

(2013) 07 CHH CK 0009
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1213 of 1996

Vidya Sagar Agrawal and Another

APPELLANT

Vs

State of M.P. (Now C.G.)

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 4 CGLJ 248

Hon'ble Judges : Radhe Shyam Sharma, J

Bench : Single Bench

Advocate : Sunil Sahu, for the Appellant; Anil S. Pandey, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against judgment dated 08-07-1996 passed by Special Judge under the Essential Commodities Act (henceforth "the Act"), Raipur in Special Case No. 8/86. By the impugned judgment, accused persons/appellants Vidya Sagar Agrawal and Shantilal Rathi have been convicted u/s 3 read with Section 7 of the Act and sentenced to undergo rigorous imprisonment for 3 months and to pay fine of Rs. 5000/- each, in default of payment of fine, to further undergo simple imprisonment for 3 months. The case of the prosecution, in brief, is as under :--

M/s. Agrawal Oil Agency had licence for selling kerosene in Bagbahra area. M/s. Agrawal Oil Agency was a partnership firm and appellant No. 1 Vidya Sagar Agrawal and co-accused (acquitted) Smt. Padma Devi were partners of the said firm. Food Inspector Bhawani Shankar Sharma (PW-6) inspected the oil agency of appellant No. 1 on 28-02-1986. The appellant No. 1 was selling the kerosene in Mahasamund area through appellant No. 2 Shantilal Rathi. Appellant No. 1 and appellant No. 2 were selling the kerosene at higher rate than prescribed and they had no licence for selling the kerosene in Mahasamund area. Therefore, the appellants violated the provision of "M.P. Kerosene (Dealers Licensing) Order, 1979".

Food Inspector Bhawani Shankar Sharma (PW-6) recorded the statement of appellant Shantilal Rathi vide Ex.-P/3 and prepared panchnama vide Ex.-P/7 on the spot and thereafter submitted a report before the Collector. Thereafter, a complaint was filed against the appellants and acquitted co-accused Smt. Padma Devi in the Court of Special Judge under the Act, Raipur, who conducted the trial and convicted and sentenced the appellants as mentioned above and acquitted co-accused Smt. Padma Devi of the charges framed against her.

2. Shri Sunil Sahu, learned counsel for the appellants argued that the Special Judge erred in holding the appellants guilty for the offence u/s 3 read with Section 7 of the Act. He further argued that appellant Shantilal Rathi was a servant of appellant No. 1 and looking to the evidence of defence witness S.K. Tiwari (DW-1, Prosecution Inspector, Food and Civil Supplies Department) and Hori Lal Sharma (D W-2, Steno-Typist, office of Sub-Divisional Officer, Mahasamund), it appears that the appellant No. 1 had permission for selling the kerosene. The prosecution has not been able to prove that the appellants violated the provision of M.P. Kerosene (Dealers Licensing) Order, 1979. The evidence of Food Inspector Bhawani Shankar Sharma (PW-6) is not reliable. The prosecution has not been able to make out any case against the appellants. Therefore, the appellants deserve to be acquitted of the charges framed against them.

3. Shri Anil S. Pandey, learned Panel Lawyer appearing for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded to the appellants do not call for any interference by this Court.

4. I have heard learned counsel for the parties and have also perused the record of Special Case No. 8/86.

5. Food Inspector Bhawani Shankar Sharma (PW-6) deposed that on 28-02-1986, he enquired about irregularities being committed by M/s. Agrawal Oil Agency, Bagbahra in Mahasamund. During the investigation, he found that appellant No. 1 was selling kerosene in Mahasamund through appellant No. 2 Shantilal Rathi without licence. He further deposed that there was a complaint against the appellants that they were selling the kerosene at higher rate than prescribed. He further deposed that the appellants had no licence for selling the kerosene in Mahasamund area. He further deposed that he recorded statement of appellant No. 2 Shantilal Rathi vide Ex.-P/3.

6. Dhanwarlal (PW-1) deposed that he had purchased 200 liters of kerosene from Vidya Sagar (appellant No. 1). Mohanlal (PW-2) deposed that the shop of Vidya Sagar (appellant No. 1) was situated at Mahasamund and he was selling the kerosene in Mahasamund area. Ratanlal (PW-3) also deposed in similar fashion.

7. In examination u/s 313 Cr.P.C., when question No. 9 was put to appellant No. 2 Shantilal Rathi, he replied that ?(I) and in answer to question No. 16 put to appellant No. 1 Vidya Sagar, he replied that he had no licence for selling the kerosene in Mahasamund. In examination u/s 313 Cr.P.C. appellant No. 2

Shantilal Rathi stated that he had shop for selling the kerosene at Mahasamund. Food Inspector Bhawani Shankar Sharma (PW-6) specifically deposed that he recorded the statement of appellant No. 2 Shantilal Rathi vide Ex.-P/3 and in Ex.-P/3 appellant No. 2 Shantilal Rathi admitted that M/s. Agrawal Oil Agency, Bagbahra had no licence for selling the kerosene in Mahasamund. He admitted all the facts in Ex.-P/3.

8. Food Inspector Bhawani Shankar Sharma (PW-6) is not a police officer and the statement recorded by the Food Inspector vide Ex.-P/3 is admissible in evidence.

9. From the above, it is established that M/s. Agrawal Oil Agency was inspected by Food Inspector Bhawani Shankar Sharma (PW-6) and the appellants were found selling the kerosene in Mahasamund area illegally without licence and appellant No. 1 Vidya Sagar had no valid licence for selling the kerosene in Mahasamund area.

10. S.K. Tiwari (DW-1) stated in his cross-examination, in para 6, that it is true that till 12-10-83, no licence had been issued to appellant Vidya Sagar for selling the kerosene in Mahasamund area. It is also true that there was no licence issued in favour of M/s. Agrawal Oil Agency for selling the kerosene in Mahasamund area. Hori Lal Sharma (DW-2) also deposed that M/s. Agrawal Oil Agency was not authorised to sell kerosene in Mahasamund area.

11. Looking to the evidence of Food Inspector Bhanwani Shankar Sharma (PW-6), S.K. Tiwari (DW-1) and Hori Lal Sharma (DW-2), it appears that the appellants had no licence for selling the kerosene in Mahasamund area.

12. The evidence of Food Inspector Bhawani Shankar Sharma (PW-6) is reliable and the same is supported by defence witnesses and it appears that the appellants were selling the kerosene in Mahasamund area without obtaining a valid licence and they did not comply with the conditions mentioned in M.P. Kerosene (Dealers Licensing) Order, 1979. The learned Special Judge, after appreciation of entire evidence available on record, rightly held the appellants guilty for the offence u/s 3 read with Section 7 of the Act. In the result, the appeal, being devoid of any merit, is liable to be and is hereby dismissed.