

Court No. - 86

Case :- CRIMINAL REVISION No. - 5118 of 2023

Revisionist :- Vineet Goyal

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Priyavrat Tripathi, Virendra Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the revisionist and learned A.G.A. for the State-respondent and perused the material available on record.
2. The instant Criminal Revision has been preferred against the confiscation order dated 10.07.2023 passed by learned Additional District Magistrate (F& R), Muzaffar Nagar in Case No. 01 of 2023, under Section 6Ka of Essential Commodities Act, 1955 as well as appellate judgment and order passed by learned Additional Session Judge Court, No.4, Muzaffar Nagar in Criminal Appeal No.53 of 2023. Whereby the appeal preferred against the impugned order passed by ADM (F&R) has been partially dismissed. The revisionist has prayer for setting aside orders of both the courts below.
3. Learned ADM (F&R) by impugned order dated 10.07.2023 directed confiscation of 66 commercial gas cylinders (weight 19 kg each) and six domestic gas cylinders (weight 14.2kg) each which were filled and one regulator in favour of State Government. A copy of order has been directed to be transmitted to DSO, Muzaffar Nagar with instructions that the gas cylinders be disposed of as per rules and the sale proceeds be deposited in criminal head and original challan be submitted with compliance report. In the event of gas cylinders being emptied, they shall be released in favour of concerned company.
4. The impugned order was assailed by the revisionists before the court of session which was decided by the impugned order dated 02.09.2023 and the appellate court dismissed the criminal appeal in respect of sixty six commercial gas cylinders, but allowed the criminal appeal in respect six domestic gas cylinders and one regulator and a direction was issued to the court below that six domestic gas cylinders and one regulator be entrusted to respective connection holder after taking appropriate security. The impugned

order passed by ADM (F&R) has been affirmed in respect of 66 commercial gas cylinders.

5. Learned counsel for the revisionists submitted that revisionist is Manager of M/s of Hanumant Bharat Gas and he is agent of LPG distributor of Commercial (exclusively non-domestic) at location Muzaffar Nagar, District Muzaffar Nagar by B.P.C.L. on 27.08.2020. No complaint was raised against the revisionist after allotment of Gas agency, due to death of family member of truck driver the said gas cylinder was stored at the house of the revisionist instead of godown on the date of incident dated 3.06.2022, on which an inspection was made by DSO alongwith other officers of Food and Civil Supply and police personnel as well. Due to leakage of cylinder the wife of revisionist had taken it seriously and some one informed the DSO on 3.06.2022 and he reached with his team at the house of the revisionist and an inquiry was made and stock was found correct. However, recovery memo was subsequently prepared and the said cylinders were seized. The DSO has taken statement of the revisionist and submitted an inquiry report on 08.06.2022. No instrument of refilling was recovered from the place of recovery.

6. Subsequently on the report of District Supply Officer Muzaffar Nagar, FIR was lodged on 09.06.2022 under Section 386, 386 IPC and Section 3/7 EC Act, at P.S. Nai Mandi, Muzaffar Nagar vide Case Crime No.285 of 2022 after three days of the incident against the revisionists, a case was also registered under Section 6 Kha of EC Act, 1954 before the respondent No.3, thereafter notice was issued to the revisionist to file reply, and the revisionists filed reply consequent upon notice on 01.06.2023.

7. The brother-in-law, wife and father-in-law of the revisionist had filed application with affidavit before the respondent No.3 for release of domestic cylinder. However, respondent No.3 vide order dated 10.07.2023 passed an order in which he directed the DSO to dispose of the gas cylinders and one regulator in accordance with law.

8. The revisionists filed Criminal Appeal before the Competent Court against order dated 10.07.2023, which was partially dismissed with similar findings as recorded by respondent No.2 with only modification that the impugned order was quashed to the extent of six domestic gas cylinders and one regulator.

9. He next submitted that the FIR in the case was lodged after three days of the incident which suggests that initially nothing

serious was found against the revisionist and FIR is product of after thought. Inasmuch as the FIR is prompted by village partybandi. The order passed by learned ADM is against settled principles of law. The appellate court has also not considered the points raised by the revisionists in appeal against the impugned order. Commercial gas cylinders do not come within purview of control order as no subsidy is provided on these cylinders. These are not covered within net of Public Distribution System.

10. He further submitted that the charge levelled against the revisionists that he was engaged in refilling the gas cylinders in illegal manner in his house is without any substance. In fact, no fire broke out in the house of the revisionist, only leakage of gas was reported at the instance of wife of the revisionist.

