

2023 SCC OnLine P&H 274

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE N.S. SHEKHAWAT, J.)

Gopal ... Appellant;

Versus

State of Haryana ... Respondent.

CRA-S-870-SB-2004 (O&M)

Decided on March 28, 2023

Advocates who appeared in this case:

Mr. Nikhil Ghai, Advocate as Amicus Curiae for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

The Judgment of the Court was delivered by

N.S. SHEKHAWAT, J.:— The present appeal is directed against the impugned judgment of conviction and order of sentence dated 16.03.2004 passed by the learned Judge, Special Court, Faridabad, whereby, the present appellant was convicted of the offence under Section 7 of the Essential Commodities Act on account of contravening the provisions of the Haryana Food Article (Licensing and Price Control) Order, 1985 and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 10,000/- with default stipulation.

2. The brief facts of the case are that the prosecution was launched in the present case on the basis of a written complaint moved by the Assistant Food and Supply Officer, Palwal against Firm M/S Balaji Enterprises, Commission Agent Palwal and the present appellant/accused was the proprietor of the said firm. As per the allegations, the premises of the firm M/S Balaji Enterprises were checked by P.D. Sharma, AFSO, and Dharam Chand, Inspector, Food and Supplies Department. As per the information made available by Government of Haryana, M/S Balaji Enterprises had received 3578 quintals and 80 kilograms wheat from Food Corporation of India, Punjab, for distribution and the same is also proved from the stock register of the firm. Apart from that, this firm had also purchased 319 quintals and 66 kilograms of wheat from M/S Jindal Trading Company, Sirsa on 12.01.1997 and 13.01.1997. In this manner, this firm had received 4028 quintals and 46 kilograms of wheat from 12.01.1997 to 13.02.1997. The firm should have distributed the wheat as per the Rules of the Government as well as Haryana Food Articles (Licencing and Price Control) Order, 1985. But the firm had issued fake cash memos and even the correct address of the customers have not been mentioned on the cash memos. which is in violation of Clause 9 of the

licence granted to the said firm. The said firm had misappropriated the wheat after issuing fake bills and preparing bogus cash memos, in which, the addresses of the consumers had not been mentioned. Thus, the accused had violated the provisions of the Haryana Food Articles (Licencing and Price Control) Order, 1985 punishable under Section 7 of the Essential Commodities Act. The matter was investigated by the police and ultimately the challan was presented against the accused in the competent Court. Vide order dated 12.08.1998, the learned Special Judge, Faridabad, *prima-facie* found that the appellant/accused had violated the provisions of the Haryana Food Articles (Licencing and Price Control) Order, 1985, which is punishable under Section 7 of the Essential Commodities Act, 1955 and the notice of accusation was served upon him, to which, he pleaded not guilty and claimed trial.

3. In support of the charge, the prosecution examined 10 witnesses. PW1 Amir Singh, SI/SHO had prepared the report under Section 173 Cr. P.C. on completion of the investigation in the instant case. ASI Rohtas Singh was examined as PW2, who had recorded the formal FIR Ex.PA/1 on receipt of the complaint Ex.PA from the Food and Supplies Officer, Palwal. PW3 Amar Singh was a customer, who had taken wheat around 14/15 quintals from the appellant. The prosecution further examined PW4 Om Parkash, Clerk, in the office of DFSC, Faridabad, who brought the summoned record. As per him, licence No. FBD/FA-2468 dated 30.10.1995 was issued in the name of Gopal, accused/appellant, the proprietor of M/s Balaji Enterprises and it was exhibited as PB. The complainant P.D. Sharma, AFSSO was examined as PW5. He clearly stated that the appellant/accused had received 4028 quintals and 46 kilograms of wheat from 12.01.1997 to 13.02.1997 and the wheat was to be distributed at a fixed price to the general public in accordance with the Haryana Food Articles (Licencing and Price Control) Order, 1985. However, the accused firm, of which, the appellant proprietor, had prepared bogus cash memos and had shown false distribution of wheat. He also deposed the facts with regard to the detailed inquiry conducted by him and also with regard to the fake bills, prepared by the present accused. He further proved the contents of the complaint Ex.PA, submitted by him to the police for registration of the case. During the investigation, the police seized the bill books Ex.P1 to Ex.P3 and the stock register Ex.P4 vide memo Ex.PC. He also submitted that the appellant was the licensee of Food and Supply Department vide licence Ex.PB and also exhibited the copy of the Haryana Food Articles (Licencing and Price Control) Order, 1985 as Ex.PD. Apart from that, the prosecution examined Daulat Khan as PW6 and Dharampal as PW7, who did not support the case of the prosecution. Begh Raj son of Ram Saran was examined as PW8, who stated that on 09th February 1997, he did not purchase any wheat from the present

appellant/accused. Vide bill No. 217 dated 09.02.1997, purchase of 16 quintals and 500 grams of wheat was shown to have been made by him, however, the same was bogus and he had stated so during the investigation of the case by the police. In his cross-examination, he stated that there is no other person of the name of Begh Raj son of Ram Saran in their village. He supported the case of the prosecution. Similarly, PW9 Nathan had also supported the case of the prosecution and stated that he had not purchased any wheat from Balaji Enterprises or the appellant/accused on 09.02.1997 and 13.02.1997. He stated that the bill No. 232 dated 09.02.1997 and 321 dated 13.02.1997 for 19 and 14 quintals, respectively, of the wheat were bogus and had been wrongly issued in his name. He had not signed or thumb marked any bill. In his cross-examination, he also stated that there was no other person in the name of Nathan son of Hira Lal in their village. The prosecution examined Sanwal Singh Inspector as PW10, who had conducted the investigation and had taken the entire record in the possession and recorded the statements of all the witnesses. He stated the facts with regard to the investigation conducted by the police.

