IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

213 (2 cases)

CRM-M-28989 of 2012 (O&M)
Decided on : 07.10.2017

Ravish Kumar

... Petitioner

Versus

State of Haryana

.. Respondent

CRM-M-2958 of 2013 (O&M)
Decided on : 07.10.2017

Gaurav Aggarwal

... Petitioner

Versus

State of Haryana

.. Respondent

CORAM : HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present : Mr.Sanjiv Gupta, Advocate
for the petitioner (in both petitions).

Mr.Naveen Sheoran, DAG, Haryana.

Arvind Singh Sangwan, J. (Oral)

Vide this judgment, aforesaid two petitions i.e. **CRM-M-28989 of 2012** and **CRM-M-2958 of 2013** are disposed of.

Brief facts of the case are that an FIR No.330 dated 26.09.2011 under Sections 7(1)(10) of the Essential Commodities Act, 1955 and Sections 420, 120-B, 409, 467, 468, 471 and 201 IPC, was registered by the complainant against the petitioner, Ravish Kumar son of Krishan Lal and co-accused namely, Naib Singh son of Joginder Singh, Krishan Kumar Gupta son of Kedar Nath, who were partners of M/s Shankar Rice Mill, under Section 7(1) (10) of the Essential Commodities Act, 1955 (hereinafter to be referred as the 'Act') and read with Sections 420, 120-B, 409, 467, 468, 471 and 201 IPC.

As per the allegations in the FIR, a secret information was received by the police that M/s Malha Ram and Company and Bhole Shankar and Company whose owners are Krishan Lal, Madan Lal, Harbans Lal sons of Malha Ram and Ashwani Kumar son of Desh Raj, Umesh son of Desh Ram, residents of Naraingarh, were having rice seller in village Bada Gaon in the name of Shiv Shanker Rice and General Mills. Though, they are having licence of sale of different fertilizers, however, on the pretext of licences, they are doing black marketing of the fertilizer and are selling the same to the people in black market and both the said firms in conspiracy with each other have stored huge quantity of un-authorised fertilizer in the premises of Shiv Shankar Rice Mill. Finding the information to be reliable which attracts the offences under Section 7(1) and 7(10) of the Act read with Sections 420, 120-B, IPC, the FIR was registered and the investigation was conducted. During investigation, a raid was conducted on the Shankar Rice Mill and 1750 bags of Uttam Veer Urea and 499 bags D.A.P. (IPL) and 108 bags N.P.K. were found in the Godown without the bill. The petitioner was arrested and the documents including 28 Bills book, one Stock Registered of Fertilizer and daily sale register were taken into possession by the police. During the investigation, the police found the partners of M/s Bhole Trading Company as innocent. Later, co-accused Naib Singh was arrested with the allegation that he has prepared certain bogus bills and similarly, co-accused Krishan Kumar Gupta, Manager Hafed was also arrested. After completion of the investigation, the challan was presented against three accused persons i.e. Ravish petitioner, Naib Singh, salesman of Cooperative Society and Krishan Kumar Gupta, a Manager of Hafed.

Lateron, Gaurav Aggarwal, the petitioner in CRM-M-2958 of 2013 who is a partner of M/s Bhole Shankar Trading Company, Naraingarh, filed an application before the trial court for releasing the goods i.e. fertilizer on Superdari which was released vide order dated 13.01.2012 (Annexcure P-3) in this petition. The trial court released 1750 bags of Urea in his favour, however, declined the permission to sell of the same. The prayer in this petition is for setting aside of that order vide which the permission to sell the case property was declined.

The present petitioner has filed this petition praying for quashing of the FIR, and the subsequent proceedings in pursuance thereof.

It is submitted on behalf of the petitioner that since this matter was pending since 2012, the trial court has framed charge under Section 7 of the Act read with Sections 420, 120-B, IPC against petitioner, whereas charges against co-accused namely, Naib Singh and Krishan Kumar Gupta, have been framed under Section 409, 420, 467, 468 and 471 IPC vide order dated 21.03.2014.

