

(2004) 09 SC CK 0091

In the Supreme Court Of India

Case No : Criminal Appeal No. 1011 of 2004 (Arising out of S.L.P. (Criminal) No. 1511 of 2004)

Prakash Babu Raghuvanshi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Constitution of India, 1950 — Article 162
Essential Commodities Act, 1955 — Section 2, 3, 7, 7(1)

Citation : (2004) 3 ACR 2787 : (2004) AIRSCW 5334 : (2004) CriLJ 4612 : (2004) 4 MPHT 303 : (2004) 8 SCALE 95 : (2004) 7 SCC 490 : (2004) 6 Supreme 668

Hon'ble Judges : C. K. Thakker, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : S.B. Upadhyay and Kumud Lata Das, for the Appellant; Vishwajit Singh and Vibha Datta Makhija, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. An interesting point has been raised in the appeal, which unfortunately does not appear to have been canvassed before the courts below. The appellant was convicted for allegedly committing offence in terms of Section 3 read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (in short 'the Act'). He was found guilty by the learned Sessions Judge, Vidisha in Sessions Case No. 11 of 1996. The conviction and the sentence of one years rigorous imprisonment and a fine of Rs. 2,000/-as had been imposed, came to be confirmed by a learned Single Judge of the High Court of Madhya Pradesh, Gwalior Bench by the impugned judgment.

3. Mr. S.B. Upadhyay, learned counsel appearing for the appellant submitted that for attracting Section 7 of the Act, the primary requirement is that there must be violation of an order. What the prosecution seems to have relied upon is Madhya

Pradesh Sarvajanik Purti Vitaran Scheme, 1991 (in short the 'Scheme'). According to him, the Scheme cannot be equated with an order, as required under the Act. Learned counsel for the respondent-State, on the other hand, submitted that such a plea which essentially would need factual adjudication, was not canvassed before either the Trial Court or the High Court.

4. Though there is a substance in the plea raised by learned counsel for the State, yet, for bringing an application u/s 7 of the Act, the essential requirement is an order, the violation of which is alleged. Unfortunately, neither before the Trial Court nor the High Court, any effort was made to place on record the order the violation of which was alleged. In *Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another*, , it was observed that a Scheme like the one at hand is framed under Article 162 of the Constitution of India, 1950 (in short 'the Constitution'). That being so, it was necessary for the prosecution to place on record the "order" which, according to it, was the foundation for taking action against the accused-appellant.

5. Section 7 refers to contravention of any order made u/s 3. It is essential for bringing in application of Section 7 to show that some order has been made u/s 3 and the order has been contravened. Section 3 deals with powers to control production, supply, distribution etc. of essential commodities. Exercise of such powers, can be done by "order". According to Section 2(c) "notified order" means an order notified in the official Gazette, and Section 2(cc) provides that "order" includes a direction issued thereunder.

6. In the circumstances, without expressing any opinion on the merits of the case, we remit the matter to the High Court to hear the matter afresh. The parties shall be permitted to "place materials in support of their respective stands. It Would be incumbent upon the State to file materials to show as to which "order" was violated. If the document in question is placed before the High Court, it goes without saying that the issue shall be examined with reference thereto and necessary adjudication shall be done.

7. We are told that the accused-appellant has been in custody for nearly four months. The order of bail granted by this Court shall continue till the fresh adjudication is done by the High Court.

8. We make it clear that by giving this direction, no opinion about his culpability or otherwise is expressed by us.

9. The appeal is disposed of accordingly.