



IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1630 of 2015

**MANOJ**

**...APPELLANT**

**VERSUS**

**STATE OF MAHARASHTRA & ANR.**

**...RESPONDENTS**

**WITH**

CRIMINAL APPEAL NO. 1631 of 2015

**PRAKASH**

**...APPELLANT**

**VERSUS**

**STATE OF MAHARASHTRA & ANR.**

**...RESPONDENTS**

**JUDGMENT**

**R. MAHADEVAN, J.**

1. The appellants herein, Manoj (A1) and Prakash (A2), who are related to each other as nephew and uncle, were tried and convicted for the offences punishable under Section 3 read with Section 7 of the Essential Commodities

Act, 1955<sup>1</sup> and were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 100/-, in default thereof to undergo further rigorous imprisonment for one month, by judgment dated 03.04.2000 passed by the Special Judge, Aurangabad<sup>2</sup> in Special Case No. 22 of 1994. Aggrieved thereby, the appellants preferred Criminal Appeal No. 166 of 2000 before the High Court of Judicature at Bombay, Bench at Aurangabad<sup>3</sup>. The High Court dismissed the appeal and affirmed the judgment of conviction and sentence passed by the trial Court. Hence, the present criminal appeals.

2. The prosecution case is that the Public Works Department<sup>4</sup> of the State Government had awarded the work of construction of a Khar passage in cement concrete along the Kannad – Bahirgaon Road, Aurangabad to Bharat Majdoor Credit Cooperative Society. After obtaining the work order, the Chairman of the said Society, Madhukar (A3) is alleged to have sublet the work to Prakash Vyenkatrao (A4). At the relevant time, Sadashiv (A5) and one more accused (A6) were working as peons in the PWD godown at Aurangabad.

3. As per the terms of the contract, the PWD was required to supply 850 bags of cement from Government quota to the contractor (A3) for execution of the work. Accordingly, the Deputy Engineer of PWD, Ramesh Jaiswal (P.W.8)

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<sup>1</sup> For short, “E.C. Act”

<sup>2</sup> Hereinafter referred to as “the trial Court”

<sup>3</sup> Hereinafter referred to as “the High Court”

<sup>4</sup> For short, “PWD”

issued the first indent for supply of 400 bags of cement in the first week of March 1994. However, according to the prosecution, the second indent of 400 bags of cement released from the PWD godown did not reach the work site.

4. It is further alleged that on 24.03.1994, P.S.I. Kadam (P.W.2) of Kranti Chowk Police Station, Aurangabad received secret information that two trucks carrying Government quota cement were stationed near Hari Masjid at Mondha, Aurangabad and that the cement bags were being unloaded at Mistri Traders with the intention of black-marketing them. Acting on the said information, P.S.I. Kadam conducted a raid and intercepted two trucks bearing registration Nos. MHF-6625 and MHB-5061 which were found parked on the road between two shops, namely, Mistri Traders and Maharashtra Agro Industries, allegedly belonging to the appellants.

5. During the raid, the appellants were allegedly found in possession of 365 bags of cement of Government quota. The remaining 25 bags of cement were allegedly recovered on 28.04.1994 from the shop of Maharashtra Agro Industries. During investigation, it was further alleged that Sadashiv (A5) had delivered the cement bags to the appellants and had received 10 bags of cement as commission.

6. P.S.I. Kadam lodged a complaint with Kranti Chowk Police Station for the offences punishable under Section 3 read with Section 7 of the E.C. Act

against the appellants and four other accused persons. Upon completion of investigation, a chargesheet was filed and the case was taken on file as Special Case No. 22 of 1994.

7. During trial, the prosecution examined 17 witnesses and relied upon oral and documentary evidence as well as material objects. Upon appreciation of the evidence on record, the trial Court convicted Accused Nos. 1, 2, 3 and 5 for the offences under Section 3 read with Section 7 of the E.C. Act and sentenced each of them to undergo rigorous imprisonment for one year and to pay a fine of Rs.100/-, in default thereof to undergo further rigorous imprisonment for one month. Accused Nos. 4 and 6 were acquitted of the charges.

8. The conviction and sentence so recorded by the trial Court were affirmed by the High Court in the appeal filed by the appellants. Consequently, the appellants have approached this Court by way of the present criminal appeals.

