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Court : Orissa

Decided On : Aug-24-2006

Reported in : 2007(II)OLR465

Judge : R.N. Biswal, J.

Appellant : Ram Kumar Sahu

Respondent : State of Orissa

Disposition : Appeal allowed

Judgement :

R.N. Biswal, J.

1. The appellant assails the judgment and order of conviction and sentence dated 1.08.1989 passed by Judge, Special Court, Sambalpur in T.R.No. 4 of 1987 convicting him of the offence under Section 7(1)(a)(1) of the Essential Commodities Act (hereinafter referred to as 'E.C.Act') and sentencing him thereunder to undergo R.I. for one year and to pay a fine of Rs. 1000/- and in default to undergo R.I. for three months more.

2. Succinctly stated the prosecution case is that on 5.5.1986 at about 11.30 A.M. the Inspector of Supplies, Jharsuguda, (P.W.2) along with another Supply Inspector (P.W.1) visited the shop premises of the accused at Jharsuguda, after

the name 'Shakti Store' and found the accused in possession of 2.20 rims of white paper, soda ash weighing 4.10 quintals, 4.40 quintals of common salt and 30 Kgs. of potato. He had not displayed the stock position of each essential commodity and retail selling price thereof in the stock-cum-price board and thereby violated clause 3 of the Orissa Declaration of Stock and Prices of Essential Commodities Order, 1973. He was also found in possession of 64 litres of kerosene oil in 4 tins containing 16 litres each, without any valid registration certificate or permit and thereby violated Clause 7(i) of the Orissa Kerosene Control Order, 1962 read with Govt. of Orissa Notification No. 20213 dated 3.5.1989. It is the further case of the prosecution that the accused was found in possession of 40 quintals of pulses for sale without any valid licence and thereby contravened Clause 3 of the Orissa Pulses and Edible Oil Dealers (Licensing) Order, 1977 and Clause 3 of the Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977. Since the aforesaid contraventions are punishable under Section 7 of the E.C.Act, P.W.2 seized the said stock of essential commodities and kept the same in zima of the accused under proper zimanama and after completion of enquiry submitted P.R. against the accused. In his statement under Section 313, Cr.P.C. the accused stated that he had not opened his shop after 30.4.1986 on account of his mother's illness and that the alleged essential commodities were recovered from the godowns of one Mahesh Kumar Sahu.

3. In order to establish its case, prosecution examined two witnesses as against one by the defence. P.W.2 is the Inspector of Supplies, Jharsuguda and P.W.1 is another Inspector of Supplies, who are said to have inspected the shop and godowns of the accused and seized the aforesaid essential commodities. One Ram Prasad was examined on behalf of the accused to depose that the essential commodities were seized from two godowns belonging to Mahesh Kumar Sahu. After assessing the evidence on record, the trial Court found the accused guilty of offence under Section 7(1)(a)(i) of the E.C.Act and convicted and sentenced him thereunder as mentioned earlier.

Being aggrieved with the said order of conviction and sentence passed against him, the accused has preferred the present appeal.

4. It transpires from the evidence of P.W.2 that on 5.5.1986 he along with P.W.1 visited 'Shakti Store' at Jharsuguda. The accused, who was then present in the store, identified himself to be the owner thereof. They found a stock-cum-price board bearing the date 30.4.1986 hung up at the shop of the accused. The stock position and price of the essential commodities were not displayed in the said board. On inspection of the shop, they found 40 quintals of pulses, 64 litres of kerosene, 4.10 quintals of soda ash, 2.20 rims of white paper, 30 Kgs., of potato and 4.40 quintals of common salt. P.W.2 entered the same in the verification report marked Ext. 4. Accused had no valid licence for purchase or sale of kerosene exceeding 10 litres. He had also no licence to possess pulses exceeding 10 quintals. P.W.2 seized the stock of essential commodities mentioned above and prepared seizure list in respect thereof as per Ext. 1 and released the same in zima of the accused. He further deposed that the voluntary statement of the accused was reduced into writing by P.W.1 under Ext. 6. In his cross-examination P.W.2 stated that he seized 30 quintals of pulses, some white papers, 4.40 quintals of common salt, 30 Kgs. of potato from Shakti Store. He admitted that he did not mention in Ext. 4 about seizure of any of the essential commodities from the shop of the accused. He has also not mentioned in Ext. 4 that the accused identified himself to be the proprietor of 'Shakti Store'. It was elicited during cross-examination from P.W.2 that he had no idea before inspection of the shop premises in question that the accused had two godowns. He also did not know to whom the godown attached to the house of the accused belonged. To the suggestion of the defence counsel, he stated that he could not say if that godown belonged to Sabitri Dei and if Mahesh Kumar Sahu was the tenant thereof. He could not say 'no' to the suggestion of the defence counsel that the godown at Jharsuguda bus stand belonged to Mahesh Kumar Sahu. Evidence of P.W.2 is not specific as to which of the commodities were recovered from which of the godowns. It transpires from the evidence of P.W.1 that the accused had stored soda ash, white paper and potatoes, 42 kgs of pulses and 64 litres of kerosene in his shop which were seized by P.W.2. During cross examination he stated that all the above mentioned essentials commodities were seized from the shop, where the stock and price board was hung. Again in the same breath, he stated that some of the seized articles were seized from two godowns of the accused and

