

REPORTABLE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1695-SB-2003 (O&M)
Date of Decision: January 14, 2015

Ashwani Kumar Bansal and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. R.S. Rai, Senior Advocate, with
Mr. Gautam Dutt, Advocate, and
Mr. Nitin Kaushal, Advocate,
for the appellants.

Mr. K.S. Pannu, DAG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J. (Oral)

1. Challenge in this criminal appeal is to the judgment of conviction and the order of sentence dated 23.8.2003, passed by learned Special Judge, Fatehgarh Sahib, whereby appellant No. 1, Ashwani Kumar Bansal (since deceased) and appellant No. 2, Sanjay Bansal, both sons of Baij Nath Bansal, were held guilty for the offence punishable under Section 7 of the Essential Commodities Act, 1955 (for brevity, 'the 1955 Act') and each one of them was ordered to undergo rigorous imprisonment for one year

besides payment of fine of Rs. 1,000/- and in default thereof to undergo further rigorous imprisonment for two months.

2. After filing of the present appeal, appellant No. 1, Ashwani Kumar Bansal, has since died and vide a separate order of even date, the appeal qua him has abated.

3. After hearing learned counsel for the parties, the following issues have been identified to be dealt with in the present appeal:-

- (i) Whether the appellant, Sanjay Bansal, was owner of the premises where the alleged spurious furnace oil was recovered?
- (ii) Whether the appellant, Sanjay Bansal, was in conscious possession of the alleged spurious furnace oil?
- (iii) Whether the material found in the premises was a furnace oil?
- (iv) Which provision was violated by the appellant, Sanjay Bansal, and can he be held guilty for the same?

4. To answer the above issues, it is essential to recapitulate the facts of the case.

5. On 2.12.1995, SI Lakhvir Singh (PW6) received a secret information that the appellant, Sanjay Bansal, his brother Ashwani Kumar Bansal (since deceased), along with their co-accused were indulging in manufacturing and supply of spurious furnace oil and if the raid was conducted, then the culprits could be caught red handed. Relying upon the secret information, FIR (Ex.PW6/A) for the offence punishable under Section 420, IPC, and Section 7 of the 1955 Act was registered. SI Lakhvir Singh (PW6) along with his fellow police officers proceeded towards the place where alleged spurious furnace oil was stored at village Mugal Majra, G.T. Road, Mandi Gobindgarh. In the way, Janak Raj (PW1), Inspector of Food and Supplies Department, Mohinder Singh Cheema (not examined), District Food and Supplies Officer, Sant Singh (PW2) and Gian Chand, Tehsildar, Amloh (not examined), and one Shamsheer Singh Boparai (not examined) were joined and after forming the raiding party, the premises alleged to be owned by the appellant, Sanjay Bansal, and his brother Ashwani Kumar Bansal (since deceased) was raided. Four underground tanks filled with furnace oil were located and checked by the officials of the Food and Supplies Department. As per the norms, samples were drawn, sealed and taken into possession. Out of the 12

samples, 4 were retained by the officials of the Food and Supplies Department. The capacity of the tanks was 75000 litres. 20000 litres of furnace oil was recovered from the possession of one Gurbachan Singh, son of Teja Singh. The investigation was carried out. The statements of the witnesses were recorded as per Section 161 of the Code of Criminal Procedure. The samples were sent to the office of the Indian Oil Corporation at Jalandhar. According to the report (Ex.PX) received therefrom, the samples were not as per specification of furnace oil. Gurbachan Singh was arrested on the same day when the raid was conducted, while the appellant, Sanjay Bansal and his brother Ashwani Kumar Bansal (since deceased) were arrested on 14.12.1995. Amrit Lal and Jasbir Singh were arrested on 25th and 26th of December, 1995 respectively.

6. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) was presented against the accused persons. However, the trial proceeded against Ashwani Kumar Bansal (since deceased) and Sanjay Bansal (appellant No.2) only, inasmuch as, Gurbachan Singh was discharged by the learned Trial Court vide order dated 20.1.1997, whereas Amrit Lal and Jasbir Singh, both died during trial, therefore, proceedings

qua them were dropped.