11. Learned counsel for the revisionist placed reliance on on a judgment of this Court in Criminal Revision No.2493 of 2022 (Raj Kumar Vs. State of U.P. and another), wherein this Court placed reliance on a judgment of Hon'ble Supreme Court in **Sunder Bhai Ambalal Desai Vs. State of Gujarat 2003 (46) A.C.C. 223 and in Shyam Singh Kushwaha Vs. State of U.P. and another 2012 (77) ACC 381** set-aside the judgment of District Magistrate, Etah and appellate judgment of Special Judge EC Act, Etah in similar case and revisionist was granted liberty to file appropriate application alongwith relevant documents showing the ownership of 22 gas filled and 14 vacant cooking gas cylinders in question, and if such an application is filed within fifteen days the same shall be considered and disposed of in accordance with law.

12. Per contra, learned A.G.A. vehemently opposed the prayer for release of 66 Commercial Gas Cylinders made in present criminal revision and has drawn attention of this Court on report of Supply Inspector City Area Muzaffar Nagar dated 08.06.2022, wherein he stated that the act of Vineet Goyal was in violation of Liquefied Petroleum Gas (Supply and Distribution Regulations) Order 2000 (Section 4) (1)(a) as well as Section 3/7 of EC Act. The gas cylinders were seized from the house of Sandhya Goyal wife of Vineet Goyal , seals of some commercial and domestic gas cylinders were found open and no satisfactory explanation could be given by the revisionist in this regard. A number of irregularities were found by inspecting team in respect of manner, mode, place of storage of cylinders in question and also state of cylinders.

13. He further submitted that it appears that the revisionist had removed the refiller prior to arrival of inspection team. On

inspection it was found that Vineet Goyal had stored 66 commercial gas cylinders and 6 domestic gas cylinders which were also refilled at his house contrary to law, with intention to derive unlawful gain.

14. On perusal of record and impugned judgments passed by learned Additional District Magistrate (F& R), Saharanpur dated 10.07.2023 and that of judgment dated 02.09.2023 passed by Learned Additional Session Judge, Court No.4, Muzaffar Nagar it appears that revisionist has taken a stand that he is an authorized distributor of Gas Cylinders. He has stated that he has obtained license for that from Ministry of Commerce Petroleum and Security Organizations, Government of India on 11.08.2020. He is having agency of distribution of Commercial Gas Cylinders, he has taken a ground that 66 gas cylinders in question were being transported in Mahindra Tempo driven by his driver Mustaqueem from taking them back to godown. The value of gas in those 66 cylinders was only Rs.77,022/-. The DSO has wrongly stated in his report that the total value of seized property was Rs.2,84,880/-. The revisionist has also taken ground that on account of sudden illness of driver Mustaqueem, latter unloaded the cylinders at the residence of the revisionist and prior to their further transportation from home to godown the inspecting team arrived and inspected his house and seized the cylinders levelling false allegations against him.

15. The above grounds does not inspire confidence. The domestic gas cylinders have already been directed to be released by orders of appellate court in Criminal Appeal No.53 of 2023. There is serious allegation against revisionist is that he had stored 66 gas cylinders in unauthorized and unsafe manner and refilling was being done from those cylinders which could have caused some unpleasant incident. In chargesheet it is stated that apart from three domestic gas cylinders the seal of all other commercial and domestic gas cylinders were found open, on which no satisfactory explanation was given by the accused Vineet Goyal from whose residence recovery was effected. The domestic gas cylinders seized alongwith the commercial gas cylinders in question are already directed to be released in present case by Special Judge (E.C. Act) in appellate judgement.

16. The revisionist has stated himself as Manager of M/s Hanumant Bharat Gas and distributor of commercial LPG gas cylinders, but cylinders were recovered from his house in huge quantity without proper justification. The company which is manufacturer of the cylinders can only be termed as their owner,

and finding of learned appellate court in this regard is in accordance with law.

17. The learned ADM (F& R) has directed in the impugned order dated 10.07.2023 that filled up gas cylinders be disposed of and sale proceeds be deposited in government head, through chalan and in case of the cylinders being vacant, same be released in favour of the concerned company. This order has been affirmed by lower appellate court i.e. court of learned Additional Session Judge. I find no proper ground or justification in causing interference in concurrent finding of facts recorded by both the courts below. The impugned orders are well reasoned, speaking and proper.

18. The revision is devoid of merit and deserves to be dismissed.

19. The revision is **dismissed**.

Order Date :- 19.11.2024

Ashish/-