



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 680/1998

Himmat Singh S/o Om Prakash R/o Jata Bass Mahamandir,
Jodhpur

-----Appellant

Versus

The State Of Rajasthan

-----Respondent



For Appellant(s) : Ms. Kamini Joshi
For Respondent(s) : Mr. Rajesh Bhati}
Mr. Ravindra Singh} AGA

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

Reportable

05/12/2025

1. By way of the present criminal appeal, the appellant has challenged the judgment of conviction and order of sentence dated 31.10.1998 passed by the Special Judge, Essential Commodities Act Cases, Jodhpur in Criminal Case No.12/1993 whereby he has been convicted under Section 3/7 of the Essential Commodities Act and sentenced to three months rigorous imprisonment with a fine of Rs.1,000/- and in default to further undergo three months RI.
2. A criminal prosecution was initiated against the appellant at Police Station Mahamandir on allegations of contravention of the Essential Commodities Act, alleging that the appellant was found in unauthorized possession of 38 gas regulators without a valid licence, thereby attracting offences punishable under Sections 3/7 of the said Act. The case was registered by the Station House



Officer and taken to trial before the learned Special Judge, EC Act Cases, Jodhpur.

2.1. It is pertinent to note that on identical allegations arising out of the same transaction and founded upon the very same set of evidence, a parallel case was registered against one Yatendra Kumar. Both the appellant and the said co-accused were jointly tried. During the alleged recovery, 38 regulators were stated to have been seized from the possession of the appellant, whereas only 4 regulators were allegedly recovered from Yatendra Kumar.

2.2. Upon culmination of the trial, the learned Special Judge, on an appreciation of identical evidence, acquitted the co-accused Yatendra Kumar of all charges. However, in a glaringly incongruous outcome, the appellant was convicted for the offence under Sections 3/7 of the Essential Commodities Act and sentenced to undergo rigorous imprisonment for three months along with a fine of ₹1,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2.3. Aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 31.10.1998 passed by the learned Special Judge, EC Act Cases, Jodhpur, the appellant has preferred the present revision petition before this Court under Section 397 Cr.P.C., assailing the legality, propriety, and sustainability of the impugned judgment.

3. Learned counsel for the appellant submitted that the prosecution has failed to establish that the alleged recovered articles were gas regulators or that they were in working condition, as no testing or technical verification was ever



conducted. In the absence of such proof, no offence under Sections 3/7 of the Essential Commodities Act is made out. The recovery is further vitiated by non-compliance with Section 100 Cr.P.C., absence of independent witnesses, and material contradictions in the evidence of police officials, all independent witnesses having disowned the prosecution case. The co-accused having been acquitted on identical evidence, the appellant is entitled to parity. Moreover, the alleged recovery by an incompetent authority and from an open public place renders the prosecution version wholly unreliable. Even otherwise, assuming the offence, the sentence imposed is grossly disproportionate, and the appellant, being a first-time offender with clean antecedents, deserves acquittal or, in the alternative, the benefit of probation. It is, therefore, prayed that the appeal be allowed and the impugned judgment be set aside.

4. The learned Addl. Government Advocate contends that the recovery of gas regulators from the conscious possession of the appellant stands conclusively established on the basis of consistent and credible testimony of official witnesses. The mere absence or non-support of independent witnesses does not render the recovery doubtful, as there is no legal requirement that police evidence must invariably be corroborated by independent testimony. It is further argued that any minor procedural irregularities are inconsequential and do not detract from the substantive merit of the prosecution case. The appellant is not entitled to parity with the acquitted co-accused, inasmuch as a substantially larger quantity of regulators was recovered from his



possession, clearly distinguishing his case. The sentence imposed is commensurate with the gravity of the offence, calls for no interference, and the appeal, therefore, deserves to be dismissed.

5. I have heard learned counsel and minutely perused the record and the impugned judgment; after anxious consideration of the rival submissions, this Court has re-examined the evidence in the light of the governing statutory framework.

5.1. At the very threshold, the core issue that arises for determination is whether a gas regulator can, by itself, be brought within the ambit of an "essential commodity" so as to attract the penal provisions of Sections 3 and 7 of the Essential Commodities Act. A careful and purposive interpretation of Section 2(a) of the Act makes it abundantly clear that only those commodities which are either expressly enumerated therein or notified by the Central Government by a statutory order fall within its sweep. In the present case, the prosecution has conspicuously failed to produce any notification, control order, or statutory instrument to demonstrate that gas regulators, independently and per se, have been declared essential commodities or that their possession is regulated under any control order issued under Section 3 of the Act. A gas regulator is merely an accessory or an appliance used in conjunction with liquefied petroleum gas and cannot, in the absence of a specific statutory mandate, be elevated to the status of an essential commodity. In the absence of such legislative or executive backing, the very edifice of the prosecution under the Essential Commodities Act stands denuded of legal foundation.



5.2. Even otherwise, the evidentiary substratum of the prosecution case is fraught with serious infirmities. The alleged seized articles were never subjected to any scientific or technical examination. No expert evidence has been adduced to establish that the recovered articles were, in fact, gas regulators or that they were in a serviceable and working condition. It has also come on record that defective or discarded regulators are routinely sold as scrap in open markets. When the prosecution has failed to dispel this possibility by objective testing, the alleged articles cannot be conclusively categorized as regulated commodities. In such a scenario, the insistence on possession of a licence becomes wholly misconceived.

5.3. The alleged recovery itself does not inspire confidence. The record reveals non-compliance with the mandatory procedural safeguards enshrined under Section 100 Cr.P.C. The seizure is stated to have been effected from an open public place, yet no independent witness has supported the prosecution version. On the contrary, the independent witnesses examined have unequivocally disowned the recovery proceedings. While it is settled that conviction can be founded on the testimony of official witnesses alone, such evidence must inspire implicit confidence and be free from material contradictions. In the present case, the testimonies of the police witnesses are not only uncorroborated but also suffer from inconsistencies which materially affect their reliability.



5.4. The principle of parity further fortifies the case of the appellant. The co-accused, Yatendra Kumar, who was tried jointly with the appellant on identical allegations and identical evidence, was acquitted by the trial court on the very grounds that the articles were not tested and their nature and functionality remained unproven. The distinction sought to be carved out by the prosecution on the basis of quantity recovered is of little consequence when the essential character of the alleged commodity itself remains unestablished. Once the very nature of the recovered articles is doubtful, the numerical strength thereof becomes wholly irrelevant.

5.5. Thus, cumulatively assessed, the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The conviction recorded by the learned Special Judge is vitiated by a fundamental misconception of law as well as by serious evidentiary lacunae. The impugned judgment reflects an unwarranted extension of the provisions of the Essential Commodities Act to a situation not contemplated by the statute.

6. In view of the aforesaid discussion, this Court is constrained to hold that the judgment of conviction and order of sentence dated 31.10.1998 passed by the learned Special Judge, Essential Commodities Act Cases, Jodhpur, is legally unsustainable. The present appeal is accordingly allowed. The conviction and sentence of the appellant under Sections 3/7 of the Essential Commodities Act are hereby set aside, and the appellant is acquitted of the charge. The appellant stands discharged from all



bail bonds, and any fine amount deposited shall be refunded in accordance with law.

7. Record of the case be transmitted forthwith.

(FARJAND ALI),J

28-Mamta/-

