



2026:AHC:91868

AFR

Judgment Reserved on 10.4.2026

Judgment Delivered on 24.4.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1235 of 1988

Pitambar Das

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Abhishek Kumar Srivastava, Amrendra Pratap Singh, Bhupendra Nath Singh, Shivendra Kumar Singh, V.C. Katiyar
Counsel for Respondent(s) : A.G.A.

Court No. - 39

HON'BLE ABDUL SHAHID, J.

1. Heard Sri Amrendra Pratap Singh, learned counsel for the appellant, and the learned A.G.A. for the State. The record has been perused.
2. The present criminal appeal has been filed on behalf of the appellant, Pitambar Das, against the impugned judgment and order dated 20.05.1988 passed by the learned Special Judge, E.C. Act, Budaun, in Special Trial Case No. 8 of 1987 (State vs. Pitambar Das), whereby he has been convicted and sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs. 2,000/- under Sections 3/7 of the Essential Commodities Act, 1955.
3. The basic prosecution case is that the accused, Pitambar Das, was challenged by the police of Bisauli to stand trial for the offence punishable under Sections 3/7 of the Essential Commodities Act, 1955 (hereinafter referred to, for the sake of convenience, as the "Act, 1955"), on the allegation that he was storing 12 quintals of wheat for illegal purposes. This was detected during an inspection conducted by Sri S.P. Dasmana, Sub-Divisional Magistrate, Bisauli, on 30.05.1984 at the Purchasing Centre of the U.P. Food Corporation of India (hereinafter referred to as the "Purchasing Centre").
4. Learned counsel for the appellant has placed reliance on Section 3 of the Act, 1955, which reads as follows:

“3. Powers to control production, supply, distribution, etc., of essential commodities.—(1) If the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply, and distribution thereof and trade and commerce therein.”

4. Learned counsel for the appellant has vehemently submitted that the aforesaid provision is merely an enabling provision and there must be a control order in force. It is argued that only in the event of a violation of such control order can any person be arraigned as an accused. However, in the present case, the prosecution has neither referred to any control order nor provided details of any alleged violation thereof by the appellant/accused. It is further submitted that it is an admitted position that the appellant was only the in-charge of the purchasing centre and was not a licence holder; therefore, the question of violation of any control order does not arise.

5. Learned counsel for the appellant has further submitted that there is no reference to any control order or its violation either in the prosecution case or in the judgment passed by the learned trial court. He has next submitted that it is the duty of the prosecution to prove its case beyond reasonable doubt, whereas in the present case, the prosecution has miserably failed to do so.

6. Learned counsel for the appellant has also relied upon Section 7 of the Act, 1955, which provides for penalties in cases of contravention of any order made under Section 3.

7. It is contended that Section 7 is attracted only when there is a violation of a control order or any provision made under Section 3 of the Act, 1955. In the present case, no such violation has been established against the appellant/accused; therefore, the question of invoking Section 7 does not arise.

8. It has further been argued that the prosecution has failed to prove, even prima facie, that any contravention was committed by the appellant so as to attract Section 7(1)(b) of the Act, 1955. Even assuming, for the sake of argument, that any violation had occurred, no action in accordance with

Section 7(1)(b) has been demonstrated. The prosecution has neither specified any control order allegedly violated by the appellant nor produced any document to show forfeiture of the alleged excess 12 quintals of wheat said to have been recovered from the appellant for illegal purposes.

9. It is thus submitted that the impugned judgment and order are wholly illegal and unsustainable in the eyes of law, as no offence has been made out against the appellant/accused. Accordingly, the same are liable to be set aside, and the appellant/accused deserves to be acquitted.

10. Per contra, learned A.G.A. has submitted that the judgment and order passed by the learned trial court is strictly in accordance with law and does not suffer from any illegality or perversity. Therefore, the present criminal appeal is liable to be dismissed.

11. S.P. Dasmana, who deposed as P.W.-1, stated in his examination-in-chief that on 21.08.1987 he was posted as Sub-Divisional Magistrate (SDM), Bisauli, in May 1984. On 30.05.1984, in the afternoon, upon receiving complaints from farmers, he inspected the wheat procurement centre of the State Food and Essential Commodities Corporation Ltd., situated at Dahar Khakha, Bisauli, along with Shri Basant Ram Bisaria, N.T., Bisauli; Shri S.N. Srivastava, Supply Inspector; and Ashok Kumar.

