

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 59 of 2020

Amitava Roy Chowdhury

Vs

The State of West Bengal

For the Petitioner : Mr. Gopal Chandra Ghosh.

For the State : Mr. Arijit Ganguly,
Mr. S. K. Dan.

Heard on : 29.11.2022

Judgment on : 20.12.2022

Shampa Dutt (Paul), J.:

The present revision is praying for quashing of G.R. No. 2099/2018 arising out of Barasat P.S. Case No. 436/18 dated 19.06.2018 U/s-7(1)(a)(ii) Essential Commodities Act, 1955 pending before the Learned First Judicial Magistrate at Barasat, on basis of written complaint made by one Ankit Mukherjee, son of Madan Mukherjee. The said Barasat P.S. Case No. 436/18 dated 19.06.2018 was started against the petitioner on 19.06.2018. The complainant purchased petrol for his motor cycle from Rathtala Service Station, Petrol Pump, on Jessore Road under Police Station Barasat. After such purchase of the petrol he found that his motor cycle was disturbing and stopped functioning. He then went to the said petrol pump and found that many people had gathered there with their motor cycle complaining that the petrol pump authority might have supplied petrol mixed with other chemicals.

The petitioner a relative of one of the partners of the petrol pump who was present at the relevant time was arrested by the police and taken into custody, though the petitioner is neither owner of the petrol pump nor an employee thereof nor connected with the said business in any way.

On investigation it revealed that while supplying product from tanker truck No. WB73D3571 on 19.06.2018 it unloaded 4 KL diesel in petrol tank of the concerned petrol pump by mistake therefore the allegation against the petitioner or anybody else in this regard is baseless. It further revealed from the said report that the petitioner is only a relative of one of the partners of the petrol pump and was present at the relevant time in the petrol pump having no nexus with retail selling and/or business of the said petrol pump.

Under the aforesaid circumstances, the charge sheet filed against the petitioner is on the basis of an unfounded complaint and the petitioner is being harassed unnecessarily for no fault on his part. Therefore it is clear that the petitioner has/had committed no offence as alleged. Thus the prayer for quashing.

Mr. Gopal Chandra Ghosh, Learned Counsel for the Petitioner has submitted that the said F.I. R. and charge sheet are on the very face mere abuse of the process of the law so far the petitioner is concerned and is liable to be quashed. The petitioner being not connected with the said petrol pump either being the owner or employee cannot be harassed unnecessarily. The petitioner has been charge sheeted without any prima facie proof of any offence against him. From facts and circumstances of the case the charge framed against the alleged accused/petitioner under Section 7(1)(A)(ii) Essential

Commodities Act, 1955 has no basis. Accordingly, the same should be quashed. The impugned proceeding is otherwise bad in law and is liable to quashed /set aside.

Mr. Arijit Ganguly, Learned Counsel for the State has produced an attested copy of the case dairy.

The Seizure list therein shows that the disputed Petroleum Products was seized.

The Result of Chemical examination shows that the examiner has given the opinion as **“on examination it is opined that the oily liquids contained in the exhibits marked as “A” and “B1” could be detected identical mixed petroleum product instead of petrol”.**

The said chemical examination report clearly notes **“identical mixed petroleum product instead of petrol.”**

One of the grounds of defence of the petitioner is that the oil tanker containing diesel poured the same in a petrol tank by mistake, which inevitably and unintentionally without knowledge was supplied to the petrol vehicle’s causing disturbance in their functioning.

Comprehensive coverage in an insurance policy may cover issues from contaminated fuel, (Misfuelling) making it a case of an accident (mistake).

The petitioner /accused has been shown as “Authority of Rathtala Service Station” which he is not as partnership agreement in respect of “Rathtala Service Station” in respect of share holdings in the firm is Smt. Aloka Paul – 51%, Mr. Biswajit Roy – 49%.

The FIR was initiated for offence under Section 7(1)(a)(ii) of the Essential Commodities Act. Charge sheet has also been submitted under the said Section.

Irrespective of the possibilities of “misfuelling” both the incidents (petrol in diesel vehicle and diesel in petrol vehicle) can damage the engine.

