IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19903 of 2017
Date of Decision: 21.11.2017

Atul Jindal @ Atul Kumar ...Petitioner

VERSUS

Central Bureau of Investigation, New Delhi ...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.K. Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate
for the petitioner.

Mr. S.S.Sandhu, Advocate
for the respondent.

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SURINDER GUPTA, J.

This is petition filed on 25.05.2017 challenging order dated 28.05.2009 framing charge against the petitioner for offences punishable under Sections 120-B/465/471 of Indian Penal Code (for short 'IPC') read with Sections 9/10 of the Essential Commodities Act, read with Section 3(v) of Solvent Order 2000 in FIR No. RC/EOU-1/2003/E/0004 under Section 120-B IPC read with Sections 8/9/10 of the Essential Commodities Act and Sections 465/471 IPC, registered at Police Station CBI/EOU-1, New Delhi and order dated 13.02.2017 passed by Additional Sessions Judge-cum-Special Judge, CBI, Haryana, whereby revision filed by the petitioner against order dated 28.05.2009, was dismissed.

2. CBI conducted an enquiry as per order of Hon'ble Gujarat High Court dated 19.10.2001 passed in Civil Application No. 3274 of 2001. Inspector Rajiv Chandola of Anti Corruption Branch, Gandhi Nagar conducted the enquiry and submitted his report as follows:-

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"Special Civil Application No. 3274 of 2001 was filed by Shri Saurin Rasik Lal Shah of Ahmedabad in the Hon'ble High Court of Gujarat praying for CBI enquiry into allegation that Naphtha imported through Mundra and Kandla Ports as fuel for power generation was being diverted to the various outlets of automobile fuel for the purpose of adulteration against the laid down directions and legal provisions. The Hon'ble High Court vide order dated 19.10.2001 directed CBI Gandhi Nagar Branch to enquire into the matter. Accordingly, PE8(A)/2001-GNR was registered against certain unknown public servants and private persons on 23.10.01. Later on petitioner also filed Civil Application No. 12106 of 2001 for direction to enquire into misuse of Naphtha imported through all the Ports in Gujarat. The Hon'ble High Court also directed to enquire above allegation on 27.12.01.

2. On the basis of thorough enquiry conducted into the matter, it has revealed that Shri Sanjay Jindal, Director of M/s Sri Hari Promoters, Panipat (Haryana) with its unit at Babarpur-Kachroli Road, Village : Rajapur, Distt. Panipat (Haryana) and other unknown persons were parties to a criminal conspiracy during the year 2001 in the matter of purchase of 1450 MTs of imported Naphtha by the unit on high seas basis from M/s J.B. Promoters Ltd., Delhi, M/s Yatish Impex Pvt. Ltd., Indore and M/s J.B. Overseas, Delhi and diverted large quantity of the same by preparing false records showing consumption of diverted quantity and falsely claimed Cenvat Credit from the Central Excise authorities.

3. It has been revealed during enquiry that M/s Sri Hari Promoters, Panipat had obtained a licence from the Distt. Food & Supplies Controller, Panipat (Haryana) under the Naphtha Control Order, 2000.

4. The aforesaid quantity of imported Naphtha was lifted by the unit by engaging tankers of private transporters. The distance between their unit and Kandla Port/Mundra Port is above 1100 kms. Out of 1450 MTs of Naphtha in total,

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1446.300 MTs is shown to have been loaded in the 121 tankers and the same is shown to have been received in their factory between 21.3.2001 to 15.11.2002. The loss during transit is reported to be 3.700 MT. The quantity of Naphtha so imported have been reflected by the Unit in the statutory records maintained i.e. RG 23-A Part-I etc. Quarterly Returns to Central Excise Authorities at Panipat (Haryana) is also shown to have been filed regularly by them in form RT-12. The Unit is also reported to have filed quarterly returns to the Distt. Food & Supplies Controller, Panipat (Haryana) as per mandatory provisions of Naphtha Control Order, 2000.

5. During scrutiny of the records of M/s Sri Hari Promoters and the same being juxtaposed with the records of M/s Srinath Industries, Bahadurgarh (Haryana) and M/s Jagdamba Petroleum (I) Pvt. Ltd., Greater Noida (UP), the diversion of tankers of Naphtha have been noticed. During the relevant period 13.720 MTs of imported Naphtha is shown to have been lifted by M/s Srinath Industries, Bahadurgarh (Haryana) vide Transportation Challan dated 14.8.2001 of Kunal Bulk Carrier, Gandhidham, through tanker bearing no. GJ6X7082 from Kandla Port. The receipt of this tanker is shown to have been made by M/s Srinath Industries on 20.08.2001 in their statutory record RG 23-A Part-I. This tanker is also shown to have been alleged utilized by M/s Jagdamba Petroleum (I) Pvt. Ltd. in lifting 13.700 MTs of imported Naphtha from Port on 3.8.2001 which is shown to have been received on 19.8.2001. The same tanker is shown to have been utilized by M/s Sri Hari Promoters in lifting 13.760 MTs of imported Naphtha from Kandla Port on 21.8.2001. Thus material available prima facie show falsification of records.

