

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

272

CRM-M-40010-2021 (O&M)

Date of decision: 08.08.2023

Rajesh Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. A.S. Khosa, Advocate for the petitioner

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY. J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.9, dated 29.01.2015, registered under Section 7 of Essential Commodities Act, 1955 and Light Diesel Oil & Kerosene Dealer Act 1978 at Police Station Sadar Hoshiarpur, District Hoshiarpur.

2. Learned counsel contends that the petitioner was running a crude oil factory and selling turpentine oil in the market. While effecting the recovery of the turpentine oil, alleged to be adulterated, no officials from the Department of Food and Supply were associated by the police. There was no report of the chemical examiner that the oil being sold by the petitioner was adulterated. No independent witness was joined at the time the recovery was effected. The police after investigating the matter, had twice filed a cancellation report, but the Magistrate without recording any reasons sent back the case for investigation merely recording the objection of Inspector Onkar Singh. He places

reliance on **Varinder Singh vs. State of Punjab**, CRM-M-10224-2015, decided on 09.10.2018.

3. Learned State counsel submits that the raid was conducted based on secret information and FIR was registered, wherein after investigation, cancellation report was prepared and presented on 20.03.2017, which was not accepted by the trial Court on the objection raised by Inspector Onkar Singh and was returned with direction for further investigation by some Gazetted officer. Thereafter, an SIT was constituted, which again recommended for presentation of the cancellation report.

4. Heard.

5. In the present case, the raid was conducted on the basis of a secret information, in which recovery of 71 drums of pitch oil from vehicle bearing PB-07-AE-4172 and 14285.2 litre of crude oil and 2539.6 litre of allegedly adulterated turpentine oil, was effected. Investigation in the case was carried out but the above was not found to be adulterated in view of the fact that the testing was not conducted, in absence of which, a cancellation report dated 20.03.2017 was submitted before the Court.

6. It would be worthwhile to make a reference to the reply dated 30.09.2022, filed by way of an affidavit of Deputy Superintendent of Police, Sub Division City, Hoshiarpur, the relevant paras thereof read thus:

“6.That it is submitted that the samples were sent to Indian Institution of Patrolling, Dehradun for examination report vide letter No.25687, dated 09-04-2015 and the report of the same was received in the Police Station on 17-04-2015 and the relevant contents of the report are as under.

"The sample quantity required for carrying out complete testing is 1.5 liters (min.). The available quantity of sample sent by you (Approx. 600 ml of each sample) is inadequate for conducting the complete testing as per prescribed specification.

In view of above, please arrange to send 1.5 liters (min.) of each sample for testing.

The cost for the testing would be Rs.25,900/- per sample + Service Tax and Education Cess @ prevailing rates which is to be paid in advance through DD in favour of Director Indian Institute of Petroleum, Dehradun.

For Pich Oil we do not have any specifications therefore cannot provide opinion.

As the Police department Hoshiarpur could not arrange Rs.25,900/- per sample, so the Indian Institute of patrolling did not provide opinion regarding the recovered pitch oil and duplicate turpentine.

7. That it is submitted that after that the SSP Hoshiarpur sent letter to District Controller Food Civil Supplies and Consumption matter Department. Hoshiarpur for examination report of recovered pitch oil and duplicate turpentine oil. On this, the District Food Civil Supply and Consumption Matter Department, Hoshiarpur gave in writing that Chief Terminal Manager of IOCL gave in writing that as per rules of corporation their lab cannot test external samples.

8. That it is submitted that during the investigation, the petitioner submitted an application No.808-SSP, dated 07-03-2016 to SSP, Hoshiarpur alleging his innocence in the present case. The said application was marked for inquiry to the predecessor of the deponent and he conducted inquiry into the matter and the examination report of samples pitch oil and duplicate turpentine oil drawn from the recovery from the petitioner could not be obtained from Indian Institution of Patroleum due to too much high cost and the District Controller Food Civil Supply and Consumption Matters Department, Hoshiarpur gave in writing that their lab cannot test external samples as per rules of Chief Terminal Manager of IOCL. Therefore, examination report of the samples of pitch oil and duplicate turpentine oil could not obtained to prove the case against the petitioner. Therefore, the SHO, P.S. Sadar, Hoshiarpur prepared cancellation report of the present case on 20.05.2016.”

