

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 10, 2018

1. CRA-S-1124-SB-2004

Kanwaljit Singh @ Lalli

....Appellant

versus

State of Punjab

....Respondent

2. CRA-S-1252-SB-2004

Amrik Singh

....Appellant

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Vikas Bahl, Senior Advocate with
Ms. Shubhreet Kaur, Advocate, for the appellants in
both the appeals.

Mr. HS Sullar, DAG, Punjab for the State

Fateh Deep Singh, J.

Both these criminal appeals by these two accused convicts Kanwaljit Singh alias Lalli and Amrik Singh being both having arisen out of the same very judgment order of sentence dated 17.5.2004 of the court of learned Additional Sessions Judge-cum-Special Judge, Amritsar are being taken up together for disposal for the sake of brevity as well as convenience.

An FIR No. 91 dated 7.10.1997 under section 420 IPC, 7 of Essential Commodities Act as well as section 78/79 Trade Act (sic) Trade and Merchandise Marks Act, 1958 (in short the Act) read with section 6 of the Copy Rights Act was registered with Police Station Sultanwind, Amritsar against Amrik Singh and Kanwaljit Singh alias Lali present appellants and Avtar Singh, Paramjit Singh @ Pamma (latter both having been acquitted).

The brief allegations are that on 7.10.1997 police party headed by DSP Rajinder Singh Waraich on the basis of the secret information that in the godown of one Jaspal Singh, Amrik Singh @ Billa along with his partners Paramjit Singh and Pamma, Avtar Singh and Kanwaljit Singh @ Lalli were preparing spurious mobile oil of **Servo Super** and **Servo Pride** products of brands of Indian Oil and are selling them after packing in cans and boxes and in case raid is conducted they can be caught red handed. On the basis of this information ruqa Ex.PJ was sent to the Police Station leading to the registration of the present case by way of Ex. PJ/1. The same was followed by raid by the Police party and at the disclosed place they found some persons preparing

mobile oil and out of whom one disclosed his name as Amrik Singh and also disclosed names of his partners as Paramjit Singh, Avtar Singh and Lali alias Kanwaljit Singh. A plastic tank of 5000 litres capacity, out of which 15 drums of **Servo Super** oil were recovered each of the capacity of 150 to 200 litres, two plastic tanks of 1000 litres capacity, out of which one was containing five drums and the other was containing 500 litres, 55 plastic cans of 5 litres each containing **Servo Super** Oil, 40 drums of high grade oil each containing 150 to 200 litres oil, one cemented tank containing oil out of which 14 drums of high grade were recovered, 74 empty drums of the capacity of 200 litres, 36 cans of 20 litres capacity, 42 empty cans of 5 litres capacity along with one Godrej almirah containing stickers etc. was found. All the recovered articles were sealed with the seal bearing impression 'RS' in the presence of independent witness Manmohan Singh, Deputy Sales Manager of Indian Oil Corporation, Amritsar. Out of the recovered oil, two cans of **Servo Super** were taken as samples and the cemented tank was sealed by means of lock. The premises were also sealed with the seal of Investigating Officer 'RS'. The recovered articles were taken into police possession through memo Ex. PE. The police during the investigations had taken from the godown one plastic can of black colour having red dye used in preparing spurious oil and two packets of colour each weighing half kilogram and which too were sealed with the seal 'RS' and taken into police possession through Ex. PF. Accused Amrik Singh was apprehended at the spot. The rough site plan of the place of recovery Ex. PK

was prepared. Photographs of the place of recovery were also got clicked. During the course of investigations, sample of the recovered oil was sent to Indian Oil Corporation, Jalandhar and which vide its report Ex. PD opined that the sample fails to meet the specifications laid down pertaining to **Servo Super MG 20W/40**. During the investigations it was found that the accused did not have any licence/authority to prepare mobile oil and this trade mark of **Servo Super** was registered trade mark of Indian Oil Corporation.

On completion of investigations, the accused were put to trial.

The prosecution at the trial examined PW1 Jaspal Singh owner of the premises who has proved the fact of having let out on rent two rooms to Kanwaljit Singh @ Lalli since February 1997 along with his three partners Paramjit Singh, Amrik Singh and Avtar Singh at a monthly rent of Rs 4000/- for first two months and thereafter at the rate of Rs 4500/- per month. PW2 Constable Harvinder Singh proved the photographs of the place, the positives Ex. P1 to P11 and their corresponding negatives as Ex. P12 and Ex. P13.. Co-owner of the premises PW3 Mohinder Kaur corroborated the fact of this tenancy to the accused and that she has shown the tenancy in her income tax return for the year 1997-98, placed on record its copy as mark 'A'. PW4 Amrit Lal, Clerk of Office of General Manager, District Industries Centre, Amritsar proved on the basis of record that no such licence was ever issued to the accused persons and proved letter of the department as Ex. PB. PW5 HC Jaswinder Singh tendered his affidavit Ex. PC. PW6 P.S.Bambra, Deputy

