

Ram Pratap Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-19-2001

Reported in : 2002CriLJ502; 2001WLC(Raj)UC551

Judge : Sunil Kumar Garg, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3, 7 and 9; Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976; [Probation of Offenders Act, 1958](#) - Sections 4; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 423 of 1986

Appellant : Ram Pratap

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : M.S. Bishnoi, Adv.

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been preferred by the accused appellant against the judgment and order dated 17-10-86 passed by learned Special Judge, Essential

Commodities Act cases, Jodhpur in Cr. Case No. 6/85 whereby the learned Special Judge convicted the accused appellant for violation of Clause 6-20 of the Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976 (hereinafter referred to as the Order of 1976) punishable under Section 3/7 of the Essential Commodities Act and Section 9 of the Essential Commodities Act and sentenced him as under :

Offence Sentence awarded
3/7 EC Act 1 year's R.I. and a fine of Rs. 1000/- in default to further undergo 6 months' R.I.
9 EC Act 1 year's R.I. and a fine of Rs. 1000/- in default to further undergo 6 months' R.I.

2. This appeal arises in the following circumstances :

i) P.W. 3 Satya Narayan, Enforcement Inspector, Nokha lodged a written report Ex. P/9 on 15-11-85 before Police Station, Nokha against the present accused appellant stating that there is a Co-operative Society situated at Gajsukhdesar, Tehsil Nokha of which P.W. 2 Maniram was Manager and he was transferred to the Society at Lunkarasar and on 30-4-84 charge of P.W. 2 Maniram was given to accused appellant temporarily who was already salesman in the Society. As per charge report Ex. P/2, the accused appellant received 3 quintal 73 kgs. palm oil for distribution to the consumers and that was distributed up to 8-6-84 by the accused appellant and this palm oil was to be distributed on the basis of 400 gms. per capita and after distribution 1. quintal 50 kgs. and 400 gms. should have been found in the stock, but when on 8-10-84, stock register was checked by P.W. 3 Satya Narayan 1 quintal 50 kg. and 300 gms. palm oil was not found in the stock. The inspection report is Ex. P/8. Thus, by doing so, the accused appellant did not distribute that palm oil to the consumers and thereby committed breach of trust and misused that palm oil and by doing so, the accused appellants violated Clauses 3(4), 5, 17 (GA), 5 and 8 of the Order of 1976. It was further stated in the report Ex. P/9 that he also made irregularities in distributing levy sugar and thus also contravened the same clauses of Order of 1976.

3. On that report, police chalked out regular FIR Ex. P/9 and started investigation.

4. After usual investigation, the police filed challan against the accused appellant in the court of learned Special Judge, Essential Commodities Act Cases, Jodhpur.
5. That on 13-9-85, the learned Special Judge framed charges for violation of Conditions No. 11 and 14 of the Licence and Clause 6-20 of the Order of 1976 punishable under Section 3/7 of the Essential Commodities Act and for offence under Section 9 of the Essential Commodities Act against accused appellant who pleaded not guilty and claimed trial.
6. During trial, 5 witnesses have been produced by the prosecution and thereafter statement of accused under Section 313, Cr. P.C. was recorded and no evidence was led in defence.
7. After the conclusion of the trial, the learned Special Judge vide his judgment and order dated 17-10-85 came to the conclusion that the accused appellant violated clauses of Order of 1976 in both respects i.e. for Palm Oil was not found in the stock Register on checking and further levy sugar was also not distributed to the consumers and thus convicted and sentenced the accused appellant as stated above.
8. Aggrieved from the said judgment and order dated 17-10-86, this appeal has been filed by the accused appellant.
9. In this appeal, it has been argued by the learned counsel for the accused appellant that the findings of conviction arrived at by the learned Special Judge are erroneous one and they should be set aside and the accused appellant should be acquitted of the charges framed against him.
10. On the contrary, the learned P.P. has opposed the submissions made by the learned counsel for the appellant and submits that the judgment and order passed by the learned trial Judge are based on proper appreciation of evidence and do not call for any interference.
11. I have heard both and perused the record.

