

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

**CRM-M-12524-2012 (O&M)**

**Date of Decision: August 27, 2015**

**Rajinder Kumar**

..Petitioner(s)  
)

**Versus**

**State of Punjab**

...Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

Present: Mr. P.S. Ahluwalia, Advocate  
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

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**ANITA CHAUDHRY, J.**

The instant petition had been filed under Section 482 Cr.P.C. which seeks quashing of FIR No.262 dated 11.11.2011, registered under Sections 420 IPC and Section 7 of the Essential Commodities Act, at Police Station Kotwali Patiala.

SI Gurpartap Singh along with his fellow officials were on patrol duty. While patrolling, they found that two iron drums were lying outside the shop of Rajinder Kumar. After removing the covers, it was found that it contained kerosene oil. On inquiry, Sohan Lal, brother of Rajinder Kumar

disclosed that the drums belonged to his brother Rajinder Kumar but as his son had met with an accident, Rajinder Kumar had taken his son to Chandigarh for treatment and on return he would submit the papers on 11.11.2011. Both the drums were sealed and were taken into police possession and deposited with MHC Ram Sarup. A DDR entry was made in the records. Rajinder Kumar failed to submit the papers and was challaned. After completion of investigation, the police had filed the challan under Section 420 IPC and Section 7 of the Essential Commodities Act.

Faced with this, the petitioner has approached this Court and seeks quashing of the FIR by invoking the provisions contained in Section 482 Cr.P.C.

The case set up by the petitioner is that mere possession of kerosene was not an offence and in this case the search and the seizure was not in accordance with the provisions of the Essential Commodities Act and the police was not competent to seize the kerosene nor they could have filed the challan against the petitioner.

The respondent-State have refuted the prayer and have filed their reply inter alia taking the plea that the challan had been presented and the matter was subjudice. The prosecution claimed that the petitioner had no license to store kerosene oil and he had been granted ample opportunity to produce the documents and he was selling kerosene at higher rates than the market rate, without a valid license. It was

pleaded that the officials of the Food and Supply Department were also joined in the investigation and samples were drawn.

The case was registered against the petitioner on the ground that two drums of kerosene oil had been kept for illegal sale which were recovered from outside his shop and the petitioner did not have the license. It would be relevant to refer to Clause 9 of the Order which is said to have been violated:-

**"9. Power of entry, search and seizure--** (a) *An officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorized by such Government and notified by the Central Government or any officer authorized and notified by the Central Government, or any officer not below the rank of Sales Officer of a Government Oil Company authorized by the Government and notified by the Central government, may, with a view to ensuring compliance with the provisions of this Order, with such assistance as may be required, for the purpose of satisfying himself that this order or any order made thereunder has been complied with:*

*(i) xxx xxx xxx.*

*(ii) enter or search any place with such aid or assistance, as may be necessary; and*

*(iii) seize and remove with such aid or assistance, as may be necessary, books registers and other records pertaining to kerosene business, along with vehicle, vessel or any other conveyance used for carrying such stock, if he has reason to believe that any provision of this Order has been or is being or is about to be contravened and thereafter take or authorize the taking of all measures necessary for securing the production of the kerosene at the Office of the Government Oil Company and the vehicle, vessel or other conveyance so seized before the Collector having jurisdiction under the provisions of the Essential Commodities Act, 1955 (10 of 1955), for their safe custody pending such procedures.*

*(b) The provisions of Sec.100 of the Code Criminal Procedure, 1973 [2 of 1974] relating to search and seizure shall, so far as may be,*

*apply to searches and seizures under this Order."*

Not only that, Clause 3(2) provides that "no dealer appointed under the public distribution system or a transporter shall sell, distribute or supply kerosene under the public distribution system to any person other than the person to whom the supplies are meant for".

Likewise, clause 4(1)(c) postulates that "no dealer having stock of kerosene supplied under the public distribution system at the business premises, including the place of storage, shall sell, distribute or supply kerosene at a price higher than that fixed by the Government or Government Oil Company." The word "dealer" has been defined under clause 2(c), to mean a person, firm, association of persons, company, institution, organization or a co-operative society approved by Government or company or State or Central Government or a parallel marketeer and engaged in the business of buying and selling kerosene. Likewise, according to clause 2(j), "public distribution system" means the system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government.

A conjoint and meaningful reading of these provisions would reveal that only an officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector, authorized by the State Government,

was competent and police officer did not have the jurisdiction/power to enter, search any place or vehicle or seize any article under the Act. Moreover, it was for the prosecution to prove that the petitioner was actually a dealer and the kerosene was supplied to him under the public distribution system, which are totally lacking in the instant case.

The only question that arises for consideration is whether a police officer who is not authorized and notified under the provisions of Clause 7 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 1993 (herein-after referred to as the Order) has the power of entry, search and seizure. A perusal of the order reproduced above makes it clear that the police officer is not authorized and is not the notified person under the Order. Consequently, he could not have exercised the power of entry, search and seizure. When this is the position, no fruitful purpose would be served by directing the petitioner to stand the complete trial. This is the matter which goes to the root of the case and the proceedings should not be allowed to go on and it would thus be an exercise in futility to continue the prosecution.

As a sequel to the above discussion, the instant petition is allowed and FIR No.262 dated 11.11.2011, registered under Sections 420 IPC and Section 7 of the Essential Commodities Act, at Police Station Kotwali Patiala and all the subsequent proceedings emanating therefrom are

quashed and the petitioner is discharged from the indicated criminal proceedings.

**(ANITA CHAUDHRY)  
JUDGE**

August 27, 2015  
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