9. The learned senior counsel appearing for the appellants submitted that the appellants were prosecuted for offences under Sections 3 and 7 of the E.C. Act for the alleged violation of the Maharashtra Cement (Licensing and Control) Order, 1973. It was urged that Section 3(c) and (d) of the E.C. Act empowers the Central Government to regulate the production, supply, price and distribution of essential commodities by issuing appropriate orders, while Section 7 provides for penalties only in cases of contravention of such orders.

The Central Government in exercise of powers under Section 5 of the E.C. Act, delegated certain powers to the State Government in respect of commodities other than foodstuffs and fertilisers *vide* S.O. 1844 dated 18.06.1966 and S.O. 2314 dated 30.07.1966, pursuant to which, the State of Maharashtra framed the Maharashtra Cement (Licensing and Control) Order, 1973<sup>5</sup>. The said Order provided for licensing under Clauses 3, 4, 5, and 7, restriction on storage under Clause 8, and prohibition of selling or buying cement at a higher price under Clause 21.

**9.1.** The learned senior counsel contended that Clause 21 of the 1973 Order cannot operate independently and has to be read with Clause 10 of the Cement Control Order, 1967, which alone provided for fixation of wholesale and retail prices. In the present case, the prosecution has not produced any material to demonstrate what the controlled price of cement was on the relevant date. There is also no evidence of any purchase, sale or intention to sell, nor even proof of the exact quantity of cement in terms of weight alleged to have been stored.

**9.2.** It was further submitted that the delegation of powers made in 1966 stood rescinded and was replaced by fresh delegations *vide* S.O.681 dated 10.11.1974 and S.O.682 dated 30.11.1974. It was pointed out that the Cement Control Order, 1967 underwent amendment by S.O.105 dated 28.02.1982, and thereafter, by S.O. 168 dated 01.03.1989, the Central Government substantially deregulated price and distribution control of cement with effect from 01.03.1987

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<sup>5</sup> For short, “1973 Order”

by omitting the preamble (paras 1 and 1A), Clauses (d) and (e) of paragraph 2, paragraphs 3, 3A, 4, 5, 7, 8, 9, 10 and 12 and the Schedule to the Cement Control Order, 1967. Consequently, Clause 21 of the 1973 Order, which depended entirely upon Clause 10 of the Cement Control Order, 1967 for price fixation, became unenforceable. It was further submitted that by S.O. 624 dated 07.08.1990, the Central Government withdrew the powers of the State Government relating to regulation of retail cement distribution through licensing.

**9.3.** The learned senior counsel further contended that there is no evidence to establish that the cement allegedly found in the godown and shop was levy cement or part of any government quota. Without admitting the prosecution case, it was argued that the levy on cement was introduced only in 1982 under Sections 18G and 25 of the Industries (Development and Regulation) Act, 1951, and therefore issue of levy or non-levy cement would not attract the provisions of the E.C. Act unless a valid and operative order under Section 3 was shown to have been violated. Reliance was placed on Sections 78 and 81 of the Indian Evidence Act, 1872, regarding the presumption of genuineness of Gazette notifications, and on the decision of this Court in *Prakash Babu Raghuvanshi v. State of Madhya Pradesh*<sup>6</sup> to contend that a conviction under Section 7 of the E.C. Act necessarily requires proof of the existence and contravention of an

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<sup>6</sup> (2004) 7 SCC 490

operative order under Section 3. It was submitted that no such order was either in force or proved in the present case. Reliance was also placed on *Salekh Chand and another v. State of Uttar Pradesh*<sup>7</sup>. wherein this Court held that in the absence of proof of the controlled price prevailing on the date of sale, a conviction under the E.C. Act cannot be sustained.

**9.4.** It was submitted that the ratio of the aforesaid judgments squarely applies to the present case as neither was the 1973 Order shown to be operative on the relevant date nor was any controlled price of cement proved by the prosecution.

**9.5.** It was further contended that both the trial Court and the High Court failed to appreciate the admissions of P.S.I. Kadam (P.W.2) and Balaji (P.W.17) that no order under the E.C. Act relating to cement was filed along with the chargesheet. Reliance was also placed on the admission of the Store Keeper Ashruba Natha Ubale (P.W. 9) who stated that cement was freely available in the open market at the relevant time. With regard to Accused No. 2 – Prakash Jain, it was submitted that he was neither the owner nor in possession of the cement, and there is no evidence of his involvement except a vague allegation of having assisted Accused No. 1. His statement under Section 313 of the Code of Criminal Procedure, 1973 (CrPC) and the sales tax registration certificate relating to his tea shop clearly establish that he had no connection with the alleged offence, and that his conviction merely on account of relationship with Accused No. 1 is wholly unsustainable.