12. So far as violation of conditions of Order of 1976 with respect to irregularities in respect to Sugar is concerned, P.W. 3 Satya Narayan has admitted in cross-examination that in Distribution Register, there is mention of the fact that 3 kg. and 700 gms. sugar was distributed and thus, it should not be treated as irregularity.

13. Now the case of misutilisation of palm oil remains.

14. The case of the accused appellant is that since he was given temporary charge and actual Manager was P.W. 2 Mani Ram, therefore, if 1 quintal 50 kgs. and 300 gms. palm oil was not found in the stock register, for that the accused appellant is not responsible.

15. In my opinion, this argument is not to be accepted because of the following reasons :

i) The accused appellant took charge from P.W. 2 Maniram through Fard Ex. P/2 on 30-4-84 where there is clear mention of the fact that palm oil of 372 kgs. was taken in charge by the accused appellant from P.W. 2 Maniram. From Fard Ex. P/4, it is also further clear that P.W. 2 Maniram took again charge of all the articles and stock from the accused appellant on 24-8-84. In the charge report Ex. P/4 palm oil was shown nil in the stock though as per stock register 1 quintal 50 kgs. and 300 gms. palm oil should have been found in the stock. Thus, for the period from 30-4-84 to 24-8-84, the accused appellant was in charge of the stock and from Ex. P/2 is also clear that on 30-4-84 he took charge of 372 kgs. of palm oil and on 24-8-84 when P.W. 2 Maniram took charge from the accused appellant, on that date, 1 quintal 50 kgs. and 300 gms. palm oil was not given in charge to P.W. 2 Maniram as the stock of palm oil was shown nil in the charge report Ex. P/4 meaning thereby that 1 quintal 50 kgs. and 300 gms. palm oil was not found in the stock register. ii) When this being the position, the case of accused appellant that palm oil was not given in his charge at all becomes falsified from that fact that when on 24-8-84, he handed over charge to P.W. 2 Maniram, 1 quintal 50 kgs. and 300 gms. palm oil was not found in the stock though as per the report Ex. P/2 he received 372 kgs. palm oil. This documentary evidence clearly establishes the fact that on 30-4-84 he received 372 kgs. palm oil and on 24-8-84, when he handed over charge to P.W. 2 Mani Ram, 1 quintal 50 kg. and 300 gms. palm oil

was not found in stock. Thus, from this point of view, the findings of learned Special Judge that the accused appellant misutilised the said palm oil are liable to be accepted as they are based on correct appreciation of evidence.

16. Simply because P.W. 2 Mani Ram admitted in his cross-examination that he was not fully relieved would not make any difference as from reports Ex. P/2 and P/4, the position to taking palm oil and its quantity is very clear. Hence, the appeal of the accused appellant against his conviction is liable to be dismissed.

17. It is not in dispute that the incident took place on 8-10-84 and more than 17 years have passed and this period is enough to exhaust anybody mentally, physically and economically. In these circumstances, after lapse of 17 years, it would not be proper to send this accused appellant to Jail. Therefore if the accused appellant is released on probation under Section 4 of the [Probation of Offenders Act, 1958](#), it would meet the ends of justice.

18. Thus, for the aforesaid reasons the appeal of the accused appellant Rampratap is partly allowed in the following manner :

i) That the conviction of accused appellant for offence under Sections 3/7 and 9 of the Essential Commodities Act is maintained and the appeal against his conviction is dismissed after confirming the judgment dated 17-10-86 passed by the learned Special Judge, Essential Commodities Act, Jodhpur.

ii) However, order of sentence dated 17-10-86 passed by the learned Special Judge, Essential Commodities Act, Jodhpur is set aside and instead of sentencing the accused appellant I direct that he be released on probation under Section 4 of the [Probation of Offenders Act, 1958](#) provided he executes a personal bond in the sum of Rs. 1000/- only with one surety in the like amount to the satisfaction of the learned Special Judge, Essential Commodities Act, Jodhpur within a period of two months from today and to keep peace and be of good behaviour for a period of one year.

iii) It is further directed that the accused appellant shall deposit Rs. 5,000/- (Rs. Five Thousand only) as cost of the prosecution before the learned trial Court and

for depositing the said amount, two months' time is granted.

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