IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-198-SB-2003 (O&M)**

Arun Kumar

..... Appellant

Versus

State of Punjab

..... Respondent

2. **CRA-S-239-SB-2003**

Ramesh Chand and others

…..Appellants

Versus

State of Punjab

……Respondent

Date of decision :-29.9.2017

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CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

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Present : Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate
for the appellant in **CRA-S-198-SB-2003**.

Mr. S.C. Nagpal, Advocate
for the appellants in **CRA-S-239-SB-2003**.

Ms. Jaspreet Kaur, AAG, Punjab.

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H.S. MADAAN, J.

Vide this judgment I propose to dispose of two appeals i.e. **CRA-S-198-SB-2003** filed by Arun Kumar and **CRA-S-239-SB-2003** filed by Ramesh Chand, Suresh Chand and Subhash Sharma, all of them being accused in FIR No.6 dated 10.01.1996 under Sections 467, 468, 471, 420 read with Section 34 IPC and Section 7 Essential Commodities Act, 1955 ("the Act" – for short), Police Station Mandi Gobindgarh who were tried by Special Judge, Fatehgarh Sahib and vide judgment dated 24.01.2003 were sentenced as follows:-

Ramesh Chand	**Under Section 7 of the EC Act**	To undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.300/- and in default of payment of file to further undergo rigorous imprisonment for one month.
	Under Section 468 IPC	To undergo rigorous imprisonment for 3½ years.
Arun Kumar	**Under Section 7 of the EC Act**	To undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.2,000/- and in default of payment of file to further undergo rigorous imprisonment for one month.
	Under Section 468 IPC	To undergo rigorous imprisonment for 3½ years.
Suresh Chand	**Under Section 468 IPC**	To undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.2,000/- and in default of payment of file to further undergo rigorous imprisonment for one month.

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Subhash Sharma	**Under Section 468 IPC**	To undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.2,000/- and in default of payment of file to further undergo rigorous imprisonment for one month.

The sentences awarded to Ramesh Chand and Arun Kumar were ordered to run concurrently.

The accused-convicts who were appellants before this Court prayed that the appeals be accepted and the impugned judgment of their conviction be set aside and they be acquitted of the charges framed against them.

Death of appellant Suresh Chand has been verified by the State counsel placing on file, a photostat attested copy of his death certificate showing that he had expired on 23.3.2012. Therefore, proceedings against him stand abated.

Briefly stated facts of the case as per prosecution story are that on 10.01.1996, a police party headed by SI Lakhvir Singh, Police Station Gobindgarh travelling in official vehicle was present at Gol Chowk, Gobindgarh in connection with special *Naka Bandi*; that there SI Lakhvir Singh received a secret information that all the accused were supplying duplicate furnace oil after mixing the same with Bitumen to mills at Mandi Gobindgarh; that they used to bring furnace oil from Delhi to Mandi Gobindgarh by tankers and for that purpose they used to prepare fake bills of Indian Oil Corporation, Mathura Refinery (UP); that the accused used to sell the said oil at Mandi Gobindgarh at different rates and that on 10.01.1996 Arun Kumar alias Ranji after loading furnace oil in tanker No.DEG-5631 was coming from Delhi to Mandi Gobindgarh. The tanker was being driven by Ramesh Chand and if a picket was laid they could be apprehended; that information being reliable one, SI Lakhvir

