

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

**1. Date of decision : 10.04.2015
Crl. Misc. No. M-29730 of 2013 (O&M)**

Savinder Singh

....Petitioner

versus

State of Punjab

...Respondent

2. Crl. Misc. No. M-28973 of 2013 (O&M)

Roshan Lal @ Mithu Ghant

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Vipul Jindal, Advocate,
for the petitioner(s).**

Mr. Daljit Singh Virk, AAG, Punjab.

RITU BAHRI, J.

By this common order, Crl. Misc. No. M-29730 of 2013 and
Crl. Misc. No. M-28973 of 2013 shall be decided together, wherein prayer
is for quashing of FIR No.51 dated 08.07.2013, under Sections 420 IPC and
7 of Essential Commodities Act, 1955, registered at Police Station, Phul,
District Bathinda and FIR No.104 dated 26.07.2013, under Sections 420/34

IPC and 7 of Essential Commodities Act, registered at Police Station, City Rampura, District Bathinda. Common questions of law and facts are involved in both the petitions.

For reference, facts taken up from Crl. Misc. No. M-29730 of 2013.

FIR No.51 dated 08.07.2013, under Sections 420 IPC and 7 of Essential Commodities Act, 1955, registered at Police Station, Phul, District Bathinda, is reproduced as under:-

“Today myself SI/SHO along with ASI Sikandar Singh, C. Baljinder Singh, 1179, C. Rupinder Singh, 975, PHG Joginder Singh, 10882 when were on checking in our Government vehicle No.PB-03-W-5987, which was being driven by HC Jugraj Singh, 485 and when we were doing routine checking and were near Nehar Canal Bridge Sidhana, I got secret information that Savinder Singh son of Puran Singh, Caste SC, resident of Harnamsinghwala Depot Holder, who is running his depot in village Harnamsinghwala, he instead of distributing the Government oil in public, is collecting the same for selling in the black market. Thus, in this way, he commits cheating with the public. Even today, he has sufficient quantity of kerosene oil in his stock and one customer Jagjit Singh son of Hakam Singh, resident of Hullewala, Police Station Phul, is in the process of obtaining kerosene in black market. If raid is conducted upon him just now, there is possibility of availability of sufficient quantity of kerosene oil. The information is true and correct. The present incident proves the offence of aforementioned Surinder Singh, Depot Holder and Jagjit Singh, customer, under Section 420 IPC, 7 Essential Commodities Act, 1955. Therefore, while sending this ruqa through PHC Joginder Singh, it is requested that the case be registered for the aforementioned offences and the case number be disclosed. I am going to the place of incident along with other colleagues.

Special report be released.

Today Nahar Canal Bridge Sidhana at 6.55 P.M.”

As per the case of the petitioner, he is a Government approved Fair Price Shop owner and his search could be conducted only by the officers of Food & Supplies Department. The local police had no authority to register a case *suo moto* against the petitioner. The proceedings conducted by Jarnail Singh, SI/SHO, Police Station, Phul are illegal and without any jurisdiction. The Governor of Punjab in order to maintain supplies and securing equitable distribution and availability of retail prices of essential commodities has framed the Punjab Public Distribution System (Licensing and Control Order), 2003 (Annexure P-3). The powers of search and seizure are set out in Clause 7 of the said Control Order, which are reproduced as under:-

“7. **Power of search and seizure-** (1) District Controllers Food Civil Supplies and Consumer Affairs, District Food Civil Supplies and Consumer Affairs Officers, Inspector Gr.I, Food Civil Supplies and Consumer Affairs and Inspector Gr.II, Food Civil Supplies and Consumer Affairs shall be competent to inspect or summon such record or documents as may be considered by him necessary for examination and take extracts or copies of any records or documents produced before him.

(2) If the said authorities have reason to believe that there has been any contravention of the provisions of this order or with a view to securing compliance with this order, he may, enter, inspect or search the fair price shop or any premises relevant to transaction of business of the fair prices shops.

(3) The said authorities may also search seize or remove such books of accounts or stocks of essential commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of this order.

(4) The provisions of Section 100 of the Code of Criminal Procedure 1973 (2 of 1974), relating to search and seizure shall so far as may be, apply to search and seizure under this order.”