The reply has been filed on behalf of the respondents. During the course of arguments, on the previous date, the State counsel was directed to place on record a notification issued on 23.1.1978 vide which item No.29 was omitted holding that fertilizer is not a controlled item, for the purpose of Essential Commodities Act. The operative part of the order dated 26.07.2017 is reproduced as under:-

> "Learned counsel for the petitioner further submits that the allegations in the FIR are that though the petitioner's firm are having license of different fertilizers, the owners of the aforesaid firm in the pretext of licences are doing black marketing of the fertilizer. Learned counsel for the petitioner has relied upon a notification dated 27.10.1977 "Haryana Prevention of Hoarding and Maintenance of Quality Order 1977" wherein Schedule Clause 2(a), fertilizer, as defined in the fertilizer (Control) Order, 1957 is exempted item.
>
> "Learned counsel for the petitioner has further relied upon the judgment of M/s Bansal & Deol Fertilizer and another Vs. State of Punjab 2006(1) R.C.R. (Criminal) 9 wherein a similar circumstances, the fertilizer has been removed from the list of controlled items of the State of Punjab by issuing a notification, the FIR was quashed.
>
> Learned State Counsel seeks a short accommodation to make a submission in reply to the contention with the counsel for the petitioner.
>
> The learned State counsel is directed that concern official from the Food and Supplies Department, dealing with the notification shall also remain present in the Court to inform the Court, if any, subsequent notification or modification in the order of 1977 has

> been made by the State Government or not after, the notification issued on 23.01.1978, vide which item No.29 was omitted holding fertilizer is not a controlled item."

Thereafter, on the next date of hearing, after hearing learned counsel for the parties, State counsel was further directed to file a specific affidavit with regard to certain clarifications and the order dated 23.8.2017 is reproduced as under :-

> "In pursuance to the order dated 26.07.2017, the notifications dated 08.09.1992 and 27.10.1977 are placed on record.
>
> A perusal of the notification shows that the averments made by the petitioner as noticed in the order dated 26.07.2017 are not denied. However, the counsel for the State submits that in the FIR, apart from Section 7(10)/10 of the Essential Commodities Act, 1955 (in short 'the Act') challan against the petitioner under Sections 420, 120-B, 409, 467, 468, 471 and 201 IPC are also invoked.
>
> It is submitted on behalf of the petitioner that since the Act is a special enactment, the petitioner who is not even a partner in the firm against whom the allegations are levelled and the partners having been found innocent during the course of investigation, the petitioner cannot be held guilty. The petitioner is stated to be booked for offence punishable under Section 406 IPC on the disclosure statement of co-accused – Naib Singh. Counsel for the petitioner has referred to the report under Section 173 Cr.P.C. wherein it has come on record that the forgery of bills as well as destroying the evidence is done by Naib Singh – co-accused and there is no explanation regarding submission of report under Section 173Cr.P.C. against the petitioner.
>
> List on 28.09.2017.
>
> Counsel for the State seeks some time to file a specific affidavit to inform the Court:-
>
> ***1.*** *as to whether in the light of the provisions of Section 7 of the Act, the FIR registered under the provisions of Indian Penal Code is maintainable;*
>
> ***2.*** *whether any evidence has come on record regarding preparation of any forged bills by the petitioner or not; and*
>
> ***3.*** *whether the petitioner on the basis of any document was found to be in-charge of the partnership firm or not.*
>
> A photocopy of this order be placed on the file of other connected case"

The Deputy Superintendent of Police (DSP), Naraingarh, District Ambala has filed additional affidavit by way of a status report in which it is fairly admitted that there is no direct evidence of forgery of bill by the petitioner which has come on record during investigation and it is also admitted that there is no document on record to show that the petitioner-accused was incharge of the partnership firm M/s Malha Ram and Company except the oral evidence.

In view of the affidavit dated 27.09.2017, filed by the DSP Narraingarh, the short legal point involved in the present petition is whether an FIR registered under Section 420 read with Section 120-B IPC is maintainable; simultaneously in a trial where the FIR under Section 7 of the Essential Commodities Act has been registered and whether the offences on face of it, from the bare perusal of the FIR and investigating report submitted by the police are made out against the petitioner or not.

It is submitted on behalf of the petitioner that the allegations in the FIR are that a raid was conducted by the police, on receiving a secret information, in the premises of Shiv Shankar Rice Mill in which admittedly the petitioner is neither a partner nor a person Incharge in the day-today business managing its affairs. It is further submitted that the partners of M/s Shiv Shankar Rice Mill as well as M/s Malha Ram and Company who were earlier nominated as accused persons, during investigation have been given a clean chit and in fact, on producing a valid licence and bills regarding goods recovered by the police from their possession, they were found innocent and even the trial court has released the goods on Superdari with a rider that the same will not be sold.