7. After supplying the documents, charges were framed against the appellant, Sanjay Bansal and Ashwani Kumar Bansal (since deceased) for the offence punishable under Section 7 of the 1955 Act.

8. In order to substantiate its allegations, the prosecution examined the following witnesses:

PW-1 Janak Raj, Inspector from Food and Supplies Department, deposed that on 2.12.1995, he along with his departmental officers and police officers went to the premises of the appellants and traced out four cemented tanks containing spurious furnace oil. 12 samples were drawn which were sealed. 4 samples were retained by the Department of Food and Supplies while 8 samples were handed over to the police. The memos prepared at the spot were attested by him.

PW-2 Sant Singh, District Food and Supplies Officer, also deposed in tune of PW-1 Janak Raj.

PW-3 Jasbir Singh deposed that he was running a Tea Stall in front of Punjab Hammers. There was a godown belonging to one Amrit Lal and during the day he was

serving the tea to Amrit Lal and other persons. There were oil drums belonging to Amrit Lal. He did not depose anything against the appellant, Sanjay Bansal, or any other accused, therefore, he was declared hostile. Nothing favourable to the prosecution could be elicited from his mouth in spite of lengthy cross-examination by the learned Public Prosecutor. However, in the cross-examination by the defence, he fairly conceded that he had not seen the accused present in the Court while adulterating the furnace oil or sending the furnace oil from the godown. He further admitted that only Amrit Lal was present there.

PW-4 Avtar Singh, Halqa Patwari, deposed that on 18.5.1996, 33/160 share of Khasra No. 16/9 was sold by Balbir Singh to Baij Nath son of Gokul Chand and the mutation was entered in the name of Baij Nath.

PW-5 HC Hans Raj had tendered his affidavit (Ex.PW15/A) to be read in evidence.

PW-6 SI Lakhvir Singh, being the investigating officer, had deposed regarding the investigation carried by him. In the opening line of the cross-examination, it was

admitted by him that no investigation was carried out to find out the ownership of the land. But it was in his knowledge that the accused were the owners of the land and the oil which was recovered from there. He further admitted that no documents relating to the business carried out by the accused were taken into police possession. It was also admitted that no person was found at the time of police raid.

9. After completion of the prosecution evidence, the statements of the appellants were recorded in terms of Section 313, Cr.P.C. In response to the second last question, the appellant, Sanjay Bansal, suffered the following answer:-

“In fact I am not dealing in the trade of sale or purchase of furnace oil nor any furnace oil was stored by me in the godowns from where the alleged samples were drawn. True facts are that the godowns belongs to Baijnath Bansal son of Gokal Chand, r/o Delhi who had in the year 1995 rented the said godown to Amrit Lal son of Marru Ram of Mandi Gobindgarh. Sh. Amrit Lal above said used to store the black oil which he used to supply to the mechanics for the using and service of the automobiles. I have been falsely implicated in this case and will lead my defence evidence to prove my innocence. The case property was got released on Sapurdari at the request of

Seema Rani w/o Amrit Lal.”

10. In the defence evidence, the following witnesses were examined:

DW-1 Om Parkash Gupta: He deposed that he knew Amrit Lal, who died 5/6 years ago. He was dealing in waste and old oil. He was working on the back side of the godown of Baij Nath. The appellant and his brother, Ashwani Kumar Bansal, are the sons of the said Baij Nath. They were iron traders.

DW-2 Seema, widow of Amrit Lal: She deposed that her husband had died 5/6 years back, who was a mechanic of heavy vehicles and was also selling the used oil of heavy vehicles. The workshop of her husband was in the godown of Baij Nath Bansal and after the police raid, her husband had closed his workshop. Her husband had taken on rent the godown of Baij Nath Bansal. The original lease agreement is Ex. DA.

DW-3 Dinesh Gupta: He deposed that lease deed (Ex.DA) was executed on 1.2.1995.

