

(1999) 12 BOM CK 0032

In the Bombay High Court

Case No : Criminal Appeal No. 672 of 1992

Chandrakant Pinayamal Motwani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 102, 102(1), 102(2), 360
Essential Commodities Act, 1955 — Section 10A, 11, 3, 7, 7(1)
Liquified Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 — Order
4, Order 6(3), Order 7, Order 7(2)
Mysore Excise Act, 1966 — Section 53, 54
Probation of Offenders Act, 1958 — Section 4(1), 4(3), 4(4), 4(5)

Citation : (2000) CriLJ 1935 : (2000) 2 MhLj 664

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : B.R. Patil, for the Appellant; M.P. Galeria, APP., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Parkar, J.—The appellant convicted u/s 6(3) and (4) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 read with Section 3 and Section 7 of the Essential Commodities Act and sentence to SI for three months and to pay a fine of Rs. 1000/- in default to suffer S.I. for ten days by the learned 2nd Additional Sessions Judge, Kolhapur in Special Case No. 11 of 1988 by the judgment and order dated 7-11-1992 has appealed against the order of conviction and sentence.

2. The few facts leading to the conviction of the appellant are summarised as under :-

Pursuant to the secret information dated 19-8-1988 received by him Police Sub Inspector Chalke raided the shop of the appellant situated in Gala No. 27 in Shahu Cloth Market in Kolhapur City. The information was that the appellant was dealing in gas cylinders, regulators etc. though he was not an authorised dealer.

Under the raid the appellant was found in possession of 25 gas cylinders out of which 14 were filled with gas and 11 were empty cylinders. Besides the cylinders he was also found in possession of 9 regulators, 40 plastic caps and rubber cordwear, which were seized under panchanama (Exh. 43) in the presence of two panchas. PSI lodged the complaint to the police station which is at Exhibit 44. PSI also informed about the raid to the District Magistrate by letter dated 20th August, 1988 copy whereof is at Exhibit 45. On 6-9-1988 the PSI recorded statements of some witnesses and thereafter on 27-10-1988 handed over the investigation to ASI Adulkr. ASI Adulkar recorded the statements of two persons. On 27-10-1988 he sent one filled gas cylinder to the Ballistic Expert, Bombay for examination. He received the reply from the Ballistic Expert that he should get the cylinder examined from the concerned company. He, therefore, sent one filled gas cylinder to Hindustan Petroleum Corporation at Bhilwadi, Dist. Sangli vide his letter (Exh. 48). In response to the same he received Certificate dated 24-2-1992 from the Hindustan Petroleum Corporation that the cylinder contained LPC gas. On 27-10-1998 the prosecution has also made enquires about the ownership of the gala which was owned by appellant's father. After completion of the investigation the charge-sheet was filed in Nov. 1988. The appellant was arrested on 4-5-1991.

3. Charge was framed on 23-12-1991 by the Special Judge, Kolhapur for violation of Orders 6(3) and (4) of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 and for committing an offence punishable u/s 3 read with Section 7 of the Essential Commodities Act to which the appellant pleaded not guilty. The defence of the accused was of total denial and that it was a false case. According to him the witnesses deposed against him under police pressure.

4. On behalf of the prosecution six witnesses were examined. PW 1- Shiraj Nurani and PW 2 Shivaji Jadhav, panchas to the seizure panchanama had turned hostile. PW 3 is Ismail Desai who is the owner of Sadanand Hotel in Shahu Market which was situated on the western side of the shop of the appellant by name Ganesh Enterprises. PW 4 is Deepak Sha who was the dealer of Bharat Gas doing business in the firm name of Nav Hind Gas Services. PW 5 is Police Sub-Inspector Maruti Chalke attached to L.C.B. at Kolhapur who raided the shop of the appellant and seized the cylinders, regulators etc. PW 6 is ASI Ramchandra Adulkar then attached to L.C.B. Kolhapur who partly investigated the case. After considering the evidence on record the learned 2nd Addl. Sessions Judge, Kolhapur who tried the aforesaid offence convicted the appellant and sentenced him as stated above by his judgment and order dated 7th Nov., 1992 in Special Case No. 11 of 1988. It is the said judgment and order which is impugned in this appeal.

