

## SUPREME COURT OF INDIA

Salekh Chand

Vs.

State of U.P.

Crl.A.Nos.121 and 122 of 1957

(S. J. Imam and J. L. Kapur, JJ.)

22.04.1959

### JUDGEMENT

#### **IMAM, J.:**

1. The Appellants Salekh Chand and Baboo Ram were convicted under S. 7 of the Essential Supplies (Temporary Powers) Act 1946, read with S. 9 of the U. P. Cement Control Order, 1953. They were sentenced to 6 months' rigorous imprisonment and a fine of Rs. 500/- each, or in default to suffer further rigorous imprisonment for 6 months. They appealed against their conviction and sentence but the Sessions Judge of Meerut dismissed the appeal, and the application in revision to the Allahabad High Court was also dismissed summarily.

2. There can be no question on the facts proved that in the month of June, 1954, the appellants sold 129 bags of cement at Rs. 9/14/- per bag to one Khazan. The only question which fell to be decided was whether the sale of these 129 bags of cement at Rs. 9/14/- per bag was beyond the controlled price of cement, and if so sold, the appellants were guilty under S. 7 of the Essential Supplies (Temporary Powers) Act, 1946. In order to ascertain whether the price of Rs. 9/14/- per bag was beyond the controlled rate of cement, there ought to have been on the record legal evidence as to what was the controlled price of a bag of cement fixed under S. 6 or S. 7 of the U. P. Cement Control Order of 1953. Neither the judgment of the Magistrate, nor that of the Sessions Judge refers to any evidence from which it could be ascertained what was the controlled price fixed under the said Order. The Magistrate referred to the evidence of Ishwar, Sahai, Supply Inspector, Meerut, to the effect that on 21-6-1954; Rohtas Brand Cement was selling at Rs. 5/8/- per bag and A. C. C. Brand was selling at the rate of Rs. 5/3/3 per bag. The Sessions Judge also refers to Ishwar Sahai's evidence as showing that the price for Rohtas Brand Cement was at Rs. 5/8/- per bag and the price of A. C. C. Brand Cement was Rs. 5/3/3 per bag. It may be mentioned at this stage that the cement sold was of the Rohtas and A. C. C. Brand. It is to be, however, noticed that in none of the judgments of the Courts below is it stated that Ishwar Sahai's evidence relates to any fixation of price by the State Government under S. 6 or by the District Magistrate under S. 7 of the Order. Section 6 states:

"No Cement Company shall charge from any purchaser in Uttar Pradesh, a price for Cement or packing of cement higher than the price fixed by the State Government from time to time and notified in the Official Gazette."

Section 7 states:

"No stockiest or other person permitted under clauses 3 and 4 shall sell cement at a price exceeding the price fixed by the District Magistrate".

We have looked into the evidence of Ishwar Sahai and find nothing therein to the effect that the price of Rs. 5/8/- per bag for Rohtas Brand Cement and Rs. 5/3/3 for A. C. C. Brand Cement, was the price fixed by the District Magistrate under S. 7 of the Order, nor do we find any evidence to the effect that any controlled price of cement was notified in the Official Gazette under S. 6. It is clear, therefore, that legal evidence as to what was the controlled price for cement on the date the appellants sold the cement to Khazan, is wanting in this case. Since there is no legal proof to that effect, it is clear that it has not been established on the evidence, as it stands that the sale of cement by the appellants was beyond the controlled price of cement fixed according to law.

3. It was urged on behalf of the State, however, that this point had not been taken in any of the courts below and that at no time had it been questioned that the controlled price of cement was other than what had been stated by Iswar Sahai. That may be so. If, however, it has to be established that the appellants sold the cement beyond the controlled price, then there must be legal proof of what that controlled price was at the time the sale took place. As in this case such evidence is lacking, it will be impossible for this Court to uphold the conviction there being no legal proof as to what was the controlled price of cement on the date of sale. In our opinion even at this stage such a point can be taken as it would be the duty of this Court to see that there was legal evidence as to what was the controlled price of cement on the date of the sale before it could say that the appellants had been rightly convicted of the offence with which they had been charged.

4. As there is no legal proof of what was the controlled price of cement on the date of the sale of the cement by the appellants, they could not be convicted of the offence with which they had been charged.

5. The appeal is accordingly allowed and the conviction and sentence passed against the appellants are set aside.

Appeal allowed.

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