“Misfuelling” is in fact an honest and common mistake (absence of ‘mens rea’) because of the fact the it is **Common Knowledge**, that misfuelling causes damage and hampers the functioning of a vehicle and such an act can never go undetected.

The Supreme Court ***in State of Madhya Pradesh vs. Narayan Singh & Ors. (1989 AIR 1789) on 25 July, 1989*** held:-

“XX XX XX Taking up the first question for consideration, we may at once state that the Trial Magistrate and the High Court have failed to comprehend and construe Section 7(1) of the Act in its full perspective. The words used in Sec. 7(1) are "if any person contravenes whether knowingly, intentionally or otherwise any Order made under Sec. 3". The Section is comprehensively worded so that it takes within its fold not only contraventions done knowingly or intentionally but even otherwise

i.e. done unintentionally. The element of mens rea in export of fertiliser bags without a valid permit is therefore not a necessary ingredient for convicting a person for contravention of an order made under Sec. 3 if the factum of export or attempt to export is established by the evidence on record.

The sweep of Sec. 7(1) in the light of the changes effected by the Legislature has been considered by one of us (Ahmadi, J.) in Swastik Oil Industries v. State, (Special Criminal Application) 1978 (19) Gujarat Law Reporter 117. In that case, M/s. Swastik Oil Industries, a licensee under the Gujarat Groundnut Dealers Licensing Order, 1966 was found to be in possession of 397 tins of groundnut oil in violation of the conditions of the licence and the provisions of the Licensing Order. Consequently, the Collector ordered confiscation of 100 tins of groundnut oil from out of the 397 tins under Sec. 6(1) of the Essential Commodities Act. On the firm preferring on appeal, the Appellate Authority viz Additional Sessions Judge, Kaira at Nadiad held "that cl. (11) of the Licensing Order had been contravened but such contravention was not deliberate as it arose out of a mere bona fide misconception regarding the true content of cl. (11) of the Licensing Order." The Additional Sessions Judge therefore held that the contravention was merely a technical one and not a wilful or deliberate one and hence the confiscation of 100 tins of groundnut oil was too harsh a punishment and that confiscation of only 25 tins would meet the ends of justice. Against this order, the firm preferred a petition under Article 227 of the Constitution to the High Court. Dealing with the matter, the High Court referred to Sec. 7 of the Act as it originally stood and the interpretation of the Section in Nathu Lal v. State of Madhya Pradesh, AIR 1966 SC 43 wherein it was held that an offence under Sec. 7 of the Act would be committed only if a person intentionally contravenes any order made under Sec. 3 of the Act as mens rea was an essential ingredient of the criminal offence referred to in Sec.

7. The High Court then referred to the change brought about by the Legislature to Sec. 7 after the

decision in *Nathu Lal's case* (supra) was rendered by promulgating Ordinance 6 of 1967 which was later replaced by Act 36 of 1967 and the change effected was that with effect from the date of the Ordinance i.e. September 16, 1967 the words "whether knowingly, intentionally or otherwise" were added between the word "contravenes" and the words and figure "any order made under Sec. 3". Interpreting the amendment made to the Sec. the High Court held as follows:

"The plain reading of the Section after its amendment made it clear that by the amendment, the Legislature intended to impose strict liability for contravention of any order made under Sec. 3 of the Act. In other words, by the use of the express words the element of mens rea as an essential condition of the offence was excluded so that every contravention whether intentional or otherwise was made an offence under Sec. 7 of the Act. Thus by introducing these words in Sec. 7 by the aforesaid statutory amendment, the Legislature made its intention explicit and nullified the effect of the Supreme Court dicta in *Nathu Lal's case*."

The High Court thereafter proceeded to consider the further amendment effected to Sec. 7 of the Act pursuant to the recommendation of the Law Commission in its 47th Report. Though for the purpose of the two appeals on hand, it would be enough if we examine the correctness of the view taken by the High Court in the light of the words contained in Sec. 7 of the Act as they stood at the relevant time viz a contravention made of an order made under Sec. 3 "whether knowingly, intentionally or otherwise", it would not be out of place if we refer to the further change noticed by the High Court, which had been made to Sec. 7 by Parliament by an Ordinance which was later replaced by Amending Act 30 of 1974. The High Court has dealt with the further amendment made to Sec. 7(1) in the *Swastik Oil Industries* as follows and it is enough if we extract the same.