5. Mr. Patil, the learned Advocate appearing on behalf of the appellant, after taking me through the entire evidence on record, contended firstly that PSI Chalke PW 5 was not empowered to search the shop of the appellant and,

therefore, the trial was vitiated. Secondly he contended that the cylinders were not seized from his possession as they were found in the open space on the platform near the shop of the appellant and the appellant having disowned or not having claimed the cylinders, the appellant could not have been tried or convicted for the aforesaid offence. He placed reliance on the panchas turning hostile and not supporting the seizure of the cylinders from the possession of the appellant. Lastly he contended that because of the passage of time a lenient view may be taken and the sentence should be reduced to already undergone and instead fine amount may be increased. Alternately he submitted that the appellant may be released on bond under the provisions of the Probation of Offenders Act, 1958.

6. On the other hand Mr. Galeria, learned APP appearing on behalf of the State contended that the offence committed by the appellant is cognizable offence, and, therefore, the Police Officer was entitled to take cognizance, search, seize and register and investigate the offence. He further submitted that the seizure from the shop of the appellant is sufficiently proved by the evidence of PW 3, a neighbour of the appellant and PW 5 PSI Chalke. As regards the sentence Mr. Galeria cited the decisions of the, Supreme Court and some High Courts and contended that the appellant was dealing in cylinders unauthorisedly without any permission or licence in that behalf and therefore, no leniency should be shown to a person who was profiteering by violating provisions of Essential Commodities Act and contravening the Order of 1988. He further argued that the trial Court having given minimum sentence prescribed under the law, the sentence cannot be said to be excessive. As regards applicability of provisions of Probation of Offenders Act, he submitted that the provisions of the said Act should not be applied to such case of economic offence which is against the society and particularly when there are no circumstances brought on record to justify the release of the appellant on probation.

7. So far as the first contention is concerned that the Police Officer was not empowered to search and seize the gas cylinders from the shop, Mr. Patil relied on the Order 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 (hereinafter for the brevity's sake referred to as "the 1988 Order"). The relevant portion of Order 7 of the aforesaid order is as follows :

7. Power of entry, search and seizure.- (1) An officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by the Central Government, or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying himself that this Order or any Order made thereunder has been complied with -

(a) stop and search any vessel or vehicle....

(b) enter or search any place....

(c) seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquified petroleum gas in cylinders....

(2) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, so far as may be apply to searches and seizures under this Order.

Mr. Patil submitted that since the provisions of Section 100 of Cr.P.C. are made applicable to this Order for the purpose of search and seizure, the search made without warrant issued by a Magistrate is invalid and, therefore, the prosecution of the trial of the appellant is vitiated. The submission is two fold. Firstly, according to Mr. Patil only the Officers mentioned in Clause (1) of Section 7 of the Order, 1988 or any other person authorised by Government notification is empowered to search the place of offence and seize the stock found in contravention of the aforesaid Order. Secondly, it was submitted that a search u/s 100 of Cr.P.C. cannot be made without warrant from the Magistrate. Mr. Patil relied on the decision of the Supreme Court in the case of K.L. Subbayya Vs. State of Karnataka, .

8. Section 10-A of the Essential Commodities Act, 1955 was introduced by Amending Act 36 of 1967 and was made applicable from 30th Dec, 1967 whereby the offences under the Act were made cognizable. The said section reads as under :

10-A Offences to be cognizable and boilable Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Act shall be cognizable and non-boilable.

By virtue of the said Section every offence punishable under the said Act is declared to be cognizable. The appellant in this case is convicted for the offence u/s 3 read with Section 7 of the Essential Commodities Act for contravening Order 6(3) and (4) of the Order of 1988. The said contravention or offence being cognizable, the Police Officer is empowered to take cognizance of the offence. Reference can be made to the observations of the Supreme Court in the case of Satya Narain Musadi and Others Vs. State of Bihar, . The Apex Court in the said decision was considering Section 11 of the said Act on the point as to when the Court can take cognizance of offences under the said Act. While considering the scheme of the Act with regard to the cognizance to be taken by the Court, the Supreme Court had considered the scope of Section 10-A of the Act and observed in para 5 of the Judgment as follows :

5. Section 10-A of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act shall be cognizable which would imply that an officer in charge of police station on receipt of the information of such cognizable offence may without the order of a Magistrate investigate into the offence according to the procedure prescribed in

Chapter XII of the Code. On completion of the investigation the police officer shall submit a report to the Magistrate empowered to take cognizance of the offence on a police report....