11. After scanning the evidence led by both the sides it has nowhere come on record, except in the statement of PW-6 SI

Lakhvir Singh that the appellant, Sanjay Bansal and his brother, Ashwani Kumar Bansal (since deceased) were the owners of the premises where the raid was conducted and alleged spurious furnace oil was found in the tanks. During cross-examination, SI Lakhvir Singh fairly conceded that he had not investigated to find out the ownership of the premises. The prosecution had also produced Avtar Singh (PW4), Halqua Patwari, who deposed that 33/60 share of Khasra No. 16/9 was sold by Balbir Singh to Baij Nath Bansal son of Gokul Chand. The deposition of PW4 Avtar Singh would clearly spell out that the premises where the oil was found in tanks, was owned by Baij Nath Bansal, son of Gokul Chand. It is the consistent case of the appellant, Sanjay Bansal that he and his brother, Ashwani Kumar Bansal (since deceased), were neither owners nor in possession of the premises from where oil tanks were found by the raiding party.

12. Though it has come on record that the said premises was owned by father of the appellant, but it was leased out to Amrit Pal, who was a mechanic of heavy vehicles and was also dealing with in the used oil. From the said facts, it is very much clear that the prosecution has miserably failed to prove that the appellant, Sanjay Bansal and his brother, Ashwani Kumar Bansal (since

deceased) were owners of the premises where raid was conducted and four cemented tanks containing oil were detected.

13. It is the conceded case of the prosecution that the appellant, Sanjay Bansal, and his brother, Ashwani Kumar Bansal (since deceased), were not found present at the spot when the raid was conducted. Even, PW-3 Jasbir Singh, who was running a tea stall outside the godown raided by the police, was very clear in his deposition that during day time he used to serve tea to Amrit Pal and 2/3 other persons and in the cross-examination by the defence, he fairly admitted that he had not seen the appellants in the premises where from alleged oil was recovered. Only Amrit Lal used to be there in the said premises. Therefore, the prosecution has also failed to substantiate the fact that the appellant, Sanjay Bansal and his brother, Ashwani Kumar Bansal (since deceased) were in conscious possession of the alleged spurious furnace oil.

14. As per the prosecution version, the oil found in the tanks was spurious furnace oil. Out of the 12 samples drawn, 4 were sent to the laboratory of the Indian Oil Corporation at Jalandhar. As per the report (Ex.PX) the samples were not as per the specification of the furnace oil. However, the report is not clear that what were the

contents of the sample. As per Clause 2(a) of the Furnace Oil (Fixation of Ceiling Price and Distribution) Order, 1974 (for brevity, 'the 1974 Order'), the expression "dealer" means *a person who carried on, directly or otherwise, the business of sale, **or the storage for purpose of sale**, of furnace oil; and includes his representative or agent but does not include an oil company* (emphasis added).

15. A person can be booked for the violation of the 1974 Order only when he stores the furnace oil for the purpose of sale. Though the prosecution has attempted to prove the storage of the furnace oil by the appellant, Sanjay Bansal, and his co-accused, but it has totally failed to prove that the furnace oil was being stored for the purpose of sale, which is an essential ingredient of Clause 2(a) of the 1974 Order, to term a person "dealer".

16. In the opinion of this Court, the prosecution has not only failed to substantiate the fact that the furnace oil was stored by the appellant, Sanjay Bansal, but it has further failed to prove that the said storage was for the purpose of sale.

17. Learned counsel for the State was asked to pinpoint the provision which was violated by the appellant for holding him guilty. Though the learned counsel for the State has failed to point

out the provision which was violated by the appellant, yet this Court has also perused Section 3 of the 1955 Act and Clause 2(a) of the 1974 Order, but it is found that there was no violation on the part of the appellant at any stage.

18. As a sequel to the above discussion, the present appeal is allowed. The conviction and sentence, dated 23.8.2003, passed by the learned Special Judge, Fatehgarh Sahib, are wholly unjustified and, as such, the same are set aside. The appellant, Sanjay Bansal, is acquitted of the charge levelled against him. The amount of fine, if deposited, be returned as per norms.

January 14, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE