

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.27845-2013 (O&M)

Date of decision : 24.01.2019

Harnek Singh and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Himanshu Jain, Advocate for the petitioners
Mr.H.S.Grewal, Addl.A.G. Punjab

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Petitioners Harnek Singh son of Waryam Singh, Harbans Singh son of S.Dheru Singh along with firm have approached this Court under Section 482 Cr.P.C. for quashing of order dated 23.4.2013 (Annexure P4) passed by learned Additional Sessions Judge, Ludhiana. They have also prayed for the quashing of all the proceedings arising out of FIR No.63 dated 21.4.1997 registered at Police Station City Khanna, District Ludhiana under Sections 406, 420 IPC and Section 7 of the Essential Commodities Act, 1955.

The factual matrix of the case is that the petitioners were running a firm M/s Harnek Singh and company. It is alleged against them that they were purchasing Urea at subsidized rates from NFL Nangal and

Bathinda and Punjab Agro Corporation, Ludhiana. These were to be supplied to farmers at subsidized rates. However, they were selling the said Urea to the manufacturing factories in black market at double/ triple the purchase price. Similar allegations were against some other firms also which are not required to be discussed here. On the basis of the said facts, FIR No.63 dated 21.4.1997 was registered at Police Station City Khanna, District Ludhiana under Sections 406, 420 IPC and Section 7 of the Essential Commodities Act, 1955.

It comes out that challan in this case was presented on 2.7.1999 before the Court of Sessions Judge, Ludhiana in view of Section 12A of 1955 Act. The said Act elapsed on 31.8.1997. The Ordinance promulgated by President of India was also lapsed on 9.7.1998. The case was therefore, remitted to the Court of Sub Divisional Judicial Magistrate, Khanna, for trial, who, after trial, vide judgment dated 12.10.2006 convicted the petitioners under Section 7(1)(i) of 1955 Act and sentenced Harnek Singh and Harbans Singh petitioners to undergo RI for two years each and fine of Rs.2000/- each, in default thereof, further RI for six months. (Annexure P1) Matter went in appeal. Learned Additional Sessions Judge, Ludhiana vide judgment dated 18.9.2012 took the view that Sub Divisional Judicial Magistrate, Khanna was not competent to try the case under Section 7 of 1955 Act. It was held that the provisions of Section 12AA of the Special Act do not override the provisions of Section 7 of 1955 Act. Therefore, the judgment of the trial Court was set aside and the case was remanded to the trial Court for appropriate action in the matter. Learned Sub Divisional Judicial Magistrate, Khanna, after receiving file, vide order dated 1.4.2013

(Annexure P3) committed the case to the Court of Sessions for trial. Matter was again taken up by the same learned Additional Sessions Judge, Ludhiana, who vide order dated 23.4.2013 (Annexure P4), held that Sub Divisional Judicial Magistrate, Khanna was competent to decide the case under Section 7 of 1955 Act and that the case was to be decided as a warrant case. The said order has been impugned before this Court.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, in this case, Essential Commodities (Special Provisions) Act, 1981 (in short, 'Special Act') was enforced w.e.f. 1.9.1982. The State of Punjab was covered under the said Act. The Act was to remain enforce initially for a period of 15 years. The Act was enforced to deal with the persons indulging in hoarding and black marketing and profiteering in essential commodities with the evil of vicious inflammatory prices and for the matters connected thereto or incidental thereto. Special Courts were therefore, constituted under Section 12A of the said Act. The Special Court was to be presided over by a Single Judge, to be appointed by the High Court on the request made by the State Government. The procedure for trial was laid down in Section 12AA of the said Act. The Act remained enforce till 31.8.1997 and the subsequent ordinance lapsed on 27.8.1998.

The matter was considered by a Full Bench of this Court in Anil Kumar vs. State of Punjab, 2004(1) RCR (Criminal) 488, where the following question was posed before the Full Bench:-

10. The Act remained in force till 31-8-1997. Thereafter,

the Essential Commodities (Special Provisions) Ordinance, 1997 was promulgated but the said Ordinance has lapsed with effect from 27-8-1998. The question which arises for consideration is as to what is the effect on the cases which were registered before the repealed Act and the cases in which the Court has taken cognizance ?

Full Bench of this Court, after taking into consideration the provisions of Section 3(1) of the Special Act and Section 6 of the General Clauses Act, 1897, made the following observations:-

13. A conjoint reading of Sub-section (1) of [Section 3](#) of the "[Special Act](#)" and [Sections 6, 6A](#) of the General Clauses Act, 1897 makes it manifestly clear that after the cesser of the "[Special Act](#)" it will tantamount repealing of the [Special Act](#) as it had been repealed by the [Central Act](#), but anything done or omitted to be done before such cesser of operation of the "[Special Act](#)", then [Section 6](#) of the General Clauses Act will come into operation.

The Full Bench also referred to Section 12AA of the Special Act in paragraph 31 of the judgment, which reads as under:-

Section 12AA reads as under:-

[\(a\)](#) All offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

[\(f\)](#) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to

pass a sentence of imprisonment for a term not exceeding two years.

Section 7 of the Special Act provides for the penalties. Therefore, conjoint reading of the Section 6 of the General Clauses Act and Section 3(1) of the Special Act makes out clear that notwithstanding the fact that the Act lapses any offence committed during the period Act remained in operation has to be tried under the said Act by the Court constituted under the said Act. Therefore, the present case is to be tried by the learned Additional Sessions Judge, acting as a Special Judge under the Essential Commodities Act. Therefore, order (Annexure P4) is patently illegal. It is unfortunate that at the same officer at one time took a view that the case is triable by the Sub Divisional Judicial Magistrate and in next time, he took a view that it is triable by the Special Court. The petitioners were thus, made shuttle cock between the Court of Sub Divisional Judicial Magistrate and Court of Sessions.

As such, impugned order (Annexure P4) is hereby quashed and the case is remanded to be tried by the Sessions Court.

Learned counsel for the petitioners has requested for quashing the entire proceedings.

I am of the view that it was due to erroneous opinion by the learned Additional Sessions Judge that the case shuttled between the Court of Sub Divisional Judicial Magistrate and Sessions Court. However, this itself along with the fact that the case is pending since the year 1997, is no ground to quash all the proceedings, particularly, considering the serious nature of the allegations.

Hence, the present petition is partly allowed. Impugned order dated 23.4.2013 (Annexure P4) is hereby quashed. The Sessions Court is directed to proceed with the case in accordance with law.

24.01.2019
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No