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<sup>7</sup> AIR 1960 SC 283

**9.6.** On the aforesaid grounds, the learned senior counsel prayed for setting aside the judgments dated 03.04.2000 passed by the trial Court and 09.10.2014 passed by the High Court and for acquittal of the appellants. In the alternative, it was submitted that Section 7 of the E.C. Act penalises only attempt or abetment and not mere preparation as held in *Malkiat Singh and another v. State of Punjab*<sup>8</sup> and that in the absence of proof of purchase or sale, mere possession of cement bags in a godown would not attract penal consequences. Even otherwise, considering the advanced age of the appellants, absence of criminal antecedents and the long lapse of time, it was prayed that the appellants be extended the benefit of the Probation of Offenders Act, 1958.

**10.** *Per contra*, the learned counsel appearing for the State of Maharashtra submitted that the High Court has rightly concluded that the possession of cement by the appellants stood duly proved on the basis of the evidence on record. It was contended that the cement supplied by the Government to Accused No. 3 for execution of Government work was diverted and sold to the appellants, and that once possession of cement in such quantity was established, the burden shifted upon the appellants to satisfactorily explain the legality of such possession.

**10.1.** It was further submitted that the appellants admittedly did not possess any valid licence for storage or sale of cement, and therefore the contravention of

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<sup>8</sup> (1969) 1 SCC 157

the statutory provisions stood established, attracting the rigours of Sections 3 and 7 of the E.C. Act. The learned counsel argued that the High Court, upon proper appreciation of the evidence, rightly held that it was incumbent upon the appellants to demonstrate either their authority to possess the cement or their right to store it.

**10.2.** The learned counsel contended that having regard to the nature of the offence and the admitted fact that the appellants had no connection whatsoever with the Government contract under which cement was supplied at concessional rates, no plausible explanation could be offered by them. It was submitted that the High Court correctly concluded that the prosecution evidence establishes that the cement was Government cement meant exclusively for public works, and that its diversion and unauthorised possession by the appellants was proved beyond reasonable doubt.

**10.3.** It was therefore submitted that the High Court was fully justified in confirming the judgment of conviction and sentence passed by the trial Court, which does not call for any interference by this Court.

**11.** We have considered the rival submissions and perused the materials available on record.

**12.** Admittedly, there was a contract for construction of a *Mori* in cement concrete on the Kannad - Bahirgaon Road, which was allotted to Accused No.3, who was the Chairman of Bharat Mazdoor Cooperative Society. According to

the prosecution, the said Society further entrusted execution of the work to Accused No 4. Accused Nos. 5 and 6 were working as Peons in the Public Works Department godown at Aurangabad.

**13.** The specific allegation against the appellants (Accused Nos. 1 and 2) is that they purchased cement at a concessional or controlled rate from Accused Nos. 3 and 4 which was meant exclusively for execution of Government work, with the intent to sell the same at a higher price and that such cement was unauthorisedly stored in their godown. On this basis, it is alleged that the appellants committed offences punishable under Section 3 read with Section 7 of the E.C. Act. The criminal proceedings initiated against them culminated in their conviction and sentence of one year rigorous imprisonment with a fine of Rs. 100/-, which was affirmed by the High Court. Therefore, the appellants are before this Court.

**14.** The principal contention urged by the learned senior counsel for the appellants is that in view of the Cement Control (Amendment) Order 1989, all restrictions on sale, purchase, possession and storage of cement stood lifted with effect from 01.03.1989. Consequently, dealing in cement did not constitute any offence on the date of the alleged incident, i.e., 24.03.1994. It was further contended that once statutory control over cement was withdrawn, there was no surviving order under Section 3 of the E.C. Act whose contravention could

attract penal consequences under Section 7, rendering the prosecution fundamentally unsustainable.

**15.** To appreciate the aforesaid submission, it is necessary to briefly notice the statutory framework governing control and regulation of cement at the relevant point of time.