7. The operative part of the cancellation report dated 20.05.2016, reads thus:

“..During investigation arrested accused Rajesh Kumar s/o Madan lal cast Bhraman r/o Rasi Vatta, Mohalla Bhadarpur and recovered 71 drums of pitch oil from his vehicle bearing no PB 07-T-4866 and recovered 14285,2 litter crude oil, pitch oil from the drums of adulterated Turpentine oil and 2539,6 litter adulterated Turpentine oil. During investigation sent a Letter no 4113-M dated 17-04-2015 for sending total 135 samples to Indian Institute Petroleum, Dehradun for testing. On receiving

that it came to know that Rs 25900 Service tax and Education access fees send in advance for per sample. That total expenses is 40 lac Rupees. During investigation accused Rajesh kumar's brother Bhupinder Kumar filled an application no. 808 S.S.P. dated 17-03-2016 for investigation. Same was investigated by SHO police/city Hoshiarpur. During investigation on the basis of bills etc produced by accused and report of district food supply controller and statements of owner of firms who purchasing material from accused, found that accused not prepared any adulterated oil and recommended cancellation report. That on 20.05.2016 cancellation report produced by SI Rajesh Kumar after received the letter no 1809 P.C dated 19.05.2016 of S.S.P. I am also satisfied with the investigation/produced cancellation report and verified by area office. So it is order to produce cancellation report along with original file before Magistrate."

8. The cancellation report dated 20.05.2016 was not accepted by the Magistrate and it was returned vide order dated 29.01.2018 directing further investigation by some Gazetted Officers, to be culminated within three months.

9. Thereafter, Senior Superintendent of Police constituted a Special Investigation Team, which conducted an investigation and recommended to submit cancellation report. The relevant para of the reply reads thus:

"11. That it is submitted that the above said special investigation team conducted investigation in the present case and found that during the investigation, the investigation officer got issued letter No.33094, dated 11-05-2015 for examination port of samples of Pitch oil and duplicate turpentine oil from Indian Institution of Oil Corporation, Jalandhar and sent to District Controller, Food Civil Supply Consumption Matters, Hoshiarpur for examination report of samples of Pitch oil and duplicate turpentine oil and the District Controller, Food Civil Supply Consumption Matters, Hoshiarpur gave in writing that as per rule and regulation of IOCL, their lab cannot test external samples vide letter No.7664-M, dated 29-05-2015. Therefore, the investigation officers was not found negligent and careless for getting examination report of samples of recovery from concerned department. Therefore, the Special Investigation Team recommended to present the cancellation report of the present FIR. The investigation report of Special Investigation Team was approved by SSP, Hoshiarpur and the SSP, Hoshiarpur directed the SHO, P.S. Sadar, Hoshiarpur to do necessary action.

12. That it is submitted that the Police of P.S. Sadar, Hoshiarpur has prepared cancellation report and sent the same for approval of the Senior Police officers. After approval of the Senior Police Officer, the cancellation report of the present case will be presented in the Ld Trial Court at Hoshiarpur.”

10. Evidently, the basis of preparing the cancellation reports was that the sample sent was inadequate as 1.5 liter was required for the purpose of testing, secondly, as per the rules of corporation, labs of IOCL cannot test external samples, thirdly, it entailed an exuberant cost of testing. Be that as it may, the fact remains that the oil recovered was not found to be adulterated, there being no testing report regarding the same.

11. Another aspect of the cancellation report that emerges is that the petitioner had produced bills and report of the District Food Supply Controller and statements of the owners of the Firm, who purchased the material from the accused and thus, found that the accused had not prepared any adulterated oil. Admittedly, no independent witness was joined at the time of alleged raid. There is nothing on record to show that there was any complaint submitted by any person that the petitioner was supplying adulterated oil.

12. In **Varinder Singh vs. State of Punjab** in CRM-M-10224-2015, decided on 09.10.2018, this Court quashed the FIR registered under Section 7 of the Essential Commodities Act and Section 420 IPC, wherein also the allegations were of selling spurious cement less in weight, however, no FSL report had been received by the prosecuting agency declaring the cement to be of inferior and spurious quality and no independent person had made a complaint against the petitioner to the police.

13. Considering the facts and circumstances of the case, there being no iota of evidence to prove the oil recovered from the petitioner was adulterated, this

Court is of the view that the continuation of the proceedings in the FIR in question against the petitioner would amount to be an abuse of process of law and thus, deserve to be dropped.

14. Resultantly, the present petition is allowed. FIR No.9, dated 29.01.2015, registered under Section 7 of Essential Commodities Act, 1955 and Light Diesel Oil & Kerosene Dealer Act 1978 at Police Station Sadar Hoshiarpur, District Hoshiarpur and consequent proceedings arising therefore, are hereby quashed.

(AMAN CHAUDHARY)
JUDGE

08.08.2023
Ankur

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No