

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-3677 of 2013
Date of decision : 13.11.2017**

Jagdish Ram and another**Petitioners**

v.

State of Punjab**Respondent**

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. P.S. Ahluwalia, Advocate, for the petitioners

Mr. Sidakmeet Sandhu, AAG, Punjab

SHEKHER DHAWAN, J.

Present petition under Section 482 Cr.P.C. is for quashing of FIR No. 50 dated 28.3.2008, under Section 7 of the Essential Commodities Act and Section 420 IPC registered at Police Station City Sunam, District Sangrur.

Learned counsel for the petitioners, inter alia, contended that the very basis of FIR to the extent that complaint was made to the police and Inspector Ravinder Singh along with other police officials conducted the raid and put up a naka and a tanker No. PB 13B-9710 and PB 13C 4612 was searched. The driver of the tanker disclosed his name to be Jagdish Pal and conductor disclosed his name to be Ravinder Kumar, who are petitioners in this case. From the tanker, 3000 litres of oil was recovered from chamber No.1, 2000 litres of oil from chamber No.2, 4000 litres of oil from chamber No.3 and 3000 litres of oil from chamber No.4 and, as such, total recovery is 9000 litres of kerosene oil was found. Learned counsel for the petitioners mainly contended that as per Rule 9 of the Kerosene (Restriction on use and Fixation

of Ceiling Price) Order, 1993 (in short “Kerosene Order”), in such a case, the recovery would be effected by officer of the Department of Food and Civil Supplies of the Government and he should not be below the rank of Inspector.

For ready reference, Rule 9 of the above extracted here below :

“9. Power of entry, search and seizure :

(a) An officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorized by such Government and notified by the Central Government or any office authorized and notified by the Central Government, or any officer not below the rank of Sales Officer of a Government Oil Company authorized by the Government and notified by the Central Government, may, with a view to ensuring compliance with the provisions of this order, with such assistance as may be required, for the purpose of the satisfying himself that this order or any order made thereunder has been complied with:

(i) stop and search any vessel or vehicle or other conveyance which the Officer has reason to believe, has been or is being, or is about to be used in contravention of this order;

(ii) enter or search any place with such aid or assistance, as may be necessary; and

(iii) seize or remove with such aid or assistance, as may be necessary, books registers and other records pertaining to kerosene business, alongwith reason to believe that any provision of this Order has been or is being or is about to be contravened and thereafter take or authorize the taking of all measures necessary for securing the production of the kerosene at the office of the Government Oil Company and the vehicle, vessel or other conveyance so seized before the Collector having jurisdiction under the provisions of Essential commodities Act, 1955 (10 of 1955) for their safe custody pending such procedures.”

Learned counsel for the petitioners further contended that as the

FIR is under Section 7 of the Essential Commodities Act and Section 420 IPC

but none from the general public had come forward to depose that he was actually cheated by the present petitioners and in absence of that Section 420 IPC also not made out against the petitioners and continuation of the proceedings on the basis of such FIR shall be miscarriage of justice and misuse of process of law and same be quashed. Reliance placed upon the judgment of this Court in the case of “**Rajinder Kumar v. State of Punjab**”, in CRM-M No. 12524 of 2012 decided on 27.8.2015

Learned State counsel while arguing on this point contended that the alleged recovery was effected at 12.45 mid night and at that time, no body from Food and Civil Supplies Department was available and raid was to be conducted in emergency, that is why Food Inspector could not be associated. As regards to cheating under Section 420 IPC, the same is an offence against general public. More so, during the trial, 4 witnesses have already been examined and there is no ground for quashing of FIR at this stage.

Having considered the above said facts and the relevant Rule 9 of the Kerosene Order, this Court is of the view that in such like offences under the Essential Commodities Act, the raid was but to be conducted in the presence of Food and Civil Supplies Department as the offence is more or less technical in nature. Mere plea that raid was conducted on odd hours, is not a ground to say good by to Rule 9 of Kerosene Order, which is essential for compliance. As regards to offence under Section 420 IPC is concerned, at least there should be some person, who may come forward and depose that he has been cheated and in absence of that, on the basis of general allegations, no offence can be said to have been made under Section 420 IPC as well.

The Hon'ble Supreme Court in the case of “**State of Haryana and**

others v. Ch. Bhajan Lal and others, AIR 1992 SC 604” laid down following guidelines relating to the exercise of the extra-ordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. :-

- “1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In view of the above, there is no ground to proceed with such an FIR, the very basis of which are against the basic principles of the relevant rules, which are essential in nature.

As such, the present petition is accepted. The impugned FIR No. 50 dated 28.3.2008, under Section 7 of the Essential Commodities Act and Section 420 IPC registered at Police Station City Sunam, District Sangrur and all other consequent proceedings arising thereto, are hereby quashed, qua the petitioners only.

(SHEKHER DHAWAN)
JUDGE

13.11.2017

Ashwani

Speaking/reasoned	:	Yes/No
Reportable	:	Yes/No