, learned counsel for appellant submitted that there was no evidence to substantiate the accusations, and the plea of the accused that there was no discrepancy in the stock of Madhuspray in relation to which the conviction is recorded should have been accepted. Additionally, it is submitted that the sentence as awarded is harsh considering the quantity of articles seized and prayer was made for liberal view being taken also on account of long passage of time. Mr, N. Prusty, learned counsel for State, on the other hand, supported the order.

4. It is to be noticed here that the accusations related to three tins of Madhuspray only, learned Special Judge having found the accused not guilty of the accusations relating to Amulspray. It is to be noted here that the accused himself admitted in his examination under Section 313, Code of Criminal Procedure, 1973 (in short 'the Code') that he was in possession of the articles and there was discrepancy. A

bare reading of Section 313(4) of the Code shows that the answers given by an accused may be taken into consideration in judging not only his innocence but also judging his guilt. There is nothing in the language of Section 313 to suggest that answers given by an accused admitting the evidence or circumstances proved against him have to be ignored and have not to be taken into consideration for judging his guilt. In *State of Maharashtra v. Sukhdev Singh* : AIR 1992 SC 2100, it was held that even on first principles there is no reason why the Court should not act on the admission of the confession made by accused in the course of trial or in a statement recorded under Section 313 of the Code. The plea that some of the tins were damaged, was not found acceptable. The evidence on record clearly established seizure of the articles, the discrepancy and added to that is the admission of the accused accepting the discrepancy. In that view of the matter, conclusion of guilt as arrived at by the learned Special Judge cannot be faulted.

5. Residual question is the sentence. it is not in dispute that though minimum custodial sentence is prescribed with regard to an accusation under Section 7(1)(a)(ii) of the Act, the Court for adequate and special reasons to be mentioned in the judgment, may impose a sentence of imprisonment for a term of less than three months. Considering long passage of time, and the quantity of articles involved, I feel it would not be proper to send the accused to custody now. The custodial sentence is restricted to period already undergone. However, the fine amount is raised to Rs. 3,000/-. In case the fine amount is not paid, the default sentence would be three months' rigorous imprisonment.

The appeal is dismissed subject to modification in sentence.

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