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Singh sent ruqa Ex.PW6/A to police station through C. Manmohan Singh, on the basis of which formal FIR Ex.PW6/B was recorded against the accused for offences under Sections 467, 468, 471, 420, 34 IPC and Section 7 of the Act. The police party left for laying of picket on G.T. Road, Sardar Nagar, Mandi Gobindgarh and a picket was actually laid; that at about 10:00 a.m., a tanker bearing registration No.DEG-5631 came from Sirhind side, it was signalled to stop, the tanker was being driven by Ramesh Chand, who was arrested at the spot however Arun Kumar travelling in the tanker managed to escape. The tanker was searched in the presence of ASI Gurdial Singh and ASI Mohinder Singh; that from chambers of the tanker, 12000 litre duplicate furnace oil was recovered, since each chamber was found to contain 4000 litre of furnace oil. The Investigating Officer took out furnace oil from all the three chambers with the help of a bucket and transferring that into a Tin container and 5 litre thereof each was put in three plastic cans for the purpose of samples. Samples as well as tanker in question were sealed with seal bearing impression “LS” of SI Lakhvir Singh. Specimen inscription of seal was prepared and seal after use was handed over to ASI Gurdial Singh. Then case property was taken into possession vide memo Ex.PW6/G. Ramesh Chand, tanker driver produced copy of driving license and RC of the tanker, which was in the name of Suresh Chand. These documents were taken into possession vide memo Ex.PW6/F. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PW6/G, fake bills issued in the name of Indian Oil Corporation alongwith Bilities in the name of Maha Lakhshmi Oil Carrier and dispatch slip were seized.

On return to the police station, the Investigating Officer deposited the case property with the MHC. During the course of investigation, sample of this furnace oil so taken was sent to Quality Control Test, Jalandhar and report Ex.PC was received therefrom, which was to the effect that the sample failed to

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meet specification of furnace oil. The accused could not explain about the possession of the aforesaid furnace oil as they were not having any licence for the purpose.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Special Judge, Fatehgarh Sahib.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C.

Learned Special Judge, Fatehgarh Sahib finding that charge for offences under Section 7 of the Act and Sections 468 & 471 IPC was disclosed against the accused, charge-sheeted the accused accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as 8 witnesses as per following details:-

PW-1 Constable Pritam Singh tendered in evidence his duly sworn affidavit Ex.PA.

PW-2 Sukhdev Singh, another formal witness, who had formally arrested accused-Subhash Chand on 19.12.1996 as he was already released on pre-arrest bail this Court deposed in that regard.

PW-3 P.S. Bamra, who was working as Deputy Manager (Laboratory) Indian Oil Corporation stated that he had received sample on 26.03.1997 in a sealed container and he had analyzed it as per norms i.e. IS 1593-1982 and found that sample did not meet flash point specification which was 53' C against the requirement of minimum of 66' C. He proved his report in that regard as Ex.PB.

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PW-4 Ram Kishan who was working as Assistant Manager in Indian Oil Refinery, Mathura proved challan Ex.PC, which had been issued by the Corporation vide which 12000 litre furnace oil had been sold to Drolia Ispat Batla Road, Mandi Gobindgarh. This witness further proved duplicate form for transporting Ex.PD stating that it was issued by the refinery.

PW-5 HC Hans Raj a formal witness tendered into evidence his duly sworn affidavit Ex.PW5/A.

PW-6 SI Lakhvir Singh, the Investigating Officer deposed regarding investigation conducted by him proving various documents.

PW-7 SI Gurdial Singh, who was member of the police party who had apprehended the tanker and effected recovery testified as to what had taken place in his presence.

PW-8 MHC Satpal Singh tendered into evidence his duly sworn affidavit Ex.PW8/A so as to provide link evidence.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

In addition to above, accused Ramesh Chand took up a plea that the owner of the tanker was residing in Delhi; that he and the tanker remained present at Mathura because the oil refinery is at Mathura from where the oil was transported to various places in the tanker; that in the normal course he got booked his tanker with oil from Mandi Gobindgarh at the instance of party concerned on 05.01.1996; that when he was going from Mathura to Mandi Gobindgarh and stayed at Pappu Dhaba on the bye-pass Rajpura for taking meals; that he and his tanker were taken by the police of Mandi Gobindgarh and

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the tanker was kept in police station when the oil was also unloaded; when the owner of the tanker came to know about it he reached on 09.01.1996; that later on they had been falsely implicated by the police in this case at the instance of rival factions of Mandi Gobindgarh, who are also in the same business.

Accused Arun Kumar took up a plea that he is dealing with sale and purchase of iron goods at Mandi Gobindgarh; that he had no connection with this case in any manner; that he had been falsely implicated by the police of Mandi Gobindgarh at the instance of some vested interest against him who were close to the local police of Mandi Gobindgarh.