some other from 'Shakti Store'. He could not say which of the commodities were seized from the godowns and which from the shop of the accused. He also could not deny to the suggestion that both the godowns belonged to Mahesh Kumar Sahu. Even if it is presumed that 2.20 rims of white paper, soda ash weighing 4.10 quintals, 4.40 quintals of common salt and 30 kgs. of potato were recovered from Shakti Store as per the prosecution case still then in absence of any evidence that accused was transacting those commodities as dealer, it cannot be said that he violated Clause 3 of the Orissa Declaration of Stock and Price of Essential Commodities Order, 1973 as held in the decision *Shiba Prasad Jadav v. State* 1989 (I) OLR 509.

5. Learned trial Court held that P.Ws. 1 and 2 were not sure that the two godowns belonged to the accused. But relying on Ext. 6, the so-called confessional statement of the accused and his statement recorded under Section 313, Cr.P.C. it held that whatever deficiency was there in the evidence of P.Ws. 1 and 2 regarding the ownership of the godowns in question, was made good by Ext. 6 and the confirmation of the same by the accused in his statement recorded under Section 313, Cr.P.C. and accordingly held that the two godowns belonged to the accused. On perusal of Ext. 6 it is found that the accused admitted that he was the proprietor of Shakti Store Jharsuguda and that he was dealing in edible oil, pulses and other essential commodities in that store. He has got two other godowns, one located at bus stand and the other one attached to his residence. In his examination-in-chief P.W.2 stated that the accused made the statement recorded under Ext. 6 voluntarily, but during cross-examination he stated that he gave such statement in reply to the questions put by him and P.W.1. The evidence of P.W.1 is conspicuously silent in this regard. So, in absence of any corroborative evidence it creates a doubt whether the accused gave such statement at all. As per Section 12-AC of the E.C.Act, the provisions of Code of Criminal Procedure are applicable to a proceeding of the present nature before a Special Court. So, as per Sub-section (4) of Section 100 of Cr.P.C. before making the search, P.W.2 ought to have called upon two or more independent and respectable inhabitants of the locality in which the shop situates or of any other locality if no such inhabitant of the said locality was available or was willing to be a witness to the search. But neither P.W.2 nor P.W.1 bothered to call upon any local witness before making

search of the shop and the godowns in question. Had there been any local witness to the search, it could have been known whether the accused gave statement as per Ext. 6. Even if it is presumed that he gave such statement, it cannot be said that it was a voluntary one, when P.W.2 deposed that the accused gave the statement to the query made by him and P.W.1. It weighed in the mind of the trial Court that the accused admitted in his statement under Section 313, Cr.P.C. that whatever he stated in Ext. 6 was correct. The relevant question in this regard is question No. 4, which reads as follows:

Shri Supkar further stated in course of checking you made a voluntary statement before him which he reduced into writing and you signed the statement after understanding the contents thereof. What do you say about this evidence?

His reply was - This is true, I have nothing to say.

Nowhere in his evidence Shri Supakar (P.W.1) stated that the accused made a voluntary statement before him and he reduced the same into writing and that the accused signed the statement after understanding the contents thereof. So, even if the accused answered question No. 4 in affirmative, still then it cannot be used against him. Moreover, the particulars of the so called voluntary statement had not been put to the accused. It was the duty of the Special Judge to put the contents of Ext. 6 specifically, distinctly and separately to him. In absence of the same it cannot be said that the accused knew all the incriminating materials contained in Ext. 6 against him and that knowing the same he answered question No. 4 in affirmative. Had he known the contents of Ext. 6 he was not expected to give defence evidence. In my view the confession said to have been made by the accused having not been specifically put to him, he was prejudiced. So the trial Court, instead of convicting the accused ought to have acquitted him under benefit of doubt.

6. The alleged occurrence took place in the year 1986. The accused-appellant faced the ordeal of a long trial of three years. Moreover the present appeal is pending before this Court since last 18 years.

Taking into considerations all these facts and the entire scenario of events, the criminal appeal is allowed. The order of conviction and sentence passed against the appellant by the trial Court are hereby set aside and the appellant is acquitted of the charge under Section 7(1)(a)(i) of the E.C. Act. He be discharged of his bail bond.

7. As found from the evidence of D.W.1, one Mahesh Kumar Sahu was the owner of both the godowns wherefrom the alleged essential commodities were seized. In his statement under Section 313, Cr.P.C. the accused also admitted that he took zima of the seized essential commodities, since Mahesh Kumar Sahu was absent. It transpires from the order sheet dated 18.8.1989 of this Court that the seized essential commodities were ordered to be sold and the sale proceeds thereof deposited in the Court of Judge, Special Court, Sambalpur. When the accused-appellant says that the essential commodities were seized from the godowns of Mahesh Kumar Sahu the sale proceeds of the same be released in favour of Mahesh Kumar Sahu.

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