"But again in the year 1974, pursuant to the recommendations of the Law Commission in their

47th Report and the experience gained in the working of the Act, by an Ordinance, Sec. 7 of the Act was amended whereby the words "whether knowingly, intentionally or otherwise" which were introduced by Amending Act 36 of the 1967 were deleted and the material part of sec. 7(1) restored to its original frame and a new provision in Sec. 10 of the Act was added which reads as under:

"10. C(I) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation: In this Section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this Section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability." This Ordinance was replaced by Amending Act 30 of 1974. The effect of this subsequent change in the statute is that a presumption of guilty mind on the part of the accused in respect of offences under the Act, including Sec. 7, would arise and it would be open to the accused to rebut the same. As the law now stands in any prosecution under the Act which requires a culpable mental state on the part of the accused, the 'same must be presumed unless the accused proves that he had no such mental state with respect to the offence for which he is tried. Now according to the explanation to Sec. 10(c) culpable mental state includes intention, motive, knowledge of a fact and belief in or reason to believe a fact. The degree of proof expected to rebut the presumption has been indicated by sub-sec. (2) thereof which says that a fact will be said to be proved only if it exists beyond reasonable doubt and it will not be sufficient to prove its existence by preponderance of probability. Thus the burden of proof lies heavily on the accused to rebut the statutory presumption and

the degree of proof expected that required for the proof of a fact by the prosecution. There can therefore be no doubt that the aforesaid legislative changes have reversed the thrust of the decision of the Supreme Court in Nathu Lal's case (supra) and the same no longer holds the field."

Reverting back to Sec. 7 of the Act as amended by Act 36 of 1967, it is manifestly seen that the crucial words "whether knowingly, intentionally or otherwise" were inserted in Sec. 7 in order to prevent persons committing offences under the Act escaping punishment on the plea that the offences were not committed deliberately. The amendment was brought about in 1967 in order to achieve the avowed purpose and object of the legislation. To the same end, a further amendment came to be made in 1974, with which we are not now directly concerned but reference to which we have made in order to show the scheme of the Act and the amplitude of Sec. 7 at different stages."

In the present case the chemical examination report clearly supports the case of the accused/petitioner. The report which clearly states "IDENTICAL MIXED PETROLEUM" PRODUCT instead of petrol makes out a clear case of "Misfuelling" which is covered by a specific insurance thus making it a case of an accident (mistake).

From the said facts and circumstances it is clear that the **petitioner/accused had no intention, motive, knowledge of the fact** and the belief or reason to believe that there was an incident of "Misfuelling" and it is clear beyond reasonable doubt that the petitioner herein did not have the '**capable mental state**' to commit the offence as alleged nor is there any evidence to constitute an offence under section

7(I)(a)(ii) of the Essential Commodities Acts and as such the possibility of conviction is remote in such a case. And continuation of the Criminal case would put the accused to great oppression and prejudice and extreme injuries could be caused to him by not quashing the criminal case despite there being no (mens rea) culpable mental state nor any evidence to make out any cognizable offence against any of the three accused persons in Barasat P.S. case No. 436/18 dated 19.06.2018, U/s-7(1)(A)(ii) Essential Commodities Act, 1955 Pending before the Ld. First Judicial Magistrate, at Barasat is liable to be quashed in respect of all the accused persons.

As such this court is of the view that it would be unfair and contrary to the interest of justice to continue with the criminal proceedings which would tantamount to abuse of process of law and to secure the ends of justice it would be prudent to quash the proceedings in the case as prayed for. The present status of the case before the Trial Court is that chargesheet has been filed and cognizance has been taken, and it is presumed that trial might have not commenced as yet.

Accordingly, the revisional application being CRR 59 of 2020 is allowed.

Proceedings being G.R. Case No. 2099 of 2018 arising out of Barasat P.S. case No. 436/18 dated 19.06.2018 U/s-7(1)(A)(ii) Essential Commodities Act, 1955 Pending before the Ld. First Judicial Magistrate,

at Barasat, is hereby quashed in respect of all three accused persons charge sheeted.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)