The petitioner has been granted license under Control Order

2003 by the Punjab Government to sell essential commodities on Fair Price Shop and his license was renewed up to 31.03.2015. Originally, his license was issued on 06.12.2004 and the same has been renewed up to 31.03.2015 (Annexure P-4). The Inspector General of Police, Crime, Punjab, had issued a letter dated 24.07.1995 (Annexure P-5) to all the Senior Superintendents of Police in the State of Punjab, directing them that checking of the record of Depot Holders had come within the purview of the Food and Supply Department. Similar instructions were issued on 03.11.1995 (Annexure P-6) stating that all the Senior Superintendents of Police have been directed to refrain from checking of Depot Holders and to comply with the provisions of the Control Order. It has been contended that checking of the truck outside the shop of the petitioner is not in accordance with the provisions of Control Order and therefore, the FIR is liable to be quashed.

Upon notice, reply on behalf of respondent No.1-State, in the shape of affidavit of Deputy Superintendent of Police, Rampura Phul (Bathinda), has been filed, wherein it has been stated that a secret information was received by SI Jarnail Singh, SHO, Police Station, Phul (Bathinda) to the effect that the petitioner, who is authorised depot holder of the Punjab Government, used to stock the kerosene oil and sell the same in black at higher rate. It was also informed that he was in possession of huge quantity of kerosene oil and one customer namely Jagjit Singh son of Hakam Singh was going to purchase kerosene oil from him in black and if a raid was conducted, then huge quantity of kerosene oil could be recovered from him. Thereafter, an information was sent to the police station for sending an officer of the Food and Supplies Department at the spot. After

sometime, Sukhvir Singh, Inspector, Incharge, Food and Supplies, Bhai Rupa reached at the spot. Thereafter, the police party, headed by SI Jarnail Singh left for conducting a raid at the Ration Depot of the petitioner at village Harnamsinghwala. Sukhvir Singh, Inspector, Food & Supplies, Bhai Rupa also accompanied the police party. When the police party reached in the street, where ration depot of the petitioner was located, they noticed that one Eicher Tractor was standing in the street. One plastic cane of 20/25 litres was lying on the mudguard of the said tractor. When enquired by SI Jarnail Singh, the person sitting on the driving seat of the said tractor, disclosed his name as Jagjit Singh son of Hakam Singh, resident of village, Phulewala. On checking of the plastic cane, the same was found to be containing kerosene oil. Sukhvir Singh, Inspector, Food & Supplies collected three bottles of kerosene oil from the plastic cane as samples. The remaining kerosene oil, on measurement, came to be 12 litres and 750 mls. Thereafter, the police proceeded to raid the ration depot of the petitioner, but the same was found locked from outside. This depot was situated in a room of the house of petitioner. On coming to know about the recovery of kerosene oil which was sold by the petitioner to Jagjit Singh in black, he along with his family members had absconded after locking his house. Thereafter, the plastic cane containing kerosene oil along with samples and the tractor were taken into police custody.

During investigation, the petitioner disclosed that the kerosene oil depot was allotted to him in the year 1998 and he was also running a shop in the village. Some quantity of the kerosene oil supplied to him by the department was being distributed among some of the card holders and he used to sell the remaining kerosene oil in black. On 08.07.2013, he had

sold 15 litres kerosene oil in black at the rate of Rs.30/- per litre to the person, who came to the village for grinding the flour. The said person was apprehended by the police accompanied by Food & Supplies Inspector.

The entire proceedings of investigation and seizure have been carried out as per Clause 7 of the Control Order, 2003.

Heard, counsel for the parties.

The petitioner has not chosen to file any rejoinder to the reply filed by the Deputy Superintendent of Police, Phul. Hence, the fact that Sukhvir Singh, Inspector, Food & Supplies, Bhai Rupa had been associated at the time of conducting the raid/search, makes it clear that the procedure, as contemplated under Clause 7 of the Control Order, 2003 (Annexure P-3) has been properly carried out by SI Jarnail Singh while proceeding to conduct raid/search at the depot of the petitioner. The petitioner cannot seek any benefit from the judgments delivered by this Court in **Vijay Kumar @ Vijay Tina Vs. State of Punjab**, 2012 (2) RCR (Crl.) 222 (Annexure P-7), **Mohinder Singh Vs. State of Haryana**, 2003 (3) AICLR 808 (Annexure P-9) and **Vijay Pal Singh Vs. The State of Haryana**, 2003 (3) AICLR 699 (Annexure P-10).

After going through the reply filed on behalf of the respondent-State, no case for quashing of the FIR is made out. The role of the present petitioner(s) would be examined by the trial Court on the basis of the evidence to be led during trial.

Resultantly, both the petitions i.e. CRM No.M-29730 of 2013 and Crl. Misc. No.28973 of 2013 are dismissed.

(RITU BAHRI)
JUDGE

10.04.2015

ajp