(Emphasis supplied)

9. That was also a case where the cognizance was taken by the Magistrate on the basis of the report submitted by the Police Officer u/s 173 of Cr.P.C. after investigation. The reliance by Mr. Patil, therefore, on Order 7 of the Order of 1988 would not be of any assistance to him. Before the amendment of 1967 the offences under the provisions of the Act were not cognizable and, therefore, the Police had no power to investigate the offence. Officers or the authority mentioned in Order 7 are the persons who are specially empowered to exercise the powers which ordinarily they could not have exercised but for the said provision. The Police Officer who is empowered to take cognizance by virtue of Section 10-A of the Act is normally vested with the powers to investigate an offence under the Code of Criminal Procedure.

10. The reliance by Mr. Patil on Section 100 of Cr.P.C. is not relevant inasmuch as it relates to taking of search or inspection in respect of place which is closed, which is not the case here. In the instant case on the information received the Police Officer went to the shop of the appellant along with panchas and found the appellant, who was present in the shop, in possession of unauthorised 25 gas cylinders, 9 regulators, 40 caps etc. Moreover Section 102 of Cr.P.C. empowers the Police Officer to seize any property which may be alleged or suspected to have been stolen or which creates suspicion of the commission of any offence. Sub-section (1) of Section 102 is worded as under:-

Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

The wording "commission of any offence" cannot be confined to the offences under the Penal Code. In the case of *Bhimji Ramji v. Emperor* reported in AIR 1944 Nagpur 366 it was held that the words "any offence" in the corresponding Section 550 of the Old Code were wide enough to cover offences falling under the provisions of Defence of India Rules, 1939 and consequently the police had power and authority to seize the money in respect of which the accused were suspected to have committed the offence under the said Rules.

11. In this case after the information was received by PW 5 PSI Chalke, he went to the shop of the appellant along with two panchas and seized the cylinders, regulators etc. under panchanama and thereafter lodged his complaint to the Police Station (Exh. 45) as per the requirement of Sub-section (2) of Section 102 of the Cr.P.C. Thereafter he reported about the seizure to the District Magistrate by letter dated 20th August, 1988, a copy whereof is produced at Exhibit 45, in compliance with Sub-section (3) of Section 102 of Cr.P.C. In my opinion the PSI Chalke PW 5 had the power to seize the property in question in accordance with

the provisions of Section 102 of Cr.P.C. Under the said section there is no requirement for warrant from the Magistrate before a Police Officer could seize the property which creates suspicion of the commission of any offence.

12. Mr. Patil however strongly relied on the decision of the Supreme Court in the case of K.L. Subbayya Vs. State of Karnataka, and contended that the search and seizure were unauthorisedly done by the Police Officer Chalke. In my view reliance by Mr. Patil on the aforesaid decision of the Supreme Court is wholly misplaced. The Supreme Court in that case was dealing with the provisions of Mysore Excise Act, 1966, Section 53 of the said Act provides for issue of warrant by the Magistrate for the purpose of search as well as arrest of any person who is engaged in the commission of an offence under the said Excise Act. Section 54 of the said Act empowers certain officers like Excise Commissioner or a Deputy Commissioner or any Police Officer of a particular rank to exercise the power of search and seizure without warrant from the Magistrate in certain conditions so that the offender is not afforded any opportunity of escape or of concealing evidence. In that case it was found by the Supreme Court that neither there was warrant issued by the Magistrate u/s 53 of the Act nor the requirements of Section 54 were complied with by the concerned officer for exercise of power of seizure without warrant from the Magistrate. In the instant case there is no such requirement of warrant from Magistrate either u/s 102 of Cr.P.C. or under Order 7 where officers other than the Police Officers are also empowered to exercise powers of search and seizure. Only because by virtue of Sub-clause (2) of Order 7 provisions of Section 100 of the Cr.P.C. are made applicable would not make search and seizure made by Police Sub-Inspector bad as the premises searched in this case were not closed.

