

**THE HIGH COURT OF ORISSA AT CUTTACK**

**CRA No. 7 of 1995**

(An appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction passed by learned Additional Sessions Judge-cum-Special Judge, Jajpur in 2(a) CC Case No. 198 of 1984/ 6 of 1993)

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**AFR Ananda Ch. Sahu ..... Appellant**

**-Versus-**

**State of Odisha ..... Respondent**

Advocate(s) appeared in this case:

For Appellant : Mr. S. Sharma, Advocate.

For Respondent : Mr. S.N. Das,  
Addl. Standing Counsel

**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**

**27<sup>th</sup> March, 2023**

**SASHIKANTA MISHRA, J.**

The appellant challenges the judgment of conviction and sentence passed by learned Additional Sessions Judge-cum-Special Judge, Jajpur on 23.12.1994 in 2(a) CC Case No. 198 of 1984 / 6 of 1993, whereby, the appellant being convicted for the offence under Section 7 of

the Essential Commodities Act was sentenced to undergo Rigorous Imprisonment (R.I.) for a period of three months and to pay a fine of Rs.100/-, in default, to undergo R.I. for one month. Be it noted that the appeal was originally filed by two appellants, out of whom, the appellant, Paramananda Sahu having expired, the appeal against him has abated.

2. Briefly stated, the prosecution case, as per prosecution report submitted by Inspector of Supplies (Regulatory), Cuttack on 24.03.1984 is that in course of visit to the firm, i.e., M/s.Mianti Stores at Kuakhia, it was found that even though there was no record of any stock of groundnut in shell yet, on physical verification at two separate places a total stock of Qt. 40.95 Kgs of groundnuts in shell was found. Further, the said firm was found to have sold and purchased groundnuts beyond the permissible limit, but without possessing any licence. Moreover, no stock and price declaration board was exhibited either in the shop premises or in the godown. It was thus, alleged that the above amounts to contravention of Clause-3 of Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973.

In so far as the deceased appellant-Paramananda Sahu is concerned, he is said to be the husband of the two partners of the firm and actually deals with the commodities along with accused-appellant, Ananda Ch. Sahu. On such report being submitted, the court below took cognizance of the offences.

3. The plea of accused persons was of denial.

4. Prosecution examined two witnesses to prove its case, of whom, P.W.-1 is the Executive Magistrate, who was present during the inspection of the premises and P.W.-2 is the complainant. Besides, the prosecution proved eight documents. Defence on the other hand examined three witnesses.

5. After appreciating the evidence on record, the court below placed reliance on the evidence of P.Ws. 1 and 2, the confessional statement of accused- Paramananda and the seizure of groundnut to hold the accused persons guilty of the alleged offence. Both of them were therefore, convicted and sentenced as already stated hereinbefore.

6. Heard Mr. S. Sharma, learned counsel for the appellant and Mr. S.N. Das, learned Addl. Standing Counsel for the State.

7. Mr. Sharma assails the impugned judgment of conviction on two grounds, namely, (i) the trial Court could not have relied upon the confessional statement of the accused as the same is inadmissible in the eye of law and (ii) the evidence on record does not at all link the accused persons with the occurrence.

8. Per contra, Mr. S.N. Das supports the findings of the trial Court and submits that the accused persons were dealing with groundnuts as evident from the seizure of the ground nuts as well as cash memo but without licence. Therefore, their complicity is clearly proved.

9. It is in the evidence of P.W.-1 that he had recorded the statement of accused, Paramananda Sahu in his own hand, though he had himself not signed on it by oversight. The said statement is proved as Ext.3. In cross-examination, he admits that he had not given any certificate that the contents of Ext.3 were read over and explained to the accused. P.W.-2 has also stated in these lines. Now the question is, what is the evidentiary value of the so-called confessional statement marked Ext.3. A reading of the impugned judgment reveals that the trial court held that the

confessional statement was made before the Executive Magistrate (P.W.-1) and therefore, is admissible in evidence.

10. Before examining the correctness of the finding of the trial court that the confessional statement marked Exhibit 3 was admissible, it is pertinent to mention here that the said document by itself does not contain any endorsement as to who recorded it. Though the accused has signed on Exhibit 3 yet there is no endorsement that the Executive Magistrate had recorded it in his own hand. In fact, in his evidence as PW-1, the Executive Magistrate has clearly admitted that he had not signed on Exhibit 3 by oversight. Since the accused has denied of giving any confessional statement, the omission on the part of the Executive Magistrate to sign on the said statement becomes highly significant. This is thus a case where it cannot be held with certainty that P.W.-1 being the Executive Magistrate had actually recorded the so-called confessional statement marked Exhibit 3.

11. Assuming for the sake of argument that the P.W.-1 had in fact recorded Exhibit 3, the question is, was he competent to do so. Section 10-A of the Essential Commodities Act provides that every offence punishable

under the said Act shall be cognizable. Section 11 provides that no Court shall take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code or any person aggrieved or any recognised Consumer Association whether such person is a member of that Association or not. The Essential Commodities Act, 1955 does not contain any particular procedure to be followed for trial of offences under the Act. Section 4 of Cr.P.C. reads as under:

**“4. Trial of offences under the Indian Penal Code and other laws.—**(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.”