Manager, Laboratory, Indian Oil Corporation Ambala proved the fact of having received in intact condition samples on which he carried on tests and proved his test report Ex. PD to bring about the fact that the recovered oil did not meet the specifications. PW7 Manmohan Singh, Retail Sales Manager, Indian Oil Corporation, Jaipur detailed how in his presence the raid was got conducted leading to recovery of the incriminating articles and proved recovery memo Ex. PE, the fact of presence of accused Amrik Singh at the time of search and seizure. PW8 SI Amarjit Singh one of the members of the police team proved the factum of recovery followed by testimony of the Investigating Officer PW9 DSP Rajinder Singh Waraich who detailed the investigations and the documents prepared during the same. Thereafter the prosecution evidence was closed.

The accused were put the entire incriminating evidence oral as well as documentary in their individual statements recorded under section 313 Cr.P.C. who denied the allegations and accused Amrik Singh took up the plea that his co-accused Kanwaljit Singh alias Lalli was his partner.

The accused in their defence examined DW1 Navneet Khurana to raise the plea of alibi that he was not present at that time and thereafter the accused closed the defence. It was subsequent thereto the accused appellants Amrik Singh and Kanwaljit Singh alias Lalli were found guilty whereas their co-accused were acquitted and the convicted persons were sentenced as

follows:-

<i>U/s 7 of the Essential Commodities Act</i>	<i>To undergo rigorous imprisonment for a period of 9 months and to pay a fine of Rs 500/- each and in default of payment of fine to further undergo RI for one month.</i>
<i>U/s 78 of the Trade and Merchandise Marks Act, 1958</i>	<i>To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs 500/- each and in default of payment of fine to further undergo RI for one month.</i>
<i>U/s 79 of the Trade and Merchandise Marks Act, 1958</i>	<i>To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs 500/- each and in default of payment of fine to further undergo RI for one month.</i>

Heard Mr. Vikas Bahl, Senior Advocate with Ms. Shubhreet Kaur, Advocate, for the appellants in both the appeals; Mr. HS Sullar, DAG, Punjab for the State and perused the records.

The first and the foremost submission put forth on behalf of the appellants side by the counsel is over the factum as to the failure of the prosecution to prove that the accused were the tenants in that very premises arguing that no proof of tenancy has come about. The same is sought to be opposed by the learned State counsel on the grounds that the oral testimony of the owners landlord/landlady regarding the factum of this letting out by PW1 Jaspal Singh and PW3 Mohinder Kaur and the apprehension of accused Amrik Singh at the time of the raid and recovery are suggestive that they do not deny the factum of tenancy.

Appreciating the submission, accused Amrik Singh in his stand taken under section 313 Cr.P.C. has categorically stated that it is his co-accused referred to as Lali alias Kanwaljit Singh is running this business and he has no concern with it. Thus, this admission invariably leads to confession in terms of section 30 read with section 31 of the Evidence Act and is an estoppel against both these accused so put up before the court jointly at the trial. The very object of this provision that wherein an accused person unreservedly confesses his own guilt and the at the same time implicates another person who is jointly tried with him for the same offence his confession may be taken into consideration against such other person as well as against himself because such an admission of his own guilt operates as a sort of estoppel in terms of Section 115 of the Evidence Act and the same is based on maxim *allegans contraria non est audiendus* which means a party is not to be heard to allege the contrary. Though such a presumption is rebuttable but the present case nothing contrary has been brought about by the accused side to undo the effects of the same. There is nothing worthwhile cross-examination upon the landlord PW1 Jaspal Singh and so is the case of deposition of landlady Mohinder Kaur PW3 and her stand that the factum of this tenancy stands duly reflected by her in the income tax returns are matters of much importance. The fact as has been highlighted in the depositions of the official witnesses of the police comprising PW8 SI Amarjit Singh and the Investigating Officer PW9 DSP Rajinder Singh Waraich as to apprehension of accused Amrik Singh alias Billa and who has

been identified in the court are matters of much significance and his presence at the time of raid, search and seizure are itself suggestive that he was in conscious possession of these articles so found out and proved in the testimony of PW7 Manmohan Singh, PW6 P.S.Bambra to be based on report Ex. PD that it was spurious mobile oil and the fact that they were carrying the trade mark of **Servo Super multi grade 20W/40** etc. leads to irresistible conclusion that it was spurious mobile oil of which brand was owned by Indian Oil Corporation and being surreptitiously and illegally sought to be put up by the accused on sale being spurious mobile oil so prepared at their premises. Though learned counsel has sought to place reliance on **Sham Sunder and others vs State of Haryana, (1989) 4 Supreme Court Cases 630** to hammer home the point that principle of vicarious liability and that person entrusted with the business of firm and responsible for conduct of business alone is liable to be prosecuted and that not all the partners certainly does not come to the aid of the appellants at least in the present case in the light of the discussions detailed above.