Accused Suresh Chand took up plea that he is owner of tanker in question which mostly remained present near Mathura Oil Refinery because the oil is transported from there in the Tankers to different places; that the tanker was booked on 05.01.1996 from Oil Refinery Mathura and his tanker and driver were taken into custody by the police from Pappu Dhaba at Rajpura when it was on its way to Mandi Gobindgarh; that he came to know about it on 09.01.1996 and then he immediately reached Mandi Gobindgarh; his driver and oil tanker were present with the police on 09.1.1996; that the oil was wrongly taken by the police and the sample has also been manipulated by the police and tampered with and sent to the Expert after much delay for their false implication due to extraneous reasons known to the police.

Accused Subhash Chand took up a plea that he is innocent; that he had no concern with this case and had been falsely implicated in this case by the police of Mandi Gobindgarh due to some extraneous reasons best know to them at the instance of some vested interest against him.

In their defence evidence, accused examined DW-1 Constable Balbir Singh who had deposed that on 25.03.1996 C. Pritam Singh was sent with the sample of this case to Jalandhar vide DDR No.9 for sending the same

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to Laboratory. This witness also proved certain entries from Register No.19 and has stated that there is no entry about sending sample of this case to the Laboratory on 23.12.1996 and there is one entry of 12.03.1996 about sending the sample to Laboratory through C. Pritam Singh.

With that the defence evidence of the accused stood concluded.

The trial Court formulated following points for determination:-

i. *Whether on 10.01.1996 at 11.oo a.m. near Gole Chowk Gobindgarh accused Arun Kumar and Ramesh Chand were found in possession of '12000' litre of spurious furnace oil and they contravened clause 5 of the furnace oil (Fixation Price and Distribution Order 1974) issued under Section 3 of the Act?*

ii. Whether all the accused forged Bility in the name of Drolia Ispat Bhakra Road, Mandi Gobindgarh for the purpose of cheating various mill owners with the sale of furnace duplicate oil?

iii. Whether the aforesaid Bility in the name of Drolia Ispat is genuine one?

iv. Whether prosecution witnesses are trust worthy and can be relied upon in the case?

v. Whether prosecution is able to prove the guilt of the accused against all the accused beyond the shadow of any reasonable doubt?

After hearing arguments, the trial Court convicted and sentenced accused as mentioned above which left them aggrieved and they have filed the present appeals.

Learned counsel for the appellants has argued that Suresh Chand who is owner of the truck has already died and only three co-convicts namely

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Ramesh Chand, Subhash Sharma and Arun Kumar are before this Court. Learned counsel for the appellants had argued that during investigation prosecution had not joined any independent witness with the police party while laying the Naka stopping the tanker and effecting the recovery, although the area where the recovery is said to have been effected is a very busy one and independent persons were easily available there. It has further been argued that the prosecution story is highly improbable and it could not have been possible for accused Arun Kumar to run away from the tanker when the area happened to be quite busy; that there was no evidence to connect accused Subhash Sharma and Suresh Chand and if somebody is liable at best it could be the driver. Learned counsel has further argued that sample sent to laboratory were not in intact condition and there is discrepancy regarding date of receipt of sample in the laboratory; the samples were not sealed; that there is delay of more than two months in sending sample to Jalandhar and no explanation could be furnished by the prosecution for the same.

As regards, the first contention that no independent witness was joined with the police party, it is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses. No previous enmity between the Investigating Officer – SI Lakhvir Singh (PW6), SI Gurdial Singh (PW7) has been alleged or proved for which they might have involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction, as such their depositions are at par with the independent witnesses. Independent corroboration is just a rule of prudence and not

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requirement of law. It is no where provided that in absence of independent corroboration, the prosecution story is to be discarded.

As regards the second contention that Arun Kumar could not have run away when several policemen were nearby, it has to be taken into account that after intercepting the tanker, the entire attention of the members of the police party must have been towards the driver of the tanker and what material it was carrying with traffic going on nearby. In such a situation Arun Kumar could very well escape from there. The police personnel by not trying to chase him did not do something unusual since their primary purpose was to intercept the tanker and to effect the recovery. The person running away could be apprehended at a later stage. Therefore, this contention does not convince me.