13. So far as the seizure of cylinders, regulators, caps etc. from the possession of the appellant is concerned, the same cannot be doubted in view of the evidence led by the prosecution. PSI Chalke PW 5 has deposed in his evidence that after receiving the information on 19-8-1988 about the stock of cylinders and regulators, he called two panchas and went to the address given in the information. The appellant was present in the shop. After he was told about the purpose of his visit, the sub-Inspector searched his shop and found 25 cylinders, 9 regulators, 40 plastic caps and rubber cord wires in the shop of the appellant. The shop was in the name of the father of the appellant. The appellant himself was present. The panchanama of seizure was made. It is Exhibit 43. Only because two panchas have turned hostile and did not support the prosecution case, the deposition of Sub-Inspector Chalke (PW 5) cannot be discarded. There is some support from the evidence of Ismail Desai (PW 3) who was the owner of a hotel in the vicinity of the appellant's shop. He deposed that towards the eastern side of his hotel there is a shop by name Ganesh Enterprises which was owned by the appellant whom he knew. He had gone to the shop of the appellant at the time of seizure and saw that police had seized cylinders, regulators from the possession of the appellant. In cross-examination he had also stated that he had seen the public taking gas cylinders from and to the shop of the appellant.

Because the witness stated in cross-examination that there is a common platform constructed in Shahu Cloth Market and the cylinders were kept on the platform, it was argued by Mr. Patil that the cylinders cannot be said to have been recovered from the possession of the appellant. In my opinion the prosecution has sufficiently proved the seizure of cylinders in question from the possession of the appellant. Panchanama (Exh. 43) states that there was one room towards the western side of the shop and when its door was opened the raiding party found cylinders, regulators and other articles in that place. As per the said panchanama there was seizure of 25 gas cylinders, 9 regulators (7 of Esso Gas Co. and 2 of Bharat Gas Co.) Besides that, there was 38 meter rubber pipe and 40 pieces of plastic caps which were seized under the said panchanama.

14. Mr. Patil then submitted that the appellant should not be made to undergo the remaining substantive sentence after a lapse of time and instead the fine amount of Rs. 1000/- awarded by the trial Court may be increased substantially. In support of this argument he cited certain decisions which, in my view, are not applicable. He placed strong reliance on the decision of a single Judge of this Court in the case of Rajendra Paleram Agarwal Vs. The State of Maharashtra, in which this Court after confirming the conviction of the accused u/s 7 of the Essential Commodities Act, reduced the substantive sentence from RI for three months to one day's simple imprisonment already undergone maintaining the sentence of fine and default sentence. The ratio of the said decision, in my opinion, will not be applicable in this case for the simple reason that the accused in that case was convicted u/s 7(1)(a)(i) under which no minimum sentence is provided and the maximum substantive sentence which may be imposed is up to one year. The learned Judge was quite aware of this and has expressly and specifically referred to it at the end of para 6 of the judgment when he stated, "The section therefore does not provide any minimum sentence for the said contravention". In the present case it is not disputed that the appellant is convicted u/s 7(1)(a)(ii) under which the minimum sentence of three months is laid down and the maximum sentence is seven years. The trial Court has awarded only the minimum prescribed sentence. It would not be out of place to mention here that earlier before the amendment of 1981, there was a proviso under which the Court had discretion to award substantive sentence less than the minimum of three months for special and adequate reasons to be given by the Court. That proviso having been deleted by amendment of 1981 the said discretion earlier vested in Court to award sentence less than the minimum is taken away and, therefore, once the conviction is recorded, there is no question of awarding sentence less than the minimum of three months imprisonment and fine which is done in this case.

15. Similarly the reliance by Mr. Patil on the decision of Orissa High Court in the case of State Vs. Dindayal Agarwala and Others, is misplaced because, as mentioned in Para 19 of the said judgment of Orissa High Court, there was power given to Court to impose lesser sentence than the minimum and, therefore, that discretion was exercised and the substantive sentence was reduced. Similar is

the position in another judgment relied on by Mr. Patil in the case of Velji Vs. State of Rajasthan, . In para 21 of the Judgment the learned single Judge of the Rajasthan High Court has observed that under the proviso the Court had discretion to impose a sentence of imprisonment for a term of less than three months by giving adequate and special reasons and, therefore, the substantive sentence was reduced to already undergone and the fine amount was enhanced.

