IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-27245-2020
Decided on : 09.11.2020

Kumar Kundan and another

. . . Petitioner(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Aman Arora, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

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MANJARI NEHRU KAUL, J. (Oral)

1. The instant petition has been filed under Section 482 Cr.P.C., for quashing of FIR No. 125, dated 25.03.2020 (Annexure P-3), under Section 188 IPC (later on added Sections 269 & 270 of IPC and Section 51B of the Disaster Management Act, 2005), registered at Police Station Asauda, District Jhajjar, Haryana and all subsequent proceedings arising therefrom including the final Report dated 08.06.2020 (Annexure P-5).

2. Learned counsel for the petitioners *inter alia* contends that the petitioners are employees of the Hindustan Colas Private Limited Company (HINCOL), which is a Joint Venture Company of Hindustan Petroleum Corporation Limited (A Govt. of India Enterprises). The HINCOL is engaged in the manufacture and supply of petroleum products (Bitumen Emulsion, modified Bitumen, Cold Mix), which finds mention in the essential commodities declaration etc. within the meaning of the Essential Commodities Act, 1955 (in short 'Act of 1955'). Vide Annexure P-4, which is a copy of letter dated 24th March, 2020, the Garrison Engineer, Military Engineer Services, Jammu, allotted work of national importance i.e.

Resurfacing of Runway and Aircraft Operating Services at Air Force Station Jammu to HINCOL. In the said communication addressed to the Plant Manager of HINCOL, a request was made that due to the strategic nature of the project relating to national security and importance and also keeping in view the time frame of 26 months given by the Ministry of Defence for its completion, there should be uninterrupted supply of Bitumen (PMB 40 E). Hence, it was in the light of the work allotted vide Annexure P-4, the petitioners were working in the factory at Bahadurgarh and that too for work related to national security and still further the production of Bitumen emulsion and modified bitumen (including polymer modified bitumen) fell within the ambit of essential services, which were allowed to operate even as per the order dated 22.03.2020 (Annexure P-2) of District Magistrate, Jhajjar. Still further, even as per the guidelines dated 15.04.2020, issued by the Ministry of Home Affairs with respect to COVID-19 lock-down, HINCOL was eligible to operate its production unit during lock-down period vide Certificate No. HRINDCE/2020/13720, dated 23.04.2020, issued by DC, Jhajjar itself.

3. The learned counsel for the petitioners thus argued that the FIR had been wrongly registered against the petitioner without taking into account and appreciating that they were performing their duties in the interest of the nation and there had been no violation of any law or notifications as alleged.

4. On being put to notice, the respondent-State filed its reply by way of affidavit of Ashok Kumar, HPS, Deputy Superintendent of Police, Badli, Jhajjar, on behalf of the respondent-State.

5. The learned State counsel while opposing the submissions and prayer of the learned counsel for the petitioners, simply reiterated the

averments made in the affidavit filed by them. When confronted with the provisions of the the Essential Commodities Act, the Essential Services Maintenance Act and even the International Airports Authority Act, wherein, petroleum products had been specifically exempted during the lock-down period and to show as to what violation of the guidelines dated 15.04.2020, issued by the Ministry of Home Affairs with respect to COVID-19 lock-down and the notification dated 22nd March, 2020 of the District Magistrate, Jhajjar, had taken place to attract the mischief of Sections 188, 269, 270 IPC and Section 51B of the Disaster Management Act, 2005, the State counsel miserably failed to satisfy this Court to the contrary.

6. I have heard learned counsel for the parties and gone through the material available on record as well as the reply by way of affidavit filed on behalf of the State.

7. It would be apposite to reproduce the relevant portion of the Essential Services Maintenance Act, 1981 (for brevity 'Act of 1981), which is as under:

> *"**2. Definitions**. (1) In this Act, unless the context otherwise requires,-*
>
> *(a) "essential service" means-*
>
> *(i) any postal, telegraph or telephone service, including any service connected therewith;*
>
> *(ii) any railway service or any transport service for the carriage of passengers or goods by air or any other transport service for the carriage of passengers or goods by land or water with respect to which Parliament has power to make laws;*
>
> ***(iii) any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft, or any service in the International Airports Authority of India***

constituted under section 3 of the International Airports Authority Act, 1971;43 of 1971).

(iv) any service, in or in connection with the working of, any major port, including any service connected with the loading unloading, movement or storage of goods in any such port;

(v) any services connected with the clearance of goods or passengers through the customs or with the prevention of smuggling;

(vi) any service in any establishment of, or connected with, the armed forces of the Union or in any other establishments of installations connected with defence;

(vii) any service in any establishment or undertaking dealing with the production of goods required for any purpose connected with defence;

(viii) any service in any section of any industrial undertaking pertaining to a scheduled industry on the working of which the safety of such undertaking or the employees employed therein depends.

8. Not only this, even as per Section 2(m) of the Oil Industry (Development) Act, 1974 (47 of 1974), which is reproduced below, Bitumen, which was being manufactured by HINCOL, falls within the definition of petroleum product:

*"**Section 2(m) "petroleum product" means any commodity made from petroleum or natural gas and includes** refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas, gasoline, naphtha, distillate gasoline, kerosene, **<u>bitumen</u>**, asphalt and tar, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by-products derived from oil or gas and blends or mixtures of two or more liquid products or by-products derived from oil*

condensate and gas or petroleum hydrocarbons not specified hereinbefore;"

9. Still further, as per para 12 of the order dated 22nd March, 2020 (Annexure P-2) of the District Administration Jhajjar, it was categorically mentioned that the following essential services would be allowed to operate during the lock-down period:-

"12. All Private, Corporates establishments & Factories to be completely shutdown other than the permitted list. The operations of all weekly bazaars, shopping malls, shopping centres/shopping complex, local markets to be ceased. Following establishments providing essential services shall be allowed to operate but with due caution for strict social distancing/decontamination.

- *Providing drinking water.*
- *Providing sewerage services.*
- *Providing banking services.*
- *Providing telephone and internet services.*
- *Providing rail and transportation services.*
- *Providing food, vegetable, groceries.*
- *Hospitals, Medical centres, medical stores.*
- *Electricity, petroleum, Oil, Energy.*
- *Media.*
- *IT Services, IT enabled services & Data centres provided to any of the essential services."*

10. A perusal of the aforementioned order leaves no manner of doubt that HINCOL stood exempted under this order as well and hence, there was no violation by the petitioners, which would make them liable for the commission of offences under Sections 188, 269, 270 IPC and Section 51B of the Disaster Management Act, 2005.

11. In the facts and circumstances of the case, I have no hesitation

in holding that the instant petition deserves to be allowed. Consequently, FIR No. 125, dated 25.03.2020 (Annexure P-3), under Section 188 IPC (later on added Sections 269 & 270 of IPC and Section 51B of the Disaster Management Act, 2005), registered at Police Station Asauda, District Jhajjar, Haryana, is quashed along with all subsequent proceedings arising therefrom.

(MANJARI NEHRU KAUL)
JUDGE

November 09, 2020
J.Ram

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