12. He further deposed that as per the records, 1251 quintals of wheat ought to have been in stock; however, upon physical verification, 1263 quintals were found. Thus, 12 quintals of wheat were found in excess of the recorded stock. The inspection was conducted in the presence of the accused, Pitambar Das, who was the in-charge of the centre at that time. When questioned about the excess quantity, he failed to give any satisfactory explanation. The accused, Pitambar Das, along with the centre's accountant, Shri Kuldeep Kumar, sought time to examine the records, which was granted.

13. He further stated that on the next day, i.e., 31.05.1984, he again visited the said procurement centre; however, even on that day, after examining the relevant records, the accused could not provide any explanation for the excess quantity of wheat. In this regard, on 31.05.1984 itself, the accused wrote a statement in his presence, signed it, and handed

it over to him. He also signed the same. The handwritten and signed statement of the accused is on record and has been marked as Ex. 1.

14. He further deposed that on the same day, he also got the filled wheat bags lying in stock at the procurement centre counted, prepared a statement thereof, and obtained the signatures of the Supply Inspector, Shri M.S. Srivastava, and the accused, Pitambar Das, on it. The said document has been marked as Ex. 2. From the procurement centre, he also took into possession the following documents relating to the purchase of wheat: one stock register, one food grain bill book, food grain bill books Nos. 48 and 49, food grain bill book No. 483, ledger book No. 704, ledger book No. 710, and ledger book No. 711. The written report (tehrir) of the incident was dictated by him at the spot, reduced into writing, read over, and signed by him. The same has been marked as Ex. Ka-3.

15. He further deposed that on the same day, at about 2:30 PM, he got the case registered at Police Station Bisauli. The accused produced the recovered excess wheat and related documents at the police station. The documents were later produced before the Court in sealed cover and marked as Exhibits 1 to 6. The seized registers, ledgers, and bill books bear his signatures as well as those of other staff members and the accused.

16. He further stated that one day prior to lodging the report, he had visited the centre and had taken the stock register with him. Wheat bags are stored at the procurement centre, and their grading is determined by FCI. Rejected wheat is also kept there. At the spot, he got the total stock counted and also conducted separate counts of Grade-1 and Grade-2 wheat. He did not obtain any information from FCI regarding grading.

17. He further stated that in Material Ex. 1, it is mentioned that entries of Grade-1 wheat commence from page 30 and entries of Grade-2 wheat from page 40. His signatures appear on page 4. He stated that he had examined the entire record and signed it after verification. However, he did not sign pages 40 and 41 and admitted that those entries were neither seen nor produced before him at that time. From the above testimony, it appears that P.W.-1 did not completely and carefully inspect the entire record and appears to have acted in haste. There is no specific mention of

violation of any control order or any provision under Section 3 of the Act, 1955.

18. M.S. Srivastava, who deposed as P.W.-2, stated that he was posted as Supply Inspector, Bisauli. He deposed that on 30.05.1984, Shri S.P. Dasmana, SDM, Bisauli, inspected the wheat procurement centre in his presence, along with Shri Basant Ram Bisaria and Ashok Kumar Saxena. The accused, Pitambar Das, was present, and the inspection was conducted in his presence.

19. He stated that upon comparison of records and physical verification, 12 quintals of wheat were found in excess, for which the accused could not provide any explanation. One day's time was granted. On the next day, i.e., 31.05.1984, they again visited the centre, but the situation remained unchanged. The accused gave a written statement (Ex. Ka-1), which bears his signatures. A weighing statement (Ex. Ka-2) was also prepared. The written report (Ex. Ka-3) was prepared at the spot on the dictation of the SDM and signed by him. Relevant documents were seized and marked as Exhibits 1 to 7. In cross-examination, he admitted that no movement register was maintained and that he had not signed any document on 30.05.1984. He further admitted that he examined only the page of the register that was open and that he could not specify the grade of the alleged excess wheat. Thus, his presence at the time of inspection on 30.05.1984 becomes doubtful, which is a serious lacuna in the prosecution case. There are material contradictions between the statements of P.W.-1 and P.W.-2, particularly regarding inspection and verification.

20. P.W.-3, Ajay Pal Singh, is a formal witness who proved the check FIR (Ex. Ka-11) and General Diary entry (Ex. Ka-12). His testimony does not materially advance the prosecution case. Mere production of formal documents is not sufficient to prove the case beyond reasonable doubt.