12. Since the Essential Commodities Act does not provide for any procedure for investigation, inquiry and trial of the offences punishable under it, the provisions of Cr.P.C. shall be applicable. Such being the legal position, the provisions relating to the recording of confessions as provided

under Cr.P.C. have to be looked into. Section 164 of Cr.P.C. relates to recording of confession and statements and reads as under:

**“164. Recording of confessions and statements.—***(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:*

*Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:*

*Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.*

*(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.*

*(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.*

*(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—*

*“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.*

*(Signed) A. B.  
Magistrate.”*

*(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.*

*(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, subsection (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:*

*Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement: Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.*

*(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker*



*of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.*

*(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.”*

13. The very words, ‘or under any other law for the time being in force’ implies that investigations conducted in respect of offences under Special Acts like the Essential Commodities Act shall also be governed by the provisions under Section 164 of CRPC unless a specific procedure is laid down in such Act(s).

14. Thus, it is evident that the power to record confession is vested only with Judicial Magistrate. Law is also well settled in this regard. In the case of **Asstt. CCE versus Duncan Agro Industries** reported in **(2000) 7 SCC 53** the Apex Court held that sub-section (1) of section 164 makes it clear that the power could only be exercised in course of investigation under Chapter XII of the Code. It is further well-settled that confession could be made only by one who is either an accused or suspected to be an accused of a crime. As to non-confessional statements, they cannot be recorded by a magistrate unless the concerned person was produced or sponsored by the investigating officer. Reference in this

regard may be had to the decision of the Apex Court in the case of ***Mahavir versus State***, reported in ***(2001) 7 SCC 148***.

15. It is not known as under which law PW-1 acquired power or authority to record any confession much less the confessional statement under Ext-3. In the absence of any legal sanction for such recording of confession, it must be held that the statement marked Exhibit 3 can have no admissibility in the eye of law. At best, it can be treated as an extra-judicial confession made by the accused before PW-1. But then, in the absence of any evidence that the same was given voluntarily by the accused, it loses its sanctity. In any case, the statement is projected as a confession and not a voluntary admission of guilt by the accused so as to be treated as an extra-judicial confession. This court therefore holds that the statement marked Exhibit 3 could not have been utilised by the prosecution and relied upon by the trial court in the case. The impugned order, to such extent has to be treated as bad in law.

16. As regards the other grounds urged by the appellant it is seen from the evidence of P.W.-1 that at the time of inspection of the shop nothing was found therein but

52 bags of groundnuts were found in the house of Madhab Sahoo and another 65 bags in the house of one Raghunath Behera. According to prosecution, these groundnuts belonged to the accused and were stored in the houses of the said persons but not reflected in the stock register. After scanning the evidence of P.Ws. 1 and 2 minutely, this Court is unable to find even a whisper as regards the link between the accused and the said Madhab Sahoo and Raghunath Behera. In other words, there is absolutely no material to show that the groundnuts allegedly found from the two houses belonged to the accused persons or that he was dealing with the same in any manner. Further, it has been alleged that M/s. Minati Store is a partnership firm, of which Ananda Ch. Sahu (appellant) and Sebati Sahoo and Manju Sahoo were partners. There is absolutely no material to show as to how accused Paramananda Sahu was involved in the transaction though the entire prosecution allegation is directed against him and not the partners. Only because Paramananda Sahu happened to be present at the time of inspection cannot, ipso facto lead to the conclusion that he was dealing with the articles transacted by the partnership firm. It would suffice to hold that this is a case where the prosecution case as laid

against the accused is not free from reasonable doubts. To such extent therefore, the trial Court must be held to have committed an error in holding the accused persons guilty on such scanty evidence.

17. As regards the allegation that the accused had not possessed licence nor they had exhibited the required signs on their shop/godowns, this Court finds the evidence also scanty. Prosecution has proved five entries in the sale register vide Exts. 4/1 to Ext.4/5 and of the cash memo vide Ext. 6/1 to Ext.6/4. This, according to the prosecution shows that the transaction in groundnuts was more than 30 Qts.

Clause-3 of the Orissa Pulses and Edible Oils Dealer's (Licensing) Order, 1977 provides that any person dealing with edible oil seeds including groundnut in shell of 30 quintals shall be required to obtain licence. Except for some entries in the stock register and the cash memos no concrete evidence has been adduced by the prosecution to prove that the accused persons were dealing with oil seeds beyond the permissible limit. In fact, nothing was seized from the shop premises and what was seized from two other houses was never proved to be that of the firm. Thus, the evidence in this regard is also inadequate.

18. For the foregoing reasons therefore, this Court finds that the impugned judgment of conviction and sentence passed by the trial court cannot be sustained in the eye of law.

19. Resultantly, the appeal is allowed, the impugned judgment is hereby set aside. The appellant being on bail, his bail bonds be discharged.

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**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack,**  
**The 27<sup>th</sup> March, 2023/ A.K. Rana**