6. The above facts disclosed that Shri Sanjay Jindal, Director of M/s Sri Hari Promoters, Panipat (Haryana) in conspiracy with others has cheated the Govt. and also committed offences of forgery and forgery for the purpose of

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> *cheating which constitute offences u/s 120-B r/w Sections 420, 467, 468, 471 IPC r/w Section 7 r/w Section 3 & Section 9 of Essential Commodities Act, 1955.*
>
> *7. This is submitted for registration of a Regular Case against the accused persons and investigation thereof."*

3. On this report, Superintendent of Police, CBI/EOU-1, New Delhi passed order as follows:-

> *"Hence a Regular case is registered against the aforesaid persons for commission of offences mentioned above and entrusted to Sh.Vivek Priyadarshi, Dy. Supdt. of Police, EOU.I, CBI, New Delhi for investigation."*

4. The investigation was thereafter conducted by DSP Vivek Priyadarshi, who after investigation presented challan against petitioner and other accused.

5. Learned counsel for the petitioner while referring to provisions of Clause 4 of the Solvent Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobile) Order, 2000 (Republished on G.O.MS.NO:206, C, F & C.P., dated 06.09.2000) (**later referred to as 'the Solvent Raffinate Order, 2000'**) and the Naptha (Acquisition, Sale, Storage and Prevention of Use in Automobile) Order, 2000 (Published in G.O.MS.NO.204, Co-operation, Food & Consumer Protection dated 06.09.2000) **(later referred to as the Naphtha Order, 2000**), has argued that as per provisions of Clause 4 of above Orders of 2000, power of search and seizure lies with the gazetted officer of Central or State Government or any police officer not below the rank of Deputy Superintendent of Police, duly authorized. In this case, preliminary enquiry was conducted by the officer of the rank of Inspector, which was illegal. He had also searched the record of the company, which formed basis for FIR registered by CBI, as

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such, registration of FIR and consequently framing of charge is not sustainable in the eyes of law. In support of his contention, he has cited judgments of Hon'ble Gujarat High Court in cases of ***Roshan Sharma*** ***vs. State of Gujarat*** ***Criminal Misc. Application No. 5317 of 2002*** and ***Kailash Subhash Jadav*** ***vs.*** ***State of Gujarat*****, *Special Criminal Application (Quashing) No. 1914 of 2008*** and of Hon'ble Apex Court in case of ***Roy J.D.*** ***vs.*** ***State of Kerala*****, *2000 (4) RCR (Criminal) 762*** and of this Court in case of ***Harpal Singh and others*** ***vs.*** ***State of Punjab*****, *1991 (3) RCR (Criminal) 307***.

6. Learned counsel for the respondent-CBI has argued that as per provisions of Clause 4 of the aforesaid two Order(s) of 2000 referred by learned counsel for the petitioner, investigation, search, and seizure were made by officer of the rank of Deputy Superintendent of Police, as such, there is no violation of provisions of above Orders. Regarding enquiry conducted by Inspector Rajiv Chandola, he has submitted that it was conducted as per order of Hon'ble Gujarat High Court and not in a case registered by the CBI. Conducting of enquiry under the orders of Hon'ble Gujarat High Court is internal matter of the investigating agency and a distinction is to be drawn between investigation and enquiry. While referring to seizure memos produced with challan, he has argued that search and seizure were conducted in the year 2004 i.e. much after registration of FIR by DSP Vivek Priyadarshi, who was competent officer to conduct the investigation. After framing of charge vide order dated 28.05.2009, 31 witnesses have been examined by prosecution. Petitioner filed revision against order framing charge only on 03.11.2014 i.e. after a period of more than 5 years of framing of charge and his revision was rightly dismissed by

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Court below.

7. The question raised by learned counsel for the petitioner is as to whether the preliminary enquiry as per order of Hon'ble Gujarat High Court could be conducted by the officer of the rank of Inspector is illegal and bad in the eyes of law and FIR could not be registered on the basis of his enquiry report?

8. A Full Bench of Hon'ble Gujarat High Court vide order dated 19.10.2001 had directed CBI, Gandhi Nagar to start preliminary enquiry into the matter regarding import of Naptha. Operative part of the order reads as follows:-

> *".........In the meantime, we consider it expedient to direct the CBI – Gandhinagar to start preliminary enquiry into the matter regarding import of naptha at Kandla Port and Mudra Port by various persons as fuel for power project and its consumption contrary to the laid down directions and legal provisions, which as alleged is going on for the last one year. Let the report of investigation be submitted by the CBI before the Court on the next date of hearing for taking further steps in the matter."*

9. CBI got the preliminary enquiry conducted from Inspector Rajiv Chandola, who submitted his report (Annexure P-3) on the basis of which FIR was ordered to be registered and the investigation was conducted by DSP Vivek Priyadarshi and search and seizure after registration of FIR were conducted by the investigating officer. After completion of investigation, CBI submitted charge-sheet in the Court of Special Judicial Magistrate, CBI, Haryana and vide order dated 28.05.2009, petitioner and other accused were charge-sheeted. They filed revision against order dated 28.05.2009 on 03.11.2014, which was dismissed by Special Judge (CBI),

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Haryana vide order dated 13.02.2017.

10. Clause 4 of 'Naphtha Order, 2000' reads as follows:-

"4. Power of search and Seizure:-

(1) Any Gazetted Officer of the Central or State Government or any Police Officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order by the Government or any officers of a Government Oil Company or any other Oil Company authorized by Central Government, not below the rank of Sales Officer may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this order or any order made thereunder has been complied with-

(a) Enter and search any place or premises being made use of or suspected to be made use of in the business of the dealer, transporter, consumer or any other person who is an employee or agent of such dealer/transporter/consumer with respect to which there is reason to believe that the provisions of this order have been/are being or are about to be contravened.

(b) Stop and search any person or vehicle or receptacle used or intended to be used for the movement of the product or using or receiving the product in contravention of this order.

(c) Inspect any book of accounts or other document or any stock of the product used or suspected to be used in the business of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer.

(d) Take samples of the product and/or seize any/or the stocks of the product which the Officer has reason to believe has been or is being or is about

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> *to be used in contravention of this order and hereafter take or authorize the taking of all measures necessary for securing the production of stocks/items so seized before the Collector having jurisdiction under the provisions of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production."*

11. Similar provisions are contained in the Solvent Raffinate Order, 2000.

12. Before proceeding further firstly I have a look at the citations referred by learned counsel for the petitioner.

13. In the case of ***Roshan Sharma (supra)***, FIR was registered on the basis of secret information and on that secret information a tanker containing Naphtha was intercepted on suspicion that the same will be used for the purpose of adulteration of petrol. The tanker was apprehended by the officer of the rank of Inspector and in these circumstances while referring to Clause 4 of aforesaid Orders of 2000 issued by Union of India in exercise of power under Section 3 of Essential Commodities Act, 1995, power of seizure vests in an officer not below the rank of Deputy Superintendent of Police. In the second citation in the case of ***Kailash Subhash Jadav (supra)***, Inspector of Police had filed a complaint and carried out investigation and filed charge-sheet, which was considered to be a violation of provisions of Clause 4 of aforesaid two Orders of 2000.

14. In the case of ***Roy V.D. (supra)***, search and seizure were conducted by an officer, who was not empowered or authorized under Section 41 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and it was observed that the search and seizure made by him lacks sanction of law and is inherently illegal.

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15. In the case of ***Harpal Singh (supra)***, Assistant Sub Inspector of Police Station Sadar Amritsar organized a raiding party on the basis of secret information that accused had received drums of kerosene oil from the truck tanker bearing registration no. 13051 PAT without any permit, licence or authority in order to sell the same in black market. Under these circumstances it was held that investigation and search conducted by Assistant Sub Inspector stands vitiated as he was not competent to do so.

16. The above citations are not applicable to facts of instant case as in all these citations either the search or seizure after registration of FIR or sending *ruqa* for registration of FIR was conducted by the officer below the rank of Deputy Superintendent of Police or the investigation and challan was filed by such officer. In the present case, FIR was got registered under the orders of Superintendent of Police, CBI and the investigation was conducted by the officer of the rank of Deputy Superintendent of Police. Learned counsel for the petitioner has not pointed out that any search or seizure was made during investigation after recording of the FIR by the officer below the rank of Deputy Superintendent of Police.

17. Learned counsel for the CBI has shown me seizure memos, which are part of challan and submitted that all the seizure memos were prepared by Deputy Superintendent of Police, who himself conducted the search. Even the proposal for search and seizure was made in the year 2004 i.e. much after the registration of FIR. The preliminary enquiry conducted by Inspector Rajiv Chandola was in compliance of order of Hon'ble High Court of Gujarat. The enquiry conducted by Inspector Rajiv Chandola is not part of the investigation conducted in this case on registration of the FIR. At this stage, there is nothing on file to show that any search of

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seizure was made by Inspector Rajiv Chandola, which form part of final report submitted by CBI in Court. He was deputed to conduct preliminary enquiry under order of Hon'ble Gujarat High Court. Clause 4 of Naphtha Order, 2000 places a bar for officer below rank of DSP and other officer authorized under this clause to conduct search and seizure for securing compliance of the provisions of the order or for the purpose of satisfying himself that this order or any other order made thereunder has been complied with. Inspector Rajiv Chandola was deputed to conduct preliminary enquiry to comply with order of Hon'ble Gujarat High Court calling for some information to take further steps in the matter pending before it. It will be question for the trial Court to see on the basis of evidence produced by prosecution as to whether prosecution has relied on any search or seizure made during preliminary enquiry which is in violation of provisions of Clause 4 of Naphtha or Solvent Raffinate Orders, 2000. At this stage, I find no reason to reject the observation of learned Revisional Court below that provisions of above two orders of 2000 are not applicable to preliminary enquiry.

18. As a sequel of my above discussion, I find no merit in the instant petition and the same is dismissed. However, nothing observed in this order shall come in the way for trial Court to decide the matter on merits on the basis of evidence recorded during trial.

(SURINDER GUPTA)
November 21, 2017 **JUDGE**
jk

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***

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