As regards there being no evidence to connect Subhash Sharma and Suresh Chand with the recovery and at best only driver being liable, again I am not in agreement with learned counsel for the appellants/convicts in that regard. Suresh Chand being registered owner of the tanker could not possibly come up with a plea that he was not aware of what was being transported in his tanker. He being owner of the tanker had control over its movements. Registered owner of the tanker cannot conveniently shift the blame on shoulders of the driver and come up with a straight face pleading innocence. The very fact that in the secret information received by the Investigating Officer, the name of Suresh Chand had surfaced being engaged in supply of furnace oil to mills at Mandi Gobindgarh goes to show his involvement. The driver of the vehicle is certainly liable and he cannot come up with a plea that he was not aware of as to what was being transported in the tanker. As far as Arun Kumar accused is concerned, if he was unaware of the material being carried in the tanker and had no guilty intention, there was no necessity for him to run away when the tanker had been intercepted by the police party. His doing so goes to show his guilty

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intention and the fact that he was aware of spurious furnace oil being carried in the tanker.

As regards the next contention that sample sent to laboratory was not in intact condition, I am not impressed by such contention raised. From the statement of PW1 Pritam Singh, PW5 HC Hans Raj, PW6 SI Lakhvir Singh, PW8 MHC Satpal Singh, it comes out that no tampering of seals with sample had taken place after the same was deposited in the malkhana by the Investigating Officer and it reached Quality Control Test Centre, Jalandhar. From the statement of PW3 P.S. Bamra, Deputy Manager (Laboratory) Indian Oil Corporation, it comes out that when sample was received, there was no tampering with the seals.

As regards the delay in sending the sample, since in view of discussion above, it has been found that no tampering with seals had taken place during the period the sample remained in malkhana till it was sent for Quality Control Test Centre, Jalandhar and there is nothing to show that there takes place any change in composition of the sample as a result of any chemical reaction with passage of time, such delay is not much material.

One more argument raised by learned counsel for the appellants was that the challan had been accepted by the Court of Sessions directly without the same being committed to such Court by the Area Magistrate, therefore the entire proceedings are vitiated. However, this contention lacks merit since in terms of Section 12-AA (a) of the Essential Commodities (Special Provisions) Act, 1981, all the offences under the Act are triable only by the Special Court constituted for the area in which the offence has been committed. In terms of Clause (e), a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act take cognizance of that offence without the accused being committed to it for trial. Thus learned Sessions Judge,

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Fategarh Sahib acting as Special Court under the Act could very well receive the challan directly and take cognizance of offences without any commitment proceedings by the Area Magistrate. The legality of the trial does not get affected for the said reason.

Furnace Oil (Fixation of Ceiling Prices and Distribution), Order, 1974 was formulated by the Central Government in exercise of powers conferred by Section 3 of the Act. As per Section 2 (a) of the abovesaid order, a dealer means a person who carried on, directly or otherwise, the business of sale, or the storage for purpose of sale of furnace oil and includes his representative or agent but does not include an oil company. Section 3 deals with fixation of maximum selling price of furnace oil, Section 4 provides that stock of the furnace oil will be displayed, Section 5(1) deals with prohibition against sale. It provides that no dealer having stock of furnace oil shall withhold it from sale to a person who is authorized by the Central Government to purchase such oil, unless he can establish that the stock of furnace oil held by him is reserved for a specific industrial consumer consequent on a contract entered into with such consumer, Section 5(3) provide that no person other than a dealer shall sell furnace oil. It is not case of the accused that they had been dealers for sale of furnace oil. There is nothing on record to show that the furnace oil being carried was meant for own use of accused. Such huge quantity being carried in the tanker was obviously meant for sale which was in violation of Sub-Section 3 of Section 5 of the order issued under Section 3 of the Act.

When apprehended, the tanker was being driven by Ramesh Chand and Arun Kumar was sitting in the said tanker though he managed to flee. The tanker was admittedly owned by Suresh Chand. He could not possibly feign ignorance and come with the denial that he was not aware of what was being caried in the tanker belonging to him. Therefore, all three of them are to be held

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liable for offence under Section 7 of the Act. But since Suresh Chand has expired, proceedings against him have abated, then only Ramesh Chand and Arun Kumar are liable.