**15.1.** Cement is a commodity of vital importance to economy and infrastructure development. Under the Industries (Development and Regulation) Act, 1951, cement is a “Scheduled Industry” within the meaning of Section 3(1). By notification dated 24.11.1962, cement was declared an “essential commodity” under Section 2(a) of the E.C. Act, thereby subjecting it to statutory control in public interest.

**15.2.** In exercise of powers conferred under Section 3 of the E.C. Act, the Central Government promulgated the Cement Control Order, 1967, which laid down an exhaustive framework for regulation of production, supply, distribution and pricing of cement. The object of the said Order was to ensure equitable distribution of cement at fair prices and to prevent hoarding, diversion and black-marketing, particularly during periods of scarcity.

**15.3.** In terms of Section 5 of the E.C. Act, the Central Government delegated its powers in respect of cement being a commodity other than foodstuffs to the State Governments. Pursuant thereto, the State of Maharashtra issued the 1973 Order providing for licensing, regulation of storage and sale of cement, and penal consequences under Section 7 of the E.C. Act for contravention thereof.

**15.4.** Subsequently, by S.O. 168(E) dated 01.03.1989, the Central Government substantially withdrew price and distribution control over cement and deleted several operative clauses of the Cement Control Order, 1967. The relevant notification expressly brought the said decontrol into effect from 01.03.1989.

For better appreciation, the same is reproduced below:

*“MINISTRY OF INDUSTRY AND COMPANY AFFAIRS*  
*(Department of Industrial Development)*  
**ORDER**

*New Dehi, the 1<sup>st</sup> March, 1989*

*S.O. 168E. – whereas the Central Government has decided for the removal of price and distribution control of cement with effect from the first day of March, 1989:*

*Now, therefore, in exercise of the powers conferred by sections 18G and 25 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby makes the following amendment in the Cement Control Order, 1967, namely:-*

- 1.(1) *This Order may be called the Cement Control (Amendment) Order, 1989;*
- 1.(2) *It shall come into force on the First day of March, 1989.*
2. *Paragraph 1 to the Preamble, Paragraph -1A, clauses (d) and (e) of paragraph 2, paragraph 3, 3A, 4, 5, 7, 8, 9, 10 and 12 and Schedule to the Cement Control Order, 1987, shall be omitted:*

*Provided that such deletion shall not affect –*

- (a) *the previous operation of the said paragraphs or anything duly done or suffered thereunder;*
- (b) *any right, privilege, obligation or liability acquired, accrued or incurred under the said paragraphs; or*
- (c) *any penalty, forfeiture or punishment incurred in respect of any offence committed against the said paragraphs; or*
- (d) *any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and*
- (e) *any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or*

*punishment may be imposed as if the said paragraph had not been omitted.*

*[No. 1-5|89-Cem.]  
R. K. SINHA, Jt. Secy.*

*Note: The principal order was notified vide S.O. 4590-IDRA|18G|67 dt. 23<sup>rd</sup> December 1967.”*

**15.5.** Further, by notification dated 07.08.1990, the delegation of powers to the State Government to regulate retail distribution of cement through licenses or permit was expressly rescinded. As a result, State-level licensing and regulatory controls over cement distribution also stood withdrawn. For ease of reference, the same reads as under:

**“MINISTRY OF FOOD AND CIVIL SUPPLIES**  
*(Department of Civil Supplies)*  
**ORDER**  
*New Delhi, the 7<sup>th</sup> August, 1990*

*S.O. 624(E). – In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government makes the following Order to amend Order No. S.O. 681(E) dated the 30<sup>th</sup> November 1974 issued by the erstwhile Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation), as follows: -*

*(i) that the delegation of powers under clause (d) of sub-section (2) of section 3 of the Essential Commodities Act, 1955 in so far as it relates to the regulation of retail cement distribution by licences or permits shall stand rescinded with immediate effect;*

*(ii) that all orders (hereinafter referred to as the said orders) issued by a State Government or a Union Territory Administration in exercise of the powers delegated to them by the aforesaid Order shall stand modified to the extent specified in (i) above.*

*Provided that such modification shall not affect-*

*(a) the previous operation of the said Order or anything duly done or suffered thereunder;*  
*(or)*

- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Order; or
- (c) any penalty or punishment incurred in respect of any offence committed against the said order; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid,

*And any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said Order has not been modified.*

*[F.No. 26(3)/90-ECR&E]*

*B.N. BAHADUR, Jt. Secy.”*

**16.** In the present case, the alleged offence is stated to have occurred on 24.03.1994. On that date, neither the Cement Control Order, 1967 nor the Maharashtra State licensing regime under the 1973 Order operated so as to attract penal consequences under Section 7 of the E.C. Act. Significantly, the prosecution has failed to place on record any subsisting control order, notification, or statutory restriction in force on the relevant date, violation of which could constitute an offence under Section 3 of the E.C. Act.

