

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1234-SB-2003

Date of decision: September 30, 2015.

Vijay Kumar

... Appellant

v.

State of Haryana

... Respondent

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Shri Ashwani Talwar, Advocate for the appellant.

Shri Sandeep Vasishth, Deputy Advocate General, Haryana.

Raj Rahul Garg, J.

The instant appeal at the behest of the appellant Vijay Kumar is directed against the judgment of conviction and the order of sentence dated 14.6.2003 whereby he has been ordered to undergo rigorous imprisonment for three years for the commission of an offence under Section 7 of the Essential Commodities Act in a case arising out of FIR No.308 dated 29.11.1995, registered under Sections 420, 467, 468, 471 IPC and Section 7 of the Essential Commodities Act, 1955.

As per prosecution version, the criminal law was set into motion on an application dated 29.11.1995 moved by complainant Harbans

Lal Bajaj to ASI Kitab Singh alleging black-marketing of gas cylinders by the gas agency being run under the name and style of Samalkha Gas Service, Samalkha by its proprietor Vijay Kumar Chhabra. Besides this, the complainant further alleged issuance of bogus connections by forging the documents as also over-charging. The complainant further prayed for a thorough investigation into the matter. The ASI made his endorsement on the said application and sent the same to the Police Station Samalkha on the basis of which the impugned FIR came to be registered. Further investigation of the case was entrusted to Inspector Satpal and Inspector Hukam Singh of CID Crime Unit, Faridabad which took into possession the incriminating material attached with the complaint. During the course of investigation, it was found that some of the persons had not been issued the connections and some of the addresses were found wrong whereas the record showed to the contrary. After recording statements of the witnesses, the appellant was arrested and the records of the Gas Agency were taken into possession. The accused-appellant was charge sheeted under Section 7 of the Essential Commodities Act, 1955.

The prosecution in support of its case examined PW1 Harbans Lal Bajaj, PW2 Jagtar Singh, Ravinder Singh as PW3, Jai Pal, Clerk in the office of DFSC, Panipat, as PW4, Ashok Kumar PW5, Daya Nand as PW6, Mam Chand as PW7, Hem Raj PW8, HC Guljari Lal PW9, Rohit Sood as PW10, PW11 SI Kashmiri Lal, PW12 Constable Satish Kumar, PW13 M.G. Seikh, Chief Manager, LPG, Delhi, PW14 DSP Narinder Singh (CID),

PW15 ASI Rameshwar Dayal, PW16 Inspector Hukam Singh, PW17 ASI Dalel Singh, PW18 Inspector Sat Pal (dead) and closed its evidence. Some of the prosecution witnesses were given being unnecessary.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein each prosecution allegation was denied by the accused and he pleaded his innocence and false implication.

After hearing both the counsel for the parties and appraising the entire evidence and material on record, the trial court recorded aforementioned judgment of conviction and order on sentence.

I have heard learned Counsel for the parties and perused the evidence on record.

Shri Ashwani Talwar, learned Counsel for the appellant, vehemently contended that there is inherent legal defect in the power exercised by the police officer regarding search and seizure. He has drawn my attention towards Gazette Notification published in the Gazette of India (Extra.) Part II Section 3(i) No.209, dated April 21, 1988. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (Act No.10 of 1955), the Central Government made the Order which is called the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988. As per this notification, sub-clause 4 of clause 3 says that no distributor shall supply liquefied petroleum gas filled in cylinders to any person than a consumer possessing valid authorization from an Oil

Company.

Clause 7 deals with power of entry, search and seizure which is as follows:-

“7. Power of entry, search and seizure.

(1) 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 not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government, or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying himself that this Order or any Order made thereunder has been complied with :

(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being, or is about to be used in the contravention of this Order;

(b) enter or search any place with such aid or assistance as may be necessary;

(c) seize and remove, with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, along with the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provisions of this order has been or is being or is about to be contravened in respect of such stock and thereafter take or authorize the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves pressure regulators, vehicles, vessels or other conveyance so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.

(2) 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 searches and seizures under this Order.”

In view of the aforesaid provision of law, it was argued that the police officer ASI Kitab Singh and Inspector Satpal and Inspector Hukam Singh of CID Crime Unit, Faridabad who allegedly took into possession the incriminating material attached with the complaint, were not competent to investigate the case nor were having any power of search and seizure. They did not join any officer of the Department of Food and Civil Supplies of the Government or of an Oil Company or a person authorized by the Central Government for the purpose of search and seizure. PW16 Inspector Hukam Singh, during the course of his cross examination, categorically stated that no officer from the Food & civil Supplies Department and Oil Company was called when he took said documents in possession. Learned Counsel for the appellant-accused further cited plethora of judgments in support of his contention, such as, Abdul Rashid and another v. State of Haryana, 2013 (4) RCR (CrI) 738, Nand Lal v. State of Punjab, CRA-S-1021-SB-2002, Vijay Kumar @ Vijay Tina v. State of Punjab, 2012(2) RCR (CrI.) 222, Karam Chand and another v. State of Haryana, 2003(4) RCR (CrI.) 622, Suresh Kumar v. State of Haryana, 1996(2) RCR (CrI.) 365, Ramesh and another v. State of Haryana, CRA-28-SB-2002, Ashok Kumar v. State of Haryana, 1992 CrI. Court Judgments, 221, Kala Devi alias Kala v. State of Haryana, 1995(2) RCR (CrI.) 427, State of Maharashtra v. Mayer Hans Gorge, 1966(1) SCJ 363, S. Chinasamy v. Seed Inspector, Coimbatore and antoehr, 2006(4) RCR (CrI.) 645 and Dharam Pal v. State of Haryana, 2010 (4), RCR(CrI.) 159.

In Karam Chand and another v. State of Haryana, 2003(4) RCR (Crl.) 622 (supra), it was held by this Court that an ASI of Police had no power to seize the cylinders. This power is vested with the officers of the Food and Civil Supplies Department. In Suresh Kumar's case (supra), search was made by Sub Inspector of Police who recovered gas cylinders from the accused. The accused was alleged to have violated the provisions of the aforesaid Order. Said Police officer was held as not authorized to conduct search and seizure under Clause 7 of the Order. The said officer was not authorized and notified to exercise the power of search and seizure.

On the other hand, Learned Counsel for the State, Shri Sandeep Vashisth, DAG, Haryana could not show me any authorization by the Central Government or any notification which authorized the police officers of this case or vests in them any power of entry, search and seizure. As such, since as per PW16 Hukam Singh no officer/official from the Food & Supplies Department or of an Oil Company was with the police at the relevant time, therefore, the case of prosecution vitiates on this count alone.

Learned Counsel for the appellant contended that since the aforementioned defect in the prosecution case goes to the very root of the case and entitles the accused-appellant to acquittal, therefore, there is no need to argue the case from different angles, including the case on merit.

As such, without commenting on the merits of the case, since the police officers of this case were not having power to search and seizure, therefore, the prosecution case vitiates and the appellant is entitled to

acquittal.

For the reasons recorded above, finding merit in this appeal, the impugned judgment of conviction dated 14.6.2003 and the order of sentence of the even date are set aside and the accused-appellant is acquitted of the charge.

The appeal stands accepted.

September 30, 2015.
kadyan

[Raj Rahul Garg]
Judge