The next point raised in the submissions of the counsel for the appellants revolves around the fact that only two samples were drawn out of such huge recovery of the alleged mobile oil claimed to be spurious and therefore, it cannot be adduced that the entire recovered articles were spurious and which argument has been opposed tooth and nail on behalf of the State. Going through the submissions, it is well and adequately established nor it is the stand of the appellants that they were licenced to manufacture such a

commodity and PW4 Amrit Lal, Clerk from the office of District Industries Centre, Amritsar has clearly proved the fact that the accused persons were not holding any valid licence or authorization and has placed reliance on letter Ex. PB nor it is the case of the defence at any juncture or could explain the circumstances in which the commodity has come to be in their possession. Their studied silence throughout at the trial under what circumstances it is so is certainly detrimental to their interests in terms of Section 106 of the Evidence Act. Since it is within the special knowledge of the accused they were therefore under legal obligation and burden to prove how the same came to be in their possession or occupation and must offer an explanation to that effect and which is totally absent in the present case. Even if assuming that only two samples have been drawn and in the absence of any such stand of the accused as detailed above it certainly leads to irresistible conclusion that the bulk from which these two samples were drawn separately or individually certainly was spurious one. By way of section 78 of the Act in the absence of any worthwhile stand and proof by the defence that they had acted without any intent had not falsified the trade mark and therefore, are deemed to have committed offences under section 79 of the Act which deals with any person who sells or exposes for sale or has in possession for sale or for any purpose of trade or manufacture, any goods or things to which any false trade mark or false trade description applies is clear indication of this violation and therefore, entitled them to punishment and penalty under these provisions.

Though a faint murmur is sought to be raised over the applicability of the provisions of the Essential Commodities Act and under the definition assigned in section 2 of the Essential Commodities Act includes in its explanation petroleum and petroleum products. Since the mobile oil is a petroleum product and therefore Essential commodities Act certainly comes into application and by virtue of the 5th Schedule to this effect the Lubricating Oils and Greases (Processing, Supply and Distribution Regulation) Order, 1987 (in short, Order of 1987) empowers any police officer above the rank of Inspector to enter and search any place, premises, vessel or vehicle where he has reason to believe, has been, or is about to be, used for the contravention of this Order. The entire chain of events leading to the raid, search and seizure of incriminating articles from the conscious possession of the accused has been brought about by the testimonies of the prosecution witnesses. The trial court in the impugned findings has rightly concluded that the accused could not produce any bill or under what circumstances the mobile oil was alleged to have been recovered came to be in their conscious possession and since the accused have also contravened the above Order of 1987 under which they cannot carry on any business of manufacturing, blending, compounding, packaging, refining, re-refining, selling or transporting any lubricating oil or grease and therefore, by virtue of Schedule 2 of the Essential Commodities Act, Indian Oil Corporation Limited, Jalandhar Laboratory is authorized to carry on analysis in such a case, therefore, the claim of the accused side that

there has been lack of impartial analysis of the articles does not carries much weight besides the fact that it is well proved by the analysis report Ex. PD that the alleged sample does not adheres to the prescribed norms and therefore, did not meet the laid requirements as sought to be projected on the containers and which recovery has been duly proved by the photographs Ex. P1 to P11 and negatives Ex. P12 and P13 and that the trade mark of the Indian Oil was being illegally used to misrepresent the articles to be one which is the sole rights of Indian Oil and therefore, clear cut violations of Orders of 1958. The trial court has given a well reasoned finding appreciating each and every aspect of the evidence in detail and has come to totally justifiable conclusion.

The learned counsel for the appellants at the fag end of submissions has sought to seek support of **Satinder Singh vs Punjab State, 2003(4) R.C.R. (Criminal) 616** that the accused have suffered trial and conviction for almost more than 20 years and therefore, are entitled to concession of probation and which is opposed by the State counsel certainly does not convinces this Court. Keeping in view the seriousness of the allegations and the fact that such like illegal acts with every passing day are gaining notoriety and needs to be strictly curbed and nipped in the bud and therefore, the appellants are not entitled to any such leniency and concession.

In the light of the foregoing discussion detailed and discussed above, apparently there is no illegality or perversity in the findings so recorded by the trial court in the impugned judgment and which needs to be upheld.

Both the appeals being wholly devoid of any merit needs and thus stands dismissed.

The accused/appellants who are on bail are directed to surrender before the appropriate authority to serve the remainder of their substantive sentences.

August 10, 2018
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>