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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 782 OF 1997

Shri Jayendra Sadarmal Talereja
aged about 37 years, residing at Gandhi Nagar
Kolhapur District Kolhapur ... Appellant

Vs.

The State of Maharashtra ... Respondent

Mr. Anand Shivaji Patil for the Appellant.
Mr. Y.M. Nakhwa, APP for the Respondent.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 16th OCTOBER 2019.

ORAL JUDGMENT :

1 The appellant herein is convicted vide judgment passed by the Special Judge, Kolhapur by judgment dated 4th November 1997 for the offence punishable under section 7 read with 3 of the Essential Commodities Act for violating sub-clause (3) of clause 6 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988, and he is sentenced to suffer R.I. for 3 months, and to pay a fine of Rs.500/- in default to suffer further R.I. for one 1 month. Hence, this appeal.



2 Such of the facts necessary for the decision of this appeal are as follows :-

On 19th April 1996 a secret information was received by Laxmipuri Police Station, Kolhapur that some shopkeepers in that area are selling bogus /duplicate gas regulators. On receipt of the said information, the Police had visited Heera General Stores and had searched the said shop. They had found certain regulators in Heera General Stores. They had then visited Geeta General Stores. The appellant was present in the shop. Upon intimation, the shop was searched in the presence of panchas and the police had seized 6 bogus gas regulators. Seizure panchanama was drawn and thereafter PW4 - Bhikaji Gokhale who was attached to Laxmipuri Police Station as head constable had lodged a report at Laxmi Puri Police Station on the basis of Crime No.60 of 1996 was registered against the appellant for the offence punishable under section 3 read with section 7 the Essential Commodities Act.

3 The case was registered as a special case. PW1 – Enayat Shaikh who has acted as a panch for search of Geeta General Stores has turned hostile at the time of trial. Similarly, PW2 – Mansing Patil has



turned hostile and has also denied the presence of the appellant in the shop at the relevant time. PW3 – Appasaheb Bhogam who had signed the panchanama at Exh.16 has also resiled from his earlier statement and has denied seizure of 6 regulators in the said shop.

4 The prosecution has relied upon the evidence of PW4 who is first informant i.e. Bhikaji Gokhale. He has deposed in consonance with the FIR lodged by him which is marked as Exh.19. He has admitted in the cross-examination that he had not obtained signature of PW1 – Enayat Shaikh on the panchanama at Exh.16.

5 PW5 – Rajesh Oonawane was attached to Laxmipuri Police Station as PSI. He has deposed before the Court the steps taken by him in the course of investigation. It is admitted that the raiding party had not taken assistance of any decoy witnesses. He has specifically admitted that he had not seized the license of Geeta General shops or the documents showing ownership of the accused over the shop. He had referred the regulators for examination to the office of Bharat Petroleum Corporation. The report was subsequently received by him indicating therein that they were genuine regulators.

6 The case of the prosecution is that even if the regulators were genuine the accused was selling them without holding a license for possession, distribution or sale. The learned counsel for the appellant submits that the prosecution has not proved the ownership of the shop and neither they have seized the license and therefore, the conviction of the accused has resulted into grave injustice.

7 The learned APP has drawn attention of this Court to Question No.6 under section 313 of the Cr.P.C. It is surprising that the accused has not only denied his presence but also his identity as Jayendra Sadarmal Talereja. Section 6(3) of the Essential Commodities Act, 1988 reads as follows :-

“6. Possession, supply or sale of liquefied petroleum gas equipments. -

(1)

(2)

(3) No person shall possess cylinders, gas cylinder valves or pressure regulators, unless he is a consumer and the same has been supplied to him by a distributor.”

8 Under section 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 (for short “the said Order of



1988”) power of entry, search and seizure is entrusted with an officer of the Department of Food and Civil Supplies of the Government, not below the rank of Inspector authorised by such Government and notified by the Central Government or any Officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying that this Order or any order made thereunder has been complied with.

9 It also contemplates that the provisions of section 100 of Cr. P.C. 1973 relating to search and seizure shall apply to search and seizure under this order. Section 7 is to be read with section 3 of the Essential Commodities Act and the said charge could be applicable only in the eventuality that the accused was a holder of valid license under the provisions of the Essential Commodities Act. Section 7 reads as under :

“7. Power of entry, search and seizure.

- (1) An Officer of the Department of Food and Civil Supplies of the Government, not below the rank of Inspector authorised by such Government and notified by the Central Government or any Officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government



or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying herself that this Order or any order made thereunder has been complied with :

- (a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be used in the contravention of this Order ;
- (b) Enter or search any place with such aid or assistance as may be necessary ;
- (c) Seize and remove, with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, along with the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this Order has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.”

10 The accused – appellant was not a license holder. Since the appellant is not a holder of valid licence under section 3 of the Essential Commodities Act, there could not be any conviction recorded under section 7 of the Essential Commodities Act. Moreover, the said Order of 1988 contemplates search and seizure by a person not below the rank of



Inspector authorised by such Government and notified by the Central Government or any Officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a State Government and notified by the Central Government with a view to ensure compliance with the provisions of this Order, for the purpose of satisfying itself that this Order or any order made thereunder has been complied with. This issue was overlooked by the learned Special Judge while framing of charge.

11 In fact, no charge should have been framed against the accused appellant for an offence punishable under section 3 of the Essential Commodities Act and therefore, no penalty could be imposed upon the appellant under section 7 of the Essential Commodities Act.

12 In view of the above, the appellant deserves to be acquitted of all the charges levelled against him. Hence, the following order :

ORDER

- (i) Appeal is allowed;
- (ii) The conviction and sentence of the appellant vide judgment dated 4th November 1997 passed by the Special Judge,



Kolhapur for the offence punishable under section 7 read with 3 of the Essential Commodities Act for violating sub-clause (3) of clause 6 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 is hereby quashed and set aside;

- (ii) Bail bond stands cancelled;
- (iii) Fees, if paid, be refunded;
- (iv) Writ be issued expeditiously;
- (v) Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)