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PRAKASH BABU RAGHUVANSHI
v.
STATE OF MADHYA PRADESH

SEPTEMBER 13, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Essential Commodities Act, 1955—Sections 2(c), 2(cc), 3 and 7—Conviction by Trial Court under Section 3 read with Section 7(1)(a)(ii)—Confirmed by High Court—On appeal—Held: Neither before Trial Court nor the High Court ‘order’ under Section 3, whose contravention was alleged was placed on record—This was essential to bring application under Section 7—Madhya Pradesh Sarvajanik Purti Vitaran Scheme, 1991.

Appellant-accused was convicted by Trial Court for an offence in terms of section 3 read with Section 7(1)(a)(ii) of the Essential Commodities Act, 1995. Conviction having been upheld by High Court, the present appeal was filed.

Appellant contended that for attracting Section 7 of the Act, the primary requirement was that there must be violation of an order. It was further contended that prosecution was for violation of Madhya Pradesh Sarvajanik Purti Vitaran Scheme, 1991, and as scheme did not amount to an ‘order’ under Section 3 of the Act, Section 7 thereof was not attracted. Respondent-state contended that this plea was not raised before the courts below and could not be allowed as it needed factual adjudication.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD :1.1. Though there is substance in the plea raised by State, yet, for bringing an application under Section 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.

[391-H; 392-A]

Madhya Pradesh Ration Vikreta Sangh Society and Ors. v. State of Madhya Pradesh and Anr., [1981] 4 SCC 535, relied on.

2. Matter is remitted to the High Court to hear it 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. [392-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1011 of 2004.

From the Judgment and Order dated 20.11.2003 of the Madhya Pradesh High Court in CrI. A. No. 455 of 1997.

S.B. Upadhyay and Ms. Kumud Lata Das for the Appellant.

Vishwajit Singh and Ms. Vibha Datta Makhija Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

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.

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.

Though there is substance in the plea raised by learned counsel for the

A State, yet, for bringing an application under Section 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 Ors. v. State of Madhya Pradesh and Anr.*, [1981] 4 SCC 535, 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.

C Section 7 refers to contravention of any order made under Section 3. It is essential for bringing in application of Section 7 to show that some order has been made under Section 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".

D According to Section 2(c) "notified order" means an order notified in the official Gazette, and Section (cc) provides that "order" includes a direction issued thereunder.

E 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 material 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.

F 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.

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

The appeal is disposed of accordingly.

V.S.S.

Appeal disposed of.