
(2002) 04 BOM CK 0100
In the Bombay High Court
Case No : Criminal Appeal No. 30 of 1991

Narayandas Madanlal Somani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (2002) BomCR(Cri) 722 : (2002) 104 BOMLR 709

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Barde, J.—The accused appellant is convicted for the offence punishable u/s 7 read with Section 3 of the Essential Commodities Act in E.C. Act Case No. 24 of 1987 by the Special Judge, Latur. Being aggrieved by the conviction and sentence, the present appeal is filed.

2. The prosecution case is that P.S.I. Pujari of Shivaji Nagar Police Station, Latur, received information that bags of wheat, which were to be sold from the fair price shop, were stored in the adat shop of the accused Narayandas Somani. He, therefore, went to that shop along with the police and the panchas. Five bags of wheat were found in the shop and on those bags, there was the stamp of Food Corporation of India. A panchnama was prepared and the five bags of wheat were seized. The five bags of wheat with the permission of the Collector were then kept in the Government godown. He then filed F.I.R. at the Police Station. Crime No. 4 of 1987 was registered and after completion of investigation, he submitted the charge sheet before the Special Judge, Latur.

3. The Special Judge, Latur, framed charge against the two accused for offence punishable u/s 7 read with Section 3 of the Essential Commodities Act, read with Clause Nos. 4 and 6 of the Maharashtra Foodgrains Rationing (Second) Order, 1966, and also of Maharashtra Scheduled Regulation of Distribution Order, 1971.

Both the accused pleaded not guilty.

4. The learned Special Judge after recording prosecution evidence and statements of the accused came to the conclusion that the prosecution has not proved any case against accused Kumar Venkatrao Salunke, the munim working at the shop of Somani. However, he held that the prosecution has proved the case against accused Narayandas Somani, the owner of the adat shop and sentenced him to suffer R.I. for one year and to pay a fine of Rs. 500/- in default of payment of fine to suffer further R.I. for 2 months.

5. The prosecution has examined the two panchas, P.W. 1 Shivaji and P.W. 2 Shivraj, whose depositions are at Exhibits 43 and 45, and the panchnama is at Exhibit 44. Shivaji has supported the prosecution case while Shivraj has not supported the prosecution case fully. The deposition of P.S.I. P.W. 5 Pujari is at Exhibit 48 and he has proved the F.I.R. and he has also stated regarding the raiding of the shop, finding of 5 bags of wheat and that there was the stamp of Food Corporation of India on each of the bags. P.W. 4 Rangnath has stated about the unloading of the bags from one tempo belonging to the accused Somani in the shop of Somani. This is all the evidence of the prosecution.

6. P.S.I. has stated that sample of wheat was obtained from the bags and the same was sent for analysis and report. However, there is no report from the analyst that the wheat whose sample was taken was the wheat meant for being distributed through the fair price shop. The learned Counsel for the Appellant accused, therefore, has argued that the prosecution has failed to prove that the wheat contained in the bags was, the wheat to be sold from the fair price shop. When this basic ingredient is not made out by the prosecution, the conviction is not proper and legal. I find substance in this argument. It was necessary for the prosecution to prove that the wheat seized from the shop of the accused was to be sold from the fair price shop.

7. Merely the statement that the bags of wheat were having the stamp of Food Corporation of India would not be sufficient to hold that the bags contained wheat to be sold through the fair price shop. The learned Counsel for the Appellant has argued that the fair price shopkeeper is allowed to retain the gunny bags in which the foodgrains are supplied to him, after selling the foodgrains generally, these bags are sold in the open market by the fair price shopkeeper. So, the finding of the bags with the stamp of Food Corporation of India with the shopkeeper accused is not a surprising matter. It may be so, but there is no such suggestion to any of the prosecution witnesses or there is no specific stand to that effect taken before the Trial Court. However, the fact remains that the prosecution has not proved that the wheat which was seized was to be sold through the fair price shop.

8. It is worth to note that five gunny bags were not produced before the Trial Court to prove that those were the bags recovered from the shop of the accused. As per the provisions of the Essential Commodities Act, the foodgrains had to be

disposed of as per the orders of the Collector, but the bags are not to be disposed of. Those are required for necessary proof in the Trial Court against the accused for offence u/s 7 of the Essential Commodities Act. When the bags were not produced before the Court, mere statement of the witnesses that bags were seized is not sufficient. The prosecution has not established that actually the bags were seized, those bags were having the stamp of Food Corporation of India, the bags were having the seals bearing the signatures of the panchas. So, this aspect of the case is also neglected by the prosecution. In such circumstances, it has to be held that the prosecution has failed to prove that the accused committed the offence punishable u/s 7 read with Section 3 of the Essential Commodities Act.

9. Hence, the appeal is allowed. The order of conviction and sentence passed against the accused Appellant by the learned Special Judge, Latur, on 7.1.1991 in E.C. Act Case No. 24 of 1987 is set aside and the Appellant accused is acquitted of the said charge. His bail bond shall stand cancelled. Fine, if paid, be refunded to him.