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Cr1.A.No. 927 OF 1998
ITEM No.102

Court No.3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.927 OF 1998

SHYAM SUNDER JAIN Appellant (s)

VERSUS

STATE OF BIHAR Respondent (s)

(With office report)

Date : 27/04/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s) Mr. H.L. Agrawal, Sr. Adv.
Mr. R.K. Gupta, Adv.
Mr. K.K. Gupta, Adv.

For Respondent (s) Mr. Saket Singh, Adv.
Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

This appeal is allowed, setting aside the impugned
conviction and sentence imposed on the appellant.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER

(signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.927 OF 1998

Shyam Sunder Jain?Appellant.

Versus

State of Bihar?Respondent.

O R D E R

The appellant was charged for an offence punishable under Section 7 of the Essential Commodities Act for the alleged contravention of provision of Clause (5) of the Bihar Trade Articles (Licences Unification) Order, 1984. The trial court accepting the prosecution case convicted the appellant for the said offence and sentenced him to undergo RI for three months and to pay a fine of Rs.500/-, in default to suffer further period of one month RI. An appeal filed against

the said judgment before the High Court of Patna came to be dismissed by the impugned order, hence the appellant is before us in this appeal.

The prosecution case stated in brief is that the appellant was the proprietor of M/s. Rup Ram Jaidayal, a wholesale dealer in textile having a shop in Henri Bazar in Motihari town. He was holding a licence to deal in clothes vide Licence No.20/85 which was valid upto 31st of December, 1985. It is alleged that in December, 1985 the appellant deposited necessary renewal fee for the renewal of his licence for the period between 1986-88 but he did not file necessary application for the renewal, hence, his renewal application for licence was not granted. Still the appellant continued to deal with the commodity concerned in contravention of the terms of the said clause of the Order. It is further case of the prosecution that on 12.12.1986, PW-1, the Marketing Officer under the orders of the Collector went to the shop of the accused and seized cloth and other books of accounts and the prosecution was launched as stated above for the contravention of the above Clause (5) of the Order.

The appellant took the plea that he had a valid licence upto December, 1985 and before the expiry of the said licence he had sent the necessary renewal fee to the authorities concerned and being told that the said fee should be accompanied by an application for renewal as required under Clause (5) of the Order. He also sent an application for such renewal. He also submitted subsequently since there was no response from the renewing authority he sent a renewal application by registered post on 1st of July, 1986.

The prosecution admits that the appellant did have a licence which was valid upto 31st of December, 1985 and that he had paid the fee of further renewal for a period of three years before the expiry of his then current licence, but it does not admit the fact that he was told about the requirement of a proper renewal application or pursuant to the said direction the appellant had sent a duly filled up renewal form prior to the expiry of his licence on 31st of December, 1985 but the prosecution further accepts that on 1st of July, 1986 he had sent a renewal form. It is also on record that by an order dated 10th of November, 1987 under Case No.3/87 the Collector East Champaran who has the authority to renew the licence had renewed his licence. But the argument of the appellant that the same was done after condoning the delay in filing the renewal application is disputed by the prosecution.

The trial court accepting the prosecution case that on the date when PW-1 inspected the shop of the appellant, i.e. on 12.12.1986 there was no valid licence hence, the appellant had contravened Clause (5) of the Order, hence, has become liable for conviction under Section 7 of the Essential Commodities Act and accordingly convicted him as stated above and the appellant's appeal was dismissed by the High Court.

We have heard the learned counsel and noticed the fact that the appellant before the expiry of his licence had sent the necessary renewal fee but the said fee was not accompanied by the renewal application. It is the contention of the appellant that few days later he had sent duly filled application for renewal which was well within the time prescribed for making renewal application but this is a disputed fact. However, it is noticed that the appellant's renewal application ultimately was accepted by the concerned authorities on 10.11.1987. In this background taking into consideration the fact that the alleged offence in question had taken place on 12.12.1986 nearly 18 years from today and there is a disputed question whether actually the appellant had sent a renewal application within the time stipulated or not and the further fact of there being an actual renewal by the concerned authority on 10.11.1987 persuades us to give the benefit of doubt to the appellant. Hence this appeal is allowed, setting aside the impugned conviction and sentence imposed on the appellant.

????????..J.

(N.Santosh Hegde)

New Delhi;????????..J.

April 27, 2004.(G.P.Mathur)