

Subhash Chandra Vs. State

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Court : Rajasthan

Decided On : Mar-26-2010

Judge : Dinesh Maheshwari, J.

Appellant : Subhash Chandra

Respondent : State

Judgement :

Dinesh Maheshwari, J.

1. This revision petition is directed against the judgment and order dated 09.06.1994 as passed by the Additional Sessions Judge No. 2 Sriganaganagar in Criminal Appeal No. 81/1992 whereby the learned Appellate Judge partly allowed the appeal filed by the accused-petitioner against the judgment and order dated 31.08.1991 passed by the Chief Judicial Magistrate, Sriganaganagar in Criminal Case No. 24/1983; and, while affirming the conviction of the petitioner for the offence under Section 3/7 of the Essential Commodities Act, altered the sentence awarded by the Chief Judicial Magistrate to that of rigorous imprisonment for three months with fine of Rs. 1,000/- and in default of payment of fine, to further simple imprisonment for one month.

2. The accusation in this case had been directed against the petitioner Subhash Chandra and one Niranjn Singh, said to be related with the firm Garg Fertilizer Company, Jawahar Market, Sriganaganagar. It was alleged that on 19.01.1979

Shyam Sunder Goswami, Enforcement Officer carried out inspection at the business premises of the said firm Garg Fertilizer Company and found that there were 45 bags of manure available in the shop allegedly purchased from one Darshan Singh who had purchased about 130 bags of manure from the godown of Kisan Co-operative Marketing Society. It was also alleged that 55 bags were sold by the firm to the customers without issuing bills and without even obtaining bills of purchase from Darshan Singh. It was alleged that the goods in question were not shown in the stock register either nor the firm had displayed the price and the stock position. The allegations were essentially of violation of the requirements of Rajasthan Essential Commodities (Stock and Price) Order, 1977. Upon filing of the complaint and after the statement of PW-1 Shyam Sunder Goswami, Enforcement Officer, charges were framed against the petitioner and Niranjn Singh and after trial, while Niranjn Singh was acquitted, the petitioner was convicted by the learned Trial Court for the offence under Section 3/7 of the Essential Commodities Act. The learned Appellate Court affirmed the finding of the learned Trial Court but reduced the sentence as noticed hereinbefore.

3. Seeking to assail the orders aforesaid, the learned Counsel for the petitioner contended that the impugned orders stand vitiated for the case having not been tried in a summary manner. It is also submitted that the learned Courts have acted illegally in not considering the testimony of Darshan Singh DW-1 who clearly deposed that he had given the bags to the firm as against the amount due in him. The learned Counsel further submitted that no independent witnesses have been examined in the case and rather the entire search proceedings were illegal for having been carried out without search warrant. The learned Counsel further submitted that there had otherwise not been any allegations of black marketing against the petitioner and even if it were taken to be a case of mistake in making the requisite entries in the stock register, the petitioner ought not to have been visited with harsh punishment.

4. Having given a thoughtful consideration to the submissions and having examined the record, so far the conviction of the petitioner is concerned, this Court is unable to find any material illegality or irregularity in the orders as passed by the learned Magistrate and as affirmed by the learned Additional Sessions Judge nor

could the trial be said to have vitiated nor any prejudice has been shown.

5. However, so far the quantum of punishment is concerned, it is noticed that the accusation relates to the incident of the year 1979; and in its essence, the accusation against the petitioner had been of the technical offence in not maintaining the stock register properly. In the given set of facts and circumstances, the present one does not appear to be a case for imposing the sentence per Clause (a)(ii) of Sub-section (1) of Section 7 of the Essential Commodities Act. It is noticed that the appeal was dismissed by the learned Additional Sessions Judge on 09.06.1994 but execution of the sentence was suspended by this Court in this revision petition on 22.06.1994. The accused-petitioner has faced this case for more than 30 years and taking into consideration the totality of the circumstances including the nature of accusation coupled with the fact that the technical offence was committed more than 30 years back, this Court is of opinion that no useful purpose would be served with imprisonment of the petitioner at this length of time; and interest of justice shall be served with modification of the sentence awarded to the petitioner for imprisonment to the term already undergone with enhancement of fine following the decision of this Court in *Prabhu Dayal v. State of Rajasthan* 1990 Cr.L.R. (Raj.) 191.

6. Accordingly, this revision petition is partly allowed to the extent indicated above. While the conviction of the petitioner under Section 3/7 of the Essential Commodities Act is maintained, the sentence as awarded, in the given circumstances, is altered to that of the period of imprisonment already undergone but with a fine of Rs. 2,000/- (two thousand), and in default of payment of fine, to further undergo three months' simple imprisonment.

7. The fine aforesaid shall be deposited by the petitioner in the Trial Court within a period of three months failing which, the learned Trial Court shall take appropriate steps in accordance with law.