

Court No. - 92

Case :- APPLICATION U/S 482 No. - 36789 of 2010

Applicant :- Devi Dayal And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Gauri Shankar, Krishna Dev Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Krishna Dev Mishra, learned counsel for the applicants and Sri Prem Prakash Tiwari, learned AGA for the State and perused the records.

2. The instant application has been filed seeking quashing of the entire proceedings of Criminal Case No. 421 of 2008, State v. Devi Dayal and Another, under Section 3/7 of the Essential Commodities Act, pending before the Additional Chief Judicial Magistrate, Court No.2, Allahabad, arising out of Case Crime No. 44 of 2006, Police Station Koraon, District Allahabad.

3. Learned counsel for the applicants submits that applicant was the owner of the fair price shop. He got the eight drums of kerosene oil for his fair price shop, which were to be carried from Tehsil Koraon to village Bhogan. Since the vehicle, in which it has to carry the kerosene oil, could carry seven drums only of kerosene oil and one drum of kerosene oil is left to carry itself with a direction to the driver of the said vehicle to bring the same on the next day. Next day, the said driver pick up were booked somewhere else. The driver could not bring the said drum, therefore, the applicant No.1 asked his assistance of one Nathu Ram to bring the drum of the kerosene oil from Koraon. Since no vehicle was available and the fair price shop's owner of other village Bhogan was bringing his kerosene oil on the tractor, the assistant of applicant no.2, who is the assistant of applicant No.1, loaded the said drum and left at Koraon from the tractor of Sri Virendra Kumar Singh, who carried the said drum to the village Tudiari itself and was kept in front of the said fair price shop of village Bhogan.

4. When the village Pradhan Sri Daya Shankar Mishra made a complaint, on which the opposite Party No.2 herein lodged the FIR against the applicant on apprehension of misappropriation of black marketing of the said kerosene oil, whereas the said drum of kerosene was sealed and intact and no kerosene was sold to anybody from there. On such complaint being made,

initially the license of fair price shop of the applicant No.1 was suspended and an enquiry was conducted. Upon enquiry, it was found that there was no intention on the part of the applicant No.1 to misappropriate the said kerosene oil in the black market. During the enquiry conducted by the Sub Divisional Magistrate, Koraon, the complainant village Pradhan Daya Shankar Mishra has also admitted that he has complained doubting the said kerosene oil was being misappropriated in a hurried manner without verifying the fact. After verification of the fact, he had come to know the said drum of kerosene could not be brought in the pick up vehicle, otherwise it was brought by the vehicle which had carried out the kerosene oil of the fair price shop owner of the village Bhogan. After due enquiry, by an order dated 25.09.2006, the Sub Divisional Magistrate found the complaint false and the applicant No.1 was found innocent, therefore, his licence was restored.

5. Learned counsel further submits that since after due enquiry, applicant No.1, who has been found innocent in the entire incident and there was no allegation of any actual black marketing, therefore, he has prayed for the quashing the entire proceedings initiated against him.

6. Learned AGA, on the other hand, submits that during the investigation, the complainant as well as Pradhan Daya Shankar Mishra, who has initially complained with the Naib Tehsildar, has admitted that the said drum of kerosene was brought by loading the same on the tractor of the fair price shop owner of the village Bhogan. However, he has made allegations that there was intention of black marketing. The complainant has apprehended that the said drum was unloaded at village Bhogan with intention to black market the same.

7. Having heard the rival submissions made by the learned counsel for the parties, this court have carefully perused the records of the case and from the records of the case, it is apparent that the applicant No.1 has brought the seven drums of kerosene oil on a pick up vehicle from the Tehsil Koraon. Eight drums were allotted and since only seven drums of kerosene oil could be brought in a pick up vehicle, therefore, one drum of vehicle was left at Koraon itself. On the next date when the other fair price shop owner of the village Bhogan went to bring his kerosene oil, the said left out drum of kerosene oil was loaded on his tractor, which was unloaded at his fair price shop and was kept for bringing it to the village Tudiari by the assistant of the applicant no.2. Since no vehicle was available, the same could not be brought and in the mean while the aforesaid complaint was lodged against him, applicant herein, and on the basis of the aforesaid complaint, the licence of the

applicant was suspended and after due enquiry and having found that the applicant have must be innocent and there was no intention of black marketing the said kerosene oil and his licence was restored.

8. On the aforesaid facts and circumstances of the case, it is apparent that there was no intention of any black marketing by the applicant herein and the aforesaid complaint was filed by the complainant only on the basis of apprehension, which is not reflected and in the enquiry conducted by the Sub Divisional Magistrate, the applicant has been found innocent.

9. In view thereof, the instant application deserves to be allowed and is hereby **allowed**. The entire proceedings of Criminal Case No. 421 of 2008, State v. Devi Dayal and Another, under Section 3/7 of the Essential Commodities Act, pending before the Additional Chief Judicial Magistrate, Court No.2, Allahabad, are hereby quashed.

10. All pending applications stand disposed of.

Order Date :- 30.11.2023

Akram