16. Mr. Patil also relied on the decision of the Supreme Court in the case of Sopana Trimbak Wani Vs. State of Maharashtra, . That was a case under the Maharashtra Foodgrains (Export Control) Order, 1966. There was conviction for contravention of Clause 3 of the Maharashtra Foodgrains Order, 1966 punishable u/s 7 of the Essential Commodities Act. Though at that time the minimum sentence of three months was prescribed, yet under the proviso the Court had the discretion to impose lesser sentence by giving adequate and special reasons and, therefore, the Supreme Court reduced the substantive sentence to already undergone as it was found that the appellant had not made profit of more than Rs. 2300 in the transaction and therefore amount of fine was reduced to Rs. 2000.

17. Mr. Patil lastly submitted that in view of the passage of time the appellant may be released on Probation under the provisions of the probation of Offenders Act, 1958. He relied firstly on the decision of the Supreme Court in the case of Ratilal Prithviraj Bafna and Others Vs. Purshottam Krishnaji Kane and Others, . That was not a case under the Essential Commodities Act or an offence committed under any act prescribing minimum sentence. In that case some of the accused i.e. Accused Nos. 2 and 4 were released on probation but not accused Nos. 1 and 3. The Supreme Court held that there was no reason to discriminate between the accused, when they were members of the same family, for the purpose of giving benefit of provisions of the Probation of Offenders Act. He also relied on the decision of the Supreme Court in the case of Roshanali Burhanali Syed Vs. State of Gujarat, . That was also not the case under the provisions of Essential Commodities Act or any enactment laying down the minimum sentence. The only question was whether the offender above 21 years of age could be given the benefit of the provisions of the Probation of Offenders Act or not. The Supreme Court, referring to Section 4(1) of the said Act held that the said provision applies to a person above 21 years of age. Thus, the above two judgments cannot be of any assistance on the point raised by Mr. Patil for the applicability of the provisions of the Probation of Offenders Act.

18. Mr. Patil strongly relied on the decision of the single Judge of the Rajasthan High Court in the case of Budh Ram Vs. State of Rajasthan, . There the offence was committed under the provisions of Rajasthan Excise Act and the Court released the appellant by giving benefit of probation u/s 361 of Cr.P.C. although there was minimum sentence prescribed for offence for which the accused was convicted holding that the provisions of Sections 360 and 361 of Cr.P.C. do not conflict with the provisions of the Rajasthan Excise Act.

19. There is no doubt the Essential Commodities Act does not exclude the applicability of the provisions of the Probation of Offenders Act, 1958. It is also true that the Probation of Offenders Act, 1958 does not exclude from its purview the economic offences or the offences which lay down the minimum substantive sentence to be imposed. The question, therefore, is whether it would be expedient and desirable to give benefit of the provisions of the Act of 1958 to the appellant who had committed an economic or antisocial offence in contravention of the provisions of the Essential Commodities Act and the Order of 1988 and was found in possession of as many as 25 gas cylinders, 9 regulators, 38 meter rubber pipe and 40 pieces of plastic caps. The appellant has not shown as to what business he was carrying on from his shop from where large number of gas cylinders were seized. It appears that this was his only business and he was dealing in these gas cylinders unauthorisedly on large scale. There is no repentance on his part nor circumstances have been brought on record in the trial Court or in this Court which would justify the application of the provisions of the Probation of Offenders Act. That the supply of gas and gas cylinders are in shortage is common knowledge. It is for that reason that various restrictions have been imposed. The cases which were cited by Mr. Patil are the ones where accused were otherwise authorised to deal in scarce commodity but had exceeded the limit. That is not the case here. In this case the appellant was not at all authorised to deal in gas or gas cylinders.

20. Mr. Galeria has relied on certain decisions to which reference may be made hear. He has cited the judgment of a single Judge of this Court in the case of Kanhaylal Kundanmal Oswal Vs. The State of Maharashtra, where the accused was found guilty under the provisions of the Essential Commodities Act. The offence was committed as far back as on 23rd March 1983. Accused was dealing in kerosene and the only contravention was that the books showed shortage of 77 litres of kerosene and he was selling kerosene at the rate of Rs. 1.91 per litre as against the rate of 1.77 per litre fixed by the Collector of Pune. Yet while dismissing the appeal in the year 1991 the Court did not think it fit to release the accused on probation. Accused in that case was dealing in kerosene and later on had actually stopped continuing the business as a retailer. Nonetheless the provisions of the Probation of Offenders Act were not applied observing that the offence was already committed and since he was no more in the business there was no question of observing his conduct by releasing him on probation. In this case the appellant was acting unauthorisedly on large scale and, therefore, there is no question of releasing him on probation so as to observe his conduct for any given period.