Learned counsel for the petitioner further submitted that as per the Haryana Government Food and Supply Department, notification dated 8.9.1992 issued in exercise of powers conferred by Sub-clause (1) of Clause 6 of the ***Haryana Prevention of Hoarding and Maintenance of Quality Order, 1997*** fertilizer as defined in the fertilizer (Control) Order, 1957 has been exempted from the purview of this order as per the schedule of this order and in other words, Item No.29 showing a fertilizer to be a controlled item stood omitted for the purpose of this order.

Learned counsel for the petitioner in support of his contentions has relied upon 2006(1) RCR (Criminal) 9 titled as ***M/s Bansal and Deol & Fertilizer and another Vs.State of Punjab,*** where this Court while relying upon a similar notification where the fertilizer was taken out of the purview of the controlled order in Punjab, quashed the FIR. The operative part of this judgment reads as under:-

> "11. The next contention, raised by counsel for the petitioners that DAP fertilizer has been removed from the list of controlled items, pursuant to the notification dated 10.2.1992 and, therefore, even if the facts, contained in the present FIR, are accepted to be true, no offence is made out against the petitioners, is borne out from the notification (Annexure P-8). A perusal thereof reveals that DAP fertilizer is no longer a controlled item. The notification is dated 10.2.1992, whereas the present FIR was registered on 4.11.1998 on which date, DAP fertilizer was no longer a controlled item The respondents, whether in their reply, or in their submissions, have failed to controvert the above notification. There is no denial of the fact that on the date of the notification, DAP fertilizer was no longer a controlled item. In this view of the matter, the Fertilizer Inspector had no jurisdiction to conduct a raid and/or lodge the FIR with respect to any shortage

of fertilizer. The Fertilizer Inspector draws his jurisdiction from the Essential Commodities Act read with the Fertilizer (Control) Order, 1985. In case an item is not a controlled item, no offence, in respect thereof, can be made out under the Fertilizer (Control) order 1985.

12. In view of what has been stated above, and taking into consideration the facts and circumstances of the present case, the present petition is accepted and the FIR No.198, dated 5.11.1998, registered under Section 7 of the Essential Commodities Act, 1955 read with Sections 5, 7, 8 and 35 of the Fertilizer (Control) Order, 1985, at Police Station Jagraon, as also subsequent proceedings emanating therefrom are quashed."

Learned counsel for the petitioner has accordingly submitted that the offence under Section 7 of the Act is not made out against the petitioner. It is next submitted on behalf of the petitioner that the prosecution of the petitioner under Section 420 IPC read with Section 120-B IPC, along with Section 7 of the Act is otherwise not maintainable as the same cannot be tried by the special court. Learned counsel for the petitioner has relied upon **2003 (1) RCR (Criminal) 788** tilted as "***S.C. Sharma and antoher*** *Vs.* ***State of Haryana and others"*** wherein this court has held as under

"9. Under **section 260 cr.p.c.,** it is provided that a court may try an offence in a summary way where the offence is not punishable with death, imprisonment for life or imprisonment for a term exceeding two years, meaning thereby that the offences punishable upto two years may be tried in a summary manner. Besides that certain offences have been specifically mentioned in **section 260 cr.p.c.,** which could also be tried in a summary manner. So far as the offence under Section 161 IPC is concerned, it is punishable with imprisonment for three years, whereas the offence under Section 420 IPC is punishable with imprisonment for 7 years. However, the offence under Section 427 IPC is punishable with imprisonment for two years. Thus, neither the offence under Section 161 IPC nor the offence under Section 420 IPC could be tried in a summary manner, whereas the offence under Section 427 IPC could be tried in a summary manner. Offences under Sections 34 and 149 IPC are not substantive offences. With regard to the offence under Section 120-B IPC, it also bears the same punishment which is the punishment provided for the main offence. In this view of the matter, only the offence under Section 427 IPC could be tried in a summary manner. So far as the present petitioners are concerned, there is absolutely nothing on record to show that they had committed offences under Section 427 IPC, inasmuch as, there is absolutely no material on record to show that the accused petitioners had committed any mischief which was punishable under Section 427 IPC. So far as other offences are concerned, as referred to above, under section 12-aa(2) of the **essential commodities act**, 1955, as applicable at the relevant time, the Special Court was competent to try other offences alongwith an offence under the **essential commodities act** only if those offences were triable in a summary way. In this view of the matter, the substantive offences under Sections 420 and 161 IPC could not be tried by the Special Court alongwith the offence under Section 7 of the **essential commodities act**.

