

(2004) 03 JH CK 0019**Jharkhand High Court****Case No:** Criminal Appeal No. 10 of 1999 (R)

Nageshwar Prasad Poddar and
Another

APPELLANT**Vs**

State of Bihar

RESPONDENT**Date of Decision:** March 24, 2004**Acts Referred:**

- Essential Commodities Act, 1955 - Section 7

Citation: (2005) 2 JCR 621**Hon'ble Judges:** Hari Shankar Prasad, J**Bench:** Single Bench**Advocate:** A.S. Dayal, for the Appellant; APP, for the Respondent**Final Decision:** Allowed

Judgement

Hari Shankar Prasad, J.

This appeal is directed against the judgment of conviction and order of sentence dated 14.12. 1998 passed in Kotwali PS Case No. 751/91, whereby and whereunder the learned 5th Additional Judicial Commissioner-cum-Special Judge, EC Act, Ranchi, held the appellants guilty under Sections 7 of the EC Act and convicted and sentenced them to undergo RI for one year each.

2. A written complaint was lodged by Udaykant Thakur. Marketing Officer, Ranchi on the basis of which Kotwali P S Case No. 751/91 u/s 7 of the EC Act was registered against appellants and after investigation I.O. submitted charge-sheet against the appellants. According to written complaint, the case is that on 26.11.91 at 3 p.m. Udaykant Thakur, informant, who is marketing Officer. Ranchi alongwith Wakil Marandi. Supply Inspector, inspected the retail coal shop of the appellant Nageshwar Poddar situated in Jagatpal Street, Ward No. 3 Ranchi and at that time appellant Nageshwar Prasad, in whose name licence was issued, was not present but son of the appellant Balram Prasad Poddar was managing the shop bearing

licence No. 1139/84. In course of inspection informant inspected the coal stock register and demanded coal sale register and cash-memo but appellant Balram Prasad Poddar replied that those registers and cash-memo are not maintained in his shop and cash-memo of the sale of coal had been maintained upto 8.10.91 only. Cognizance in the case was taken and substance of accusation was explained. On this piece of evidence the learned Special Judge EC Act recorded the evidence of witnesses both oral and documentary and came to a finding and held the appellants guilty and convicted and sentenced them as aforesaid.

3. Two witnesses have been examined on behalf of the prosecution PW 1 is the informant and PW 2 is a manager.

4. PW 1, who is informant, has stated that he went to the shop of appellant Nageshwar Prasad Poddar, who is a licensee bearing licence No. 1139/84 but he was not present and his son told that register and other cash-memos are not maintained in his shop and these things have been maintained upto 8.10.1991. He recorded the statement of PW 2 and one more person, who levelled allegation against the shopkeeper that he used to sale coal at Rs. 40/- per mound and thus charged Rs. 14/-more than the fixed price. They also disclosed that the cash-memos are not supplied to them.

5. PW 2 is V Abraham, who is manager, ATI, Ranchi. He has stated that he used to purchase coal by sending his junior staff who paid Rs. 40/- per mound. On this piece of evidence, learned Special Judge came to a finding and held the appellants guilty and convicted and sentenced them as aforesaid.

6. While assailing the judgment, learned counsel for the appellants submitted that when the shop was inspected at that time, the appellant Nageshwar Prasad was not present and the shop was inspected without the sanction of D.C. or S.D.O. and further that PW 2 himself never purchased coal from his shop and the coal was purchased by his junior staff and, therefore he cannot be in a position to say that his junior staff actually paid Rs. 40/- or the actual price fixed by the Government and excess amount was retained by them. It was further pointed out that those junior staff has not been examined nor their names have come in the evidence of PW 2. It was also pointed out that the Supply Inspector, who was along with PW 1, has not been examined nor IO who investigated the case has been examined.

7. Considering the submissions of the learned counsel for the parties and after going through the material brought on record. I am of the view that prosecution has not been able to prove the case.

8. In the result, this appeal succeeds and is allowed and the appellants are acquitted of the charges levelled against them. They are on bail, hence they are discharged from the liability of the bail bonds.