

SUPREME COURT OF INDIA

Gurudeo Prasad Gupta

Vs.

State of Bihar

Crl.A.No.404 of 1999

(B. N. Agarwal and Dr. A.R. Lakshmanan JJ.)

22.04.2004

JUDGMENT

1. Heard the parties.

2. The sole appellant was convicted by the trial court under Section 7(1)(a)(ii) of the *Essential Commodities Act, 1955* (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for a period of three months which is the minimum sentence prescribed thereunder. On appeal being preferred before the Patna High Court, the conviction and sentence of the appellant have been confirmed. Hence this appeal by special leave.

3. The learned counsel appearing on behalf of the appellant, at the outset, submitted that the High Court was not justified in confirming the conviction of the appellant under Section 7(1)(a)(ii) of the Act as on the facts alleged and proved, the only offence disclosed against the appellant was under Section 7(1)(a)(i) of the Act. Section 7(1)(a)(i) of the Act lays down that if any person contravenes any order made under Section 3 he shall be punishable in case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section with imprisonment for a term which may extend to one year. Section 7(1)(a)(ii) lays down that in case there is violation of any other order issued under any other clause of sub-section (2) of Section 3 of the Act, the maximum punishment that can be awarded is seven years and minimum three months. Section 3(2)(i) confers power upon the State Government to issue an order requiring a person to maintain books of accounts and records relating to their business. It appears that the appellant is said to have violated the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 whereunder a licence is issued to a dealer and one of the terms and conditions of the licence is that a person shall be required to maintain stock register. This provision in the said Order has been made in the exercise of powers under Section 3(2)(i) of the Act and if there is any violation of the said provision, the same would make it punishable under Section 7(1)(e)(i) of the Act. In case the violation alleged is in relation to discrepancy in the entry made in the stock register vis-a-vis actual stock found on physical verification, the same is punishable under Section 7(1)(a)(i) of the Act. Thus, we are of the view that the conviction of the appellant under Section 7(1)(a)(ii) was wholly unwarranted rather as a matter of fact the appellant should have been convicted under

Section 7(1)(a)(i) of the Act whereunder no minimum sentence has been prescribed. At this juncture, learned counsel appearing on behalf of the appellant submitted that the appellant has remained in custody for a period of about two weeks, as such the sentence should be reduced to the period already undergone. In the present case, the occurrence is said to have taken place in the year 1986. In the facts and circumstances of the case, we are of the view that the ends of justice would be met in case the appellant is awarded sentence for the period already undergone.

4. Accordingly, the appeal is allowed in part, the conviction and sentence of the appellant under Section 7(1)(a)(ii) are set aside and he is convicted under Section 7(1)(a)(i) and awarded sentence for the period already undergone. The appellant who is on bail is discharged from the liability of bail bonds.