

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-31509 of 2013
DECIDED ON : SEPTEMBER 26, 2016

RAJIV KUMAR MAHAJAN & OTHERS

....PETITIONERS

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Veneet Sharma, Advocate,
for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 of the Code of Criminal Procedure (for short 'Code'), petitioners have sought the quashing of FIR No. 134, dated 23.05.2013, under Section 420 IPC and Section 7 of Essential Commodities Act, 1955 (for brevity 'Act'), registered at Police Station A Division, Amritsar City, District Amritsar (Annexure P-1) and all consequential proceedings arising therefrom.

The contention of learned counsel for the petitioner is that as per allegations contained in the FIR a secret information was received by the Sub Inspector to the effect that petitioners are bringing kerosene oil from the owners

of P.S. Mohan Singh Firm and are selling the same in the open market on higher price. Although the said kerosene oil is meant to be sold in the public distribution system. On the basis of said information, a raid was conducted and petitioners no. 2 to 4 were apprehended at the spot and on search 8 drums of kerosene oil having 200 liters each were recovered from the vehicle being driven by petitioner No.4. Petitioner No.1 has been involved in this case just being owner of vehicle in question. The petitioners No.2 to 4 were merely transporting the kerosene oil from P.S. Mohan Singh authorised dealer of kerosene oil etc of the Indian Oil Corporation to M/s Chaman Lal and Supply, Majitha as well as Balwinder Singh Daburji. They were also possessing the relevant bills. Otherwise also, in view of Clause 9 of the Kerosene (Restriction of Use and Fixation of Ceiling Price) Order 1993 (for short 'Order'), the power to search and seizure is only with the officers of the Department of Food and Civil Supplies of the Government not below the rank of an Inspector, that too, who is authorised as such by the Government. In the instant case, although Inspectors of Food and Civil Supplies Department were allegedly joined but they remained mute spectators and the entire search and seizure proceedings were carried out by the police officials. Not only this, even the FIR was put into black and white on the basis of ruqa sent by Sub Inspector.

Moreover, there is nothing on record to suggest that the said Inspectors were notified by the State Government and were authorised to carry out the search and seizure operation, as per the provisions of the afore-said order. Moreover, even if the allegations contained in the FIR are taken at their face value and examined, neither an offence under Section 420 IPC nor under Section

7 of the Act is made out. Continuing of any proceedings in respect of FIR would be nothing but an abuse of process of law. Thus, the FIR in question deserves to be quashed.

On the other hand learned State counsel has submitted that the search and seizure operation was conducted in this case by the Inspectors of Department of Food and Civil Supplies with the assistance of police party. As such, it cannot be said that there is any violation of Clause 9 of the Order. When the vehicle was intercepted there were eight iron drums loaded in it containing kerosene oil. When petitioners No.2 to 4 were asked about the bills of kerosene oil, they could not produce the same. Thus, petitioners by keeping the kerosene oil in their possession instead of distributing the same to the depot holders, were selling the same in black i.e. on higher price to some other persons can be said to have committed fraud with the public. Thus, petitioners have rightly been nominated as accused.

There is sufficient evidence collected by the investigating agency against them and report under Section 173(2) of the Code has already been prepared, which can not be presented as its presentation was stayed by this Court. Accordingly, he prayed for the dismissal of instant petition.

After bestowing due consideration to the submissions made by learned counsel for the parties and scrutinising the contents of FIR as well as other relevant provisions of law, this Court is of the considered view that no case is made out to quash the FIR in question. As far as the alleged violation of Clause 9 of the Order is concerned, the search and seizure operation in this case was made by the Inspectors of the Food and Civil Supplies Department, though

with the assistance of police officials. Moreover, it is a matter of evidence that the Inspectors were duly authorised and notified by the State Government in this regard. But it cannot be made a ground at this stage to quash the FIR. The recovery of eight drums of kerosene oil regarding which no bills etc. were produced by the petitioners, is violative of Section 7 of the Act. As per the allegations, even the kerosene oil was being transported, which was meant for public distribution system, was allegedly being sold at higher rates to different persons.

In fact, the kerosene oil was required to be distributed to the ration card holders through the depot holders. As far as the judgments referred to in the petition are concerned, the same are not applicable to the facts and circumstances of the case in hand especially, in view of the fact that the Inspectors from the Department of Food and Civil Supplies conducted the search and seizure operation. Though, they were assisted by the police officials.

Here, it would be pertinent to mention that the power to quash a criminal proceedings should be exercised very sparingly and with circumspection that too, in the rarest of rare cases. While quashing the FIR, the Court would not be justified in embarking upon an inquiry, as to the reliability and genuineness of the allegations made in the FIR or complaint.

Moreover, in the present case the allegations made in the FIR, recovery of kerosene oil from the petitioners No.2 to 4 as well as other material do clearly constitute *prima facie* commission of cognizable offence justifying the registration of the case and investigation thereon. Instant case does not fall under any of the categories of cases formulated in the case of **State of Haryana**

& others vs. Bhajan Lal & others; 1992 Supp (1) SCC 335; calling for an exercise of extra ordinary or inherent powers to quash the FIR.

In the light of what has been discussed above, instant petition being devoid of any merits, is dismissed.

SEPTEMBER 26, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No