As far as involvement of Subhash Sharma is concerned, the prosecution was unable to connect him with the offences for which he was booked. He was neither found travelling in the tanker containing spurious furnace oil nor could be connected with the said recovery in any other manner. As a matter of fact, only Ramesh Chand and Arun Kumar have been convicted for offence under Section 7 of the Act, whereas though Suresh Chand ought to have been charged and tried for the said offence but it was not so done by the Special Court. Ramesh Chand, Arun Kumar, Suresh Chand and Subhash Sharma have been convicted for offence under Section 468 IPC but I find that prosecution had been unable to slap criminal liability as regards such offence upon either of the accused.

Section 468 deals with offence of forgery for the purpose of cheating. It provides that whoever commits forgery, intending that the document shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Offence of forgery is defined by Section 463 IPC as whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

In this case the only witness examined by the prosecution in that regard happened to be PW4 Ram Kishan, who proved challan Ex.PC, which had been issued by Indian Oil Refinery, Mathura, vide which 12000 litre furnace oil had been sold to Drolia Ispat Batla Road, Mandi Gobindgarh besides proving

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duplicate form for transporting Ex.PD stating that it was issued by the refinery. Things would have been entirely different, if he had stated that such documents had in fact not being issued by concerns from which those are purported to be issued and are rather forged and fabricated documents but he did not say even a word in that regard. The remaining evidence adduced by the prosecution is mostly regarding the recovery part and the nature of material being carried in it. Once the prosecution had been unable to prove the forgery of documents, the question of the same having been done for the purpose of cheating does not crop up.

The trial Court clearly fell in error in convicting the accused for offence under Section 468 IPC without there being sufficient material available on record to substantiate those allegations and to prove necessary ingredients of the said offence.

Therefore, I conclude that the impugned judgment needs to be upheld as regards conviction of accused Ramesh Chand and Arun Kumar for offence under Section 7 of the Act, whereas it is bound to be set aside as regards conviction of Ramesh Chand, Arun Kumar, Suresh Chand and Subhash Sharma for offence under Section 468 IPC.

Resultantly, Subhash Sharma, who has been convicted for offence under Section 468 IPC only is acquitted of the charge framed against him with proceedings qua Suresh Chand having been abated on account of his death. Conviction of appellant Ramesh Chand and Arun Kumar for offence under Section 7 of the Act is maintained.

As regards sentence part, accused Ramesh Chand was sentenced to undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.300/- and in default of payment of file to further undergo rigorous imprisonment for one month whereas accused Arun Kumar was sentenced to undergo rigorous imprisonment for 3½ years and to pay a fine of Rs.2,000/- and in default of payment of file to further undergo rigorous imprisonment for one month. They

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have said to have deposited the amount of fine. Learned counsel representing such appellants have prayed for taking of a lenient view in the matter for the reason that the incident took place more than 21 years back. It is stated that appellant Ramesh Chand is aged about 62 years and Arun Kumar is aged about 46 years.

As per the custody certificates, appellant – accused Arun Kumar has undergone 2 months and 26 days out of the total sentence, whereas appellant – accused Ramesh Chand has undergone 4 months of the total sentence.

Considering the facts and circumstances, I am of the view that ends of justice would be squarely met if the sentence of appellants – accused Arun Kumar and Ramesh Chand is reduced to two years, whereas the part of conviction relating to payment of fine is kept as intact.

With such modification, the impugned judgment is upheld as against Arun Kumar and Ramesh Chand and their appeals are allowed partly, whereas appeal filed by Subhash Sharma is accepted and he is acquitted of the charge framed against him.

Appellants Arun Kumar and Ramesh Chand are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Fatehgarh Sahib is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

(H.S. MADAAN)
JUDGE

29.9.2017

Gaurav Sorot /Brij

1. Whether reportable? **No / Yes**

2. Whether speaking / reasoned? **No / Yes**

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