10. From the perusal of the above, in my opinion, it would be clear that criminal complaint and all subsequent proceedings taken thereon against the accused petitioners, including the summoning orders, are abuse of the process of law and are liable to be quashed in both the cases.

11. For the reasons recorded above, both the petitions are allowed and the criminal complaint, summoning order and all subsequent proceedings taken thereon against the petitioners are quashed.

Petitions allowed."

A similar view has been taken by this Court in **2011 (1) RCR (Criminal) 102**, ***Rakesh Kumar Vs. State of Haryana*** and by the Division Bench of Andra Pradesh in **2004 (3) RCR (Criminal) 81**.

Learned counsel for the petitioner has further submitted that in view of the additional affidavit filed by the DSP Naraingarh dated 27.09.2017, it is clearly admitted that there is no direct evidence of forgery of bill by the petitioner which has come on record during the investigation and it is also admitted that there is no document on record to show that the petitioner-accused was Incharge of partnership firm except oral evidence or that M/s Malha Ram and Company is a family business of the petitioner. It is thus, submitted that in the absence of any evidence against the petitioner that he has committed any forgery of bills or that he was partner in the Malha Ram and Company, the prosecution of the petitioner under Sections 420 and 120-B IPC is not maintainable.

On the other hand, learned State counsel, has submitted that in the firm M/s Malha Ram and Company, father of the petitioner is share holder of 10% and that petitioner is actively taking care of this business. It is also submitted that there is disclosure statement of the co-accused Naib Singh to this effect.

After hearing learned counsel for the parties, I find merit in the petition. In view of the fact that there is no documentary evidence on record forming part of the report under Section 173 Cr.P.C. that the petitioner is either a partner or Incharge of the partner firm M/s Malha Ram and Company, and there is no direct evidence of forgery of bills against the petitioner as admitted in the affidavit dated 27.9.2017 filed by DSP, Naraingarh, the offences under Sections 420 and 120-B IPC are not made out. It is worth mentioning here that the partners of the firm M/s Shiv Shankar Rice Mill as well as Malha Ram and Company, who were initially arrayed as an accused persons were given a clean chit during the investigation by the police and no challan under Section 173 Cr.P.C was submitted against them. So far the offence under Section 7(10) of the Essential Commodities Act is concerned, it is not disputed by the learned State counsel that as per notification dated 27.10.1997, the item No.29 relating to the fertilizer as defined in the Fertilizer Controlled Order 1957 stands omitted from the schedule of this order.

A similar view has been taken by this Court in M/s Bansal and Deol Fertilizer and others' case (supra) where the fertilizer was removed from the list of controlled item pursuant to a notification, the FIR was quashed.

The joint prosecution of the petitioner under Section 7(10) of the Essential Commodities Act along with Section 420 and 120-B, IPC is also not legally sustainable as the procedure for prosecution laid down in the Fertilizer Controlled Order and Essential Commodities Act, being a summary procedure cannot be clubbed with a warrant case where the offences under Sections 420 and 120-B, IPC are to be tried by the court as in case of Section 7, it is to be tried by a special court whereas the offence under Sections 420 and 120-B, IPC cannot be tried by the special court.

In view of the judgment relied upon by the petitioner in SC Sharma case (supra), the joint prosecution of the petitioner under Section 10 of the Commodities Act and Sections 420 and 120-B, IPC is not sustainable

For the reasons stated above, from a bare perusal of the FIR and the reports submitted under Section 173 Cr.P.C., no offence is made out under Section 7 of the Essential Commodities Act or Section 420 and 120-B, IPC against the petitioner.

Accordingly, this petition is allowed and FIR No.330 dated 26.09.2011 under Sections 7(1)(10) of the Essential Commodities Act, 1955 and Sections 420, 120-B, 409, 467, 468, 471 and 201 IPC, was registered qua the petitioner along with all subsequent proceedings arising therefrom are quashed. Since the FIR has been quashed against the petitioner, the orders dated 13.01.2012 and 08.01.2013 which are impugned in the connected petition i.e. CRM-M-2958 of 2013 putting a rider on the right of the petitioner, Gaurav Aggarwal in that case not to sell 1750 bags of fertilizer are also set aside.

[Arvind Singh Sangwan]
Judge

07.10.2017
sd

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No