21. P.W.-4, Prem Narain, proved the sanction for prosecution dated 04.02.1987 (Ex. Ka-13).

22. P.W.-5, Maharaj Singh, the Investigating Officer, deposed regarding the steps taken during investigation and proved the site plan (Ex. Ka-14)

and charge-sheet (Ex. Ka-15). However, in cross-examination, he admitted that he did not personally verify records from FCI, had no knowledge of grading of wheat, and verified only a limited number of bags. He also admitted that certain facts were not entered in the General Diary.

23. Thus, the investigation suffers from serious lapses. There is no clear evidence regarding the nature, grade, or illegality of the alleged excess wheat.

24. In his statement under Section 313 Cr.P.C., the accused denied all allegations.

25. In defence, the appellant examined D.W.-1 Kuldeep Kumar, D.W.-2 Raja Babu Singh, and himself as D.W.-3.

26. Learned counsel for the appellant has relied on the law laid down by the Hon'ble Supreme Court in **Nathulal vs State Of Madhya Pradesh AIR 1966 SC 43** that in the matter of the criminal proceeding mens rea is essential ingredients of criminal offence only where it is absolutely clear that implementation of the object of the statute would otherwise be defeated that mens rea may be necessary implementation be excluded from the statute.

27. Learned counsel for the appellant has further submitted that, as per Section 7 of the Essential Commodities Act, an offence under Section 3 requires mens rea as an essential ingredient. The storage of food grains, as per Section 3(2) of the Madhya Pradesh Food Grains Dealers Licensing Order, 1958, was undertaken after applying for the requisite permit. The accused was not informed about the rejection of his application, and the storage of food grains was done under a bona fide belief that it would be legal to do so. Therefore, intentional contravention of Section 7 of the Act cannot be inferred.”

28. He has vehemently relied that there was no mention of any licensing order which has been violated by the appellant. He is not a dealer. There has been mens rea it has to proved by the prosecution. The story of the prosecution is consistently contrary and not corroborative to each other.

In absence of the violation of any control order or any violation of provisions of Section 3 of the Act, no penalty could be imposed upon the appellant under Section 7 of the Act. There is also no compliance of Section 7(1)(b) of the Act.

29. Learned counsel has placed reliance on the law laid down by the Hon'ble Supreme Court in **Shambhu Dayal v. State of West Bengal (1990), reported in 1990 LawSuit (SC) 287**, wherein it has been observed that while conferring wide powers as above on the Collector, the legislature has also protected the dealer's interest by providing, that in the event, it is ultimately found that he was not guilty of contravention of any order made under section 3, he shall be paid the price realised with reasonable interest. But if the prosecution ends in a conviction, section 7(1)(b) enjoins that the property in respect of which the order was contravened 'shall be forfeited' to the Government. The language of this clause is clearly mandatory and leaves no option to the Court but to order forfeiture. This becomes clear if we read this clause in juxtaposition with clause (c) which confers a discretion on the Court to order forfeiture of any packing, covering or receptacle in which the essential commodity was found or any animal, E vehicle, vessel or any other conveyance which was used to carry the same.

30. There are serious contradictions in the story of the prosecution. The prosecution has failed to mention basic requirement of the violation of any control order or the violation of Section 3 of the Act. The prosecution has also failed to comply the provisions of Section 7(1)(b) of the Act. The appellant who was the mere In-charge of the Purchasing Centre and he is not a dealer hence the question of any violation of the control order prima-facie does not arise or come into existence. The alleged competent person who inspected the Purchasing Centre of the Food Corporation of India which is a Government Undertaking and even he fails to mention what kind of grade of the wheat was recovered in excess alleged to be 12 quintals of wheat from the wheat procurement centre, of F.C.1(Food Corporation of India) where the accused appellant was stated to be incharge. It is obligatory duty for initiation of the prosecution against any person that there must be act committed by accused in contravention of any control order or any violation of provision of Section 3 of the Act.

There is no compliance of Section 7(1)(b) of the Act,1955. Therefore, the prosecution has miserably failed to prove its case beyond reasonable doubt.

31. In view of the foregoing discussion and the law laid down, the impugned judgment and order dated 20.05.1988 is hereby set aside. The appellant is acquitted of the charges under Sections 3/7 of the Essential Commodities Act, 1955. Consequently, his bail bonds and sureties stand discharged.

32. The criminal appeal is accordingly **allowed**.

(Abdul Shahid,J.)

April 24, 2026

M. Tarik