**17.** Therefore, the prosecution launched against the appellants under the E.C. Act was wholly misconceived. Both the trial Court and the High Court failed to examine the legal effect of decontrol and proceeded solely on an appreciation of evidence, ignoring the absence of a statutory foundation for the offence. Such an approach strikes at the root of the conviction and renders the same unsustainable in law.

18. The legal position is no longer *res integra*. In ***Kolhapur Canesugar Works Ltd. v. Union of India***<sup>9</sup>, this Court authoritatively held that where a statutory provision is unconditionally omitted without a saving clause, all proceedings founded upon such provision must lapse. The relevant observation reads as under:

*"The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision."*

19. Applying the aforesaid principle, in the absence of any subsisting statutory control or saving provision operative on the date of the alleged incident, the prosecution of the appellants under the E.C. Act is legally untenable. On this ground alone, the conviction and sentence imposed upon the appellants are liable to be set aside.

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<sup>9</sup> (2000) 2 SCC 536

**20.** In view of the foregoing conclusion, it is unnecessary for this Court to examine the remaining contentions raised on behalf of the appellants.

**21.** Before parting with the matter, we deem it appropriate to record certain observations. This case is illustrative of a prosecution founded on an incorrect appreciation of the statutory framework. The gravamen of the allegation against the appellants was unauthorised purchase, possession and storage of cement allegedly procured through Government or controlled supply channels meant exclusively for public works.

**22.** It must however be clarified that although regulatory control over cement stood rescinded at the time of the alleged offence, and the appellants could not, therefore, be prosecuted under the provisions of the Essential Commodities Act, 1955, acts such as diversion of Government-supplied cement meant for public works, dishonest retention thereof, or unauthorised dealing in such Government property may still attract penal consequences under the Indian Penal Code, depending upon the nature of the evidence led and the specific ingredients of the offences that are established.

**23.** In the present case, the prosecution examined seventeen witnesses including truck drivers, officers of the Public Works Department, and police officials forming part of the raiding party. The Courts below have concurrently recorded findings that cement earmarked for Government work and supplied at

concessional rates was diverted from the Government godown and found stored in premises connected with the appellants, without any lawful authority.

**24.** Both the trial Court and the High Court further held that the appellants failed to furnish any satisfactory explanation or documentary justification for such possession. These findings are essentially factual and are supported by the evidence on record.

**25.** Nevertheless, in the absence of any subsisting statutory order under Section 3 of the E.C. Act on the date of the alleged occurrence, a conviction under Section 7 thereof is legally impermissible. That said, this was a case where the investigating agency ought to have invoked appropriate provisions of the Indian Penal Code, having regard to the nature of the allegations and the evidence collected.

**26.** In a given case, where the facts proved disclose commission of a minor offence, the trial Court is empowered under Section 222 of the CrPC (corresponding to Section 245 of the Bharatiya Nagarik Suraksha Sanhita, 2023) to record a conviction for such minor offence even in the absence of a specific charge, provided the essential ingredients thereof are established beyond reasonable doubt and no prejudice is caused to the accused.

**27.** The prosecution, however, did not culminate in any such exercise, nor can the High Court, in an appeal against conviction under a distinct statutory offence, substitute the conviction by invoking provisions of the Indian Penal Code for the first time. The lapse, therefore, lies squarely at the door of the investigating agency.

**28.** With the above observations, the Criminal Appeals are allowed. The judgment of conviction and sentence passed by the Courts below are set aside. The bail bonds, if any, executed by the appellants shall stand cancelled and the fine amount, if paid, shall be refunded to them.

**29.** Pending application(s), if any, shall stand disposed of.

.....J.  
[B.V. NAGARATHNA]

.....J.  
[R. MAHADEVAN]

**NEW DELHI;**  
**FEBRUARY 13, 2026.**