

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-986-SB of 2004
Date of decision : 22.5.2017

SatbirAppellant
v.
State of HaryanaRespondent

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Ms. Amandeep Kaur, Advocate (amicus curiae), for the appellant
Ms. Kirti Singh, DAG, Haryana

Shekher Dhawan, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 6.3.2004, whereby the appellant was convicted for commission of offence under Section 7 of the Essential Commodities Act (in short “the Act”) and sentenced as under :

<i>Under Section</i>	<i>Sentence</i>	<i>In Default</i>
7 of E.C. Act	Rigorous imprisonment for Three years & fine of ₹ 10,000/-	Rigorous imprisonment for Nine months

Facts relevant for the purpose of decision of the appeal; that on 17.6.1998, the appellant was found to be in possession of 27 drums of black oil, 15,000 litres of black oil contained in three underground tanks of cement and 6,000 litres of black oil in a lorry tank. The raid was conducted by Inspector Randhir Singh along with Braham Parkash Yadav, Inspector, Food and Civil Supplies Department, Haryana. The matter was investigated. The samples were sent to FSL.

After completion of investigation proceedings, challan presented in the Court for trial.

During the process of trial, learned Special Judge, Faridabad, designated for dealing with such offences, completed various proceedings of the trial including framing of charges under Section 7 of the Act against the accused/appellant, recording of statements of prosecution witnesses and examination of the accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, learned trial Judge held the appellant guilty and convicted and sentenced him as mentioned above.

The appellant is in appeal against the said judgment of conviction and order of sentence.

At the time of arguments, learned counsel for the appellant contended that the learned trial Judge has ignored certain basic facts and legal points. First of all, the alleged recovery of black oil was effected on the basis of raid, conducted by the police party on 17.6.1998, whereas, the samples were sent to Forensic Science Laboratory (FSL) on 12.1.1999. More so, at the time of arrest and recovery, no witness from general public was associated, though there was no dearth of the same. The statements of official witnesses, examined during trial, are full of material contradictions and as such, their testimonies were not believable but the learned trial Judge has relied upon such statements and convicted the appellant and, therefore, the judgment of conviction and order of sentence are liable to be set aside. The statements made by witnesses were contradictory on the material points, including the recovery of alleged quantity of black oil.

While arguing on these points, learned State counsel contended that

recovery was effected from the possession of the accused and he was apprehended on the spot. The samples were sent to FSL and as per FSL report, the recovered black oil contained kerosene mixed with some brownish black material approximately 5% by volume and fuel oil/furnace oil of grade MV2 and HV as per critical tests of ISI Specifications, meaning thereby, that total 26,400 litres of black oil contained 300 litres of 'kerosene'. The possession of kerosene oil except under licence is also covered under the alleged offence and the learned trial Judge has rightly held the appellant/accused guilty and convicted and sentenced him accordingly.

Having considered the rival contentions of learned counsel for the parties and appraisal of record, this Court is of the considered view that as per the provisions of Haryana Kerosene Dealers Licensing (First Amendment) Order, 1994, a person cannot have possession of or deal with "kerosene oil" except under licence and keeping in view the alleged recovery of 15,000 litres of black oil contained in three underground tanks of cement, 6,000 litres of black oil in a lorry tank and 27 drums of black oil each containing 200 liters, from the appellant, the learned trial Judge has rightly come to the conclusion that the appellant is guilty of the offence.

This is not the case of the appellant that he is having licence for having possession of 26,400 litres black oil. As per FSL report Ex.PE, the samples were found to be of kerosene mixed with some brownish black material approximately 5% by volume. The relevant part of the FSL report is as under :

"Result of examination"

Exhibit 1 – was identified as sample of kerosene mixed with some brownish black material approx. 5% by volume.

Exhibit 2 – was identified as a sample of Fuel oil/furnace oil of grade MV2 as per critical tests of ISI specifications.

Exhibit 3 - was identified as a sample of Fuel oil/furnace oil of grade HV as per critical tests of ISI specifications.”

As regards the contentions of learned counsel for the appellant that there was delay in sending the samples to FSL, the same has no significance. Rather, as per report of FSL, three sealed parcels were received. The seals were found intact and tallied with sample seal as per Forwarding Authority's letter.

It has come in the statement of PW4 Braham Parkash and PW6 Inspector Randhir Singh that total recovery of 26,400 litres of black oil was effected from the possession of the appellant. The samples were drawn and sealed on the spot. Apart from that, 200 litres of bituman and machines for mixing kerosene were found on the spot.

It was further contended by learned counsel for the appellant that no independent witness was joined at the time of alleged occurrence and there are contradictions on material points in the statements of official witnesses, namely; PW4 Braham Parkash and PW6 Inspector Randhir Singh. Legally speaking, there is no bar that police officials cannot be competent witnesses. But real test of law is that witnesses must stand by the test of cross examination and that their testimonies must inspire confidence. In the present case, both the witnesses have well stood by the test of cross examination and the learned trial Judge has rightly relied upon their testimonies.

Learned counsel for the appellant could not point out any discrepancy on the material points before this Court in the statements of witnesses on the basis of which their testimonies could be disbelieved. There is nothing on the file that they are inimical to the appellant or they were interested witnesses in any way.

The learned trial Judge has rightly concluded that as per Section 7

(2) of the Petroleum Act, 1934, no licence is needed for transport or storage of limited quantity of petroleum Class 'C' products and as per FSL report (Ex.PE), out of the three samples, one was found to be of kerosene mixed with brownish black material approx. 5% in volume and two samples were containing approx. 750 ml. of viscous liquid taken from underground cemented tanks and as per the Haryana Kerosene Dealers Licensing Order, 1994 (Ex.PH) and Lubricating Oils and Greases (Processing, Supply and Distribution) Regulation Order, 1987 (Ex.PG/2), the possession of above referred quantity of black oil is restricted. Otherwise, the possession of the black oil stands proved.

In view of the above, this Court is of the considered view that the offences alleged against the appellant under Section 7 of the EC Act stands duly proved and the learned trial Judge has rightly held the accused/appellant guilty and convicted and sentenced as above.

In view of the above, present appeal is without any merit and stands dismissed.

(SHEKHER DHAWAN)
JUDGE

22.5.2017
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No