4. After the closure of the prosecution evidence, the statement of accused was recorded under Section 313 Cr. P.C. and he pleaded his false implication. No evidence was led by the prosecution in his defence.

5. Learned counsel for the appellant submitted that the learned trial Court has committed grave error in relying upon the testimony of PW10 Inspector Sanwal Singh, who had not recovered the bill books and the stock register from the accused. Still further, even no independent witness was joined at the time of recovery of the said record in the instant case and the mandate of section 100 of Cr. P.C. was not followed and the appellant was liable to be acquitted by this Court. The submissions have been opposed by the learned State counsel by contending that PW1 Inspector Sanwal Singh had recovered the record from the officials of the Food and Supplies Department, who had conducted the inquiry in the present case as per law. Still further, the case of the prosecution has been supported by PW8 Begh Raj and PW9 Nathan, who clearly deposed that the bogus bill was prepared by the accused firm/appellant. I find no force in the submissions made by the learned counsel for the appellant. In the instant case, prior to the registration of the FIR, the inquiry was conducted by the controlling department, i.e. Food and Civil Supplies Department, Haryana and the stock registers as well as bill books Ex.P1 to Ex.P4 were taken into possession by P.D. Sharma, Assistant Food and Supplies Officer, PW5 and after holding inquiry, he requested the police to lodge the FIR vide communication Ex.PA. On the basis of the said complaint Ex.PA, formal FIR Ex.PA/1 was recorded by PW2 Rohtas Singh ASI. Even, the bill

books Ex.P1 to Ex.P3 and stock register Ex.P4 were taken into possession by the police vide memo Ex.PC from PW5 P.D. Sharma, AFSO. Even, the officials of the department had no enmity with the present appellant and even he assigned no reasons for falsely implicating him in the present case. Even, PW5 P.D. Sharma was subjected to lengthy cross-examination and no reasons was suggested to him for falsely involving the present appellant in the criminal case. Still further, in the instant case two independent persons PW8 Begh Raj and PW9 Nathan had supported the case of the prosecution, who clearly stated that bogus bills were prepared by the accused in their names.

6. Learned counsel for the appellant further referred to certain minor inconsistencies appearing in the testimonies of various prosecution witnesses. However, the learned trial Court has already dealt with the same by recording detailed findings in this regard and the same are liable to be upheld. Apart from that, I have also scrutinized the trial Court record carefully and the learned trial Court has correctly recorded that the bill books Ex.P1 to Ex.P3 and stock register Ex.P4, which were duly maintained by the accused as per the terms of the licence, were taken into possession, which clearly revealed that the transactions contained in the record were not genuine in so far as the purported sale of wheat to PW8 Begh Raj and PW9 Nathan were concerned. Even, the present appellant/accused was the sole proprietor of the firm M/s Balaji Enterprises and the said fact could not be disproved by the present appellant. The learned trial Court has recorded valid and detailed reasons for convicting the present appellant and the impugned judgment dated 16.03.2004 passed by the learned Judge, Special Court, Faridabad, is upheld and affirmed.

7. However, this Court cannot lose sight of the fact that as per the notice of accusation dated 12.08.1998, the present appellant was aged 47 years on the said day. Consequently, at present the appellant/accused is about more than 71 years. Even, the FIR in the instant case was registered on 29.03.1997 and the present appellant has faced the agony of trial/appellant since the last 24 years. After taking into consideration all the facts and the circumstances of the present case, I am of the view that the ends of justice will be adequately met, if the appellant is ordered to be released on probation, in stead of awarding substantive sentence. Accordingly, upholding the conviction of the appellant for the notice framed against him, it is directed that the appellant shall be released on probation of good conduct on his furnishing personal bond in the sum of Rs. 20,000/- with a surety in the like amount to keep peace and be of good behavior for a period of one year and to receive the sentence as and when called upon to do so during period of one year. It is further made clear that the bail/surety bond to be furnished by the appellant would be without

the supervision of Probation Officer. The requisite bonds shall be furnished before the trial Court within two months from today, failing which, the appellant shall undergo the sentence imposed upon him by the learned trial Court.

8. Consequently, the appeal stands dismissed on merits with the modification on the question of sentence as indicated above.

9. The appeal stands disposed off accordingly.

10. All pending applications, if any, are disposed off, accordingly.

11. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

12. Records of the Court below be sent back.

13. In the end, I record my appreciation for Mr. Nikhil Ghai, learned Amicus Curiae, who had rendered able assistance to this Court.

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