21. Mr. Galeria also cited the decision of the Rajasthan High Court in the case of Badri Lal Vs. State of Rajasthan, . That was a case where the offence was committed as far back as in the year 1977 under the Essential Commodities Act. Accused was having fair price shop and the only contravention was that there was discrepancy in the stock register and the price of the levy sugar was not displayed. It was a case where the accused was a licensed dealer in the essential

commodities in the year 1977. By referring to some judgment of the Supreme Court the Rajasthan High Court had declined to apply the provisions of the Probation of Offenders Act, 1957 and confirmed both the order of conviction as well as the sentence.

22. In this connection Mr. Galeria also relied on the decision of the Division Bench of this Court in the case of Mohanlal Gokuldas v. Emperor reported in AIR 1948 Bom 358 in which the Division Bench has observed that the deterrent sentence must be imposed on economic offenders with highly anti-social character. It was further observed that it is in the interest of justice that the persons convicted of profiteering should be put down with heavy hands. That was a case arising under the Essential Supplies (Temporary Powers) Act, 1946.

23. Mr. Galeria then strongly relied on the decision of the Constitution Bench of the Supreme Court in the case of Pyrali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, . That was a case under the Prevention of Food Adulteration Act. The offence prescribed the minimum sentence of six months and fine of Rs. 1000. After referring to the earlier judgments of the Supreme Court on the point and citing the recommendations of the Law Commission's 47th Report, the Apex Court has deprecated the application of the provisions of the Probation of Offenders Act to economic offences and anti-social offences, though technically applicable. It was observed in para 20 of the judgment as follows at pages 322-323 of Cri LJ :

The kind application of the probation principle is negated by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose antisocial operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive - not easily humanised by the therapeutic probationary measure.

It is also relevant to quote the observations of the Supreme Court in para 25 of the said judgment:

Indeed, the education of the sentencing judge, particularly in the context of economic offences, is a yawning gap in our criminal system and the near-escape of the accused before the trial Court in this case, prevented only by the Criminal Revision to the High Court permits us to observe that the magistracy in the country has yet to realise that "there are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's physical protection." Or, we may add, even in less severe situations heavy enough fine to drive him out of the trade if he tried the trick again. There is injustice to the community - the invisible but immense victim of the crime in the Court's misplaced sympathy for the culprit.

24. In the instant case, as observed earlier, the appellant was dealing in gas cylinders unauthorisedly and had very conveniently disowned the possession as well as the ownership of the gas cylinders. Neither his age nor his conduct would justify his release on probation in the context of the above referred decisions of the Supreme Court. Nothing was brought on record either in the trial Court or in this Court to justify the application of the provisions of the Probation of Offenders Act. Since he was dealing in the gas cylinders absolutely unauthorisedly, there is no question of releasing him on probation and observe his conduct during the probationary period which is the object and intention underlying those provisions. There is also no question of supervising his conduct as contemplated by Sub-sections (3), (4) and (5) of Section 4 of the Probation of Offenders Act. It is such people who create further shortage of the essential commodities which deprives many registered consumers of their right to get gas cylinders in time. The registered consumers suffer because of the unauthorised dealings in gas cylinders by persons like the appellant.

25. In my view, the application of the provisions of the Probation of Offenders Act to the offences punishable with minimum sentence, though not expressly prohibited, would defeat the very object, purpose and spirit underlying the prescription of minimum sentence. There is, therefore, no question of either reducing the sentence below minimum prescribed by law or to release the appellant on probation as pleaded on behalf of the appellant.

26. For the aforesaid reasons the order of conviction and sentence recorded by the IInd Additional Sessions Judge, Kolhapur on 7-11-1992 in Special Case No. 11 of 1988 against the appellant is confirmed and the appeal is dismissed. On the application of Mr. Patil appellant is given time of four weeks to surrender to his bail.