

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

Crl. Misc. M 29829 of 2015 (O&M)
Date of decision: 26.8.2016

Sudhir Kapoor

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE A. B. CHAUDHARI

Present: Mr. MS Sachdev, Advocate,
for the petitioner.

Mr. KS Sidhu, DAG, Punjab.

A. B. CHAUDHARI, J. (Oral)

Rule

Heard forthwith.

In the present petition, the petitioner has put to challenge FIR No. 148 dated 24.8.2008 under Sections 420 IPC, Section 7 of the Essential Commodities Act and Section 207 of the Motor Vehicle Act registered at Police Station Goraya, District Jalandhar (Annexure P/1).

The petitioner to amend the petition in order to challenge the order dated 20.2.2016 passed by the Judicial Magistrate Ist Class, Phillaur, District Jalandhar, vide which cancellation report was rejected. The amendment be carried out within two weeks.

Learned counsel for the petitioner has drawn my attention to the FIR that was lodged on 24.8.2008 under Sections 420 IPC, Section 7 of the Essential Commodities Act and Section 207 of the Motor Vehicle Act.

The allegations in the FIR are that the petitioner owned a tanker and had purchased industrial waste oil which was being transported from Jalandhar to Phillaur. However, the police official was given a secret information by some special informer that kerosene was being mixed with some oil and was being transported. Acting on the information, a police party stopped the tanker and seized it. The material in the tanker was black oil/furnace oil weighing about 12000 litres. A sample was collected and was sent to the Forensic Science Laboratory, Chandigarh in order to find out the nature of oil.

The report of the Assistant Director, Forensic Science Laboratory, Chandigarh dated 6.10.2008 shows that it was not possible to examine such sample in the absence of any infrastructure available with the laboratory. On the suggestion given by the Assistant Director, Forensic Science Laboratory, Chandigarh to send the same to the Fuel Testing Laboratory, Noida, it was accordingly done. The said Laboratory did not entertain the sample for the same reason.

The matter then stopped there. Thereafter, cancellation report was filed before the Judicial Magistrate 1st Class, Phillaur, who passed the impugned order dated 20.2.2016, which is challenged by way of amendment, as per the leave granted by this Court.

I have carefully perused the order.

Learned Magistrate refused to accept the cancellation report on the ground that the theory of misplacement of sample was not acceptable. The record shows that a cancellation report was filed not because of misplacement of sample but because of non-availability of infrastructure for

testing such sample either at Forensic Science Laboratory or at Fuel Testing Laboratory, Noida. There is specific averment in the petition that the oil was a black oil which was a waste oil which is used in the industries which is called industrial or furnace oil. Thus, question of mixing the same with the kerosene oil does not arise.

At this stage, learned counsel for the petitioner has submitted that earlier this oil was being used by the industries as used oil and it was falling in the category of essential commodities by virtue of Furnace Oil (Fixation of Ceiling Prices and Distribution) Order 1974. However, by virtue of notification dated 31.7.1998, the said Order of 1974 was rescinded by the Government of India and, therefore, according to him, there is no offence if the black oil obtained from furnace oil is sold or transported. In other words, according to him, no offence under the provisions of the Essential Commodities Act at all is made out even upon reading of the FIR. I find substance in the submission.

In so far as the offence under Section 420 IPC and under Section 207 of the Motor Vehicle Act are concerned, there is absolutely no ingredients much less single ingredient to attract offence under Section 420 IPC or Section 207 of the Motor Vehicle Act. Perusal of the FIR show it sans of any ingredients of the offences under Section 420 IPC or under Section 207 of the Motor Vehicle Act. The only issue that was raised by the police that it was some oil that was being transported, but then since, 2008 till this date, the prosecution has not been able to find out as to what was the nature of the oil. At any rate on 31.7.1998, the essential commodities Order of 1974 was rescinded.

In the light of the above factual background, time gap that has passed and in the wake of the nature of evidence and the fact that what was being transported was a waste oil, there is no point in continuing with such prosecution. The truck was taken into possession on superdari and the oil is also said to have been utilized. In the whole back ground, I think continuance of the prosecution would be an exercise in futility.

In that view of the matter, order dated 20.2.2016 passed by the learned Judicial Magistrate Ist Class, Phillaur will have to be set aside.

In the result, order dated 20.2.2016 passed by the learned Judicial Magistrate Ist Class, Phillaur is set aside and the cancellation report filed by the police before the Magistrate is accepted. Consequently, FIR No. 148 dated 24.8.2008 under Sections 420 IPC, Section 7 of the Essential Commodities Act and Section 207 of the Motor Vehicle Act registered at Police Station Goraya, District Jalandhar (Annexure P/1) is also quashed.

The present petition stands disposed of accordingly.

26.8.2016
prem

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No