

SUPREME COURT OF INDIA

Prakash Babu Raghuvanshi

Vs.

State of Madhya Pradesh

CrI.A.No.1011 of 2004

(Arijit Pasayat and C.K.Thakker JJ.)

13.09.2004

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. 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.

3. 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 Puri 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.

4. Though there is a substance in the plea raised by learned counsel for the 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 others vs. State of Madhya Pradesh and Another*), 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.

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

6. 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 materials 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.

7. 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.

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

9. The appeal is disposed of accordingly.