

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

CRM-M No. 5499 of 2012 (O&M)

Reserved on:-27.02.2024

Pronounced on :-04.04.2024

Ranjit Kaur

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. K.S. Boparai, Advocate for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

HARKESH MANUJA, J. (ORAL)

1. The petitioner, by way of present petition, filed under Section 482 Cr.P.C., seeks quashing of FIR No.187 dated 26.10.2010, registered under Section 7 of the Essential Commodities Act, 1955 and Section 420 IPC, at Police Station Model Town, Ludhiana besides challenging challan/charge sheet dated 09.05.2010 (Annexure P-10) alongwith all the subsequent proceedings arising therefrom.

2. Brief facts of the case are that initially, petitioner-Ranjit Kaur was running a gas agency of Bharat Petroleum Corporation Limited in the name of M/s Sakater Gas Service which was allotted to her on 19.06.1992, by the Punjab Govt being unmarried girl under the policy of the State and the same was renewed in her name from time to time. After, the petitioner migrated to Canada in 1992-93 as she got married there and the aforesaid

gas agency was looked after by her sister-Manjit Kaur and her husband-Sukhwant Singh. Later, on 16.01.2003, petitioner even executed power of attorney dated 16.01.2003 in favour of her sister authorising her to deal with the same. Thereafter, in the year 2010, a dispute arose between Manjit Kaur and their brother regarding settlement of accounts due to which, he lodged a complaint before the Department of Food and Civil Supplies. Upon inquiry, some irregularities in the functioning of the agency were found, as a result thereof, present FIR was registered against Manjit Kaur and her husband Sukhwant Singh for not maintaining records and selling of gas cylinders to general public at higher rate rather than the registered customers. Subsequently, the name of the petitioner was added as an accused in the same.

3. Learned counsel for the petitioner submitted that no offence was made out against the present petitioner as there was no specific allegation against her in the FIR in question. He contended that the petitioner was neither incharge nor responsible for conducting day-to-day business of the agency at the relevant point in time, as she executed a power of attorney dated 16.01.2003 in favour of her sister authorising her to deal with the same, beside it, the complaint was filed on 23.10.2010, on the basis of which, present FIR was registered on 26.10.2010, whereas the petitioner never visited India since December, 2008.

Learned counsel also submitted that though the main allegations were against Manjit Kaur and her husband-Sukhmant Singh (sister and brother-in-law respectively of the petitioner), who were operating the gas agency and were selling the gas cylinders at higher price to the general public and not to the registered customers besides it, they not even

maintaining the record as per agreement, however, both were granted the concession of anticipatory bail by this Court vide order dated 04.02.2011, though later convicted. Moreover, even an appeal filed at the instance of Manjit Kaur and Sukhwant Singh against the judgment of their conviction and order of sentence dated 10.07.2019 passed by the Court of Judicial Magistrate Ist Class, Ludhiana, was allowed, thereby, acquitted them of the charges framed, vide judgment dated 20.02.2023 passed by learned Additional Sessions Judge, Ludhiana.

4. On the other hand, learned State Counsel vehemently opposed the prayer made in the present petition, while submitting that the petitioner being incharge of the aforesaid gas agency was responsible in conducting day-to-day business of the agency and as such, has rightly been arrayed as accused; thus, the FIR in question warranted no interference.

5. I have heard learned counsel for the parties and gone through the paper book.

6. In the present case, a perusal of the FIR shows that the allegations of not maintaining records and violation of the terms & conditions of the contract entered with the BPCL were against the sister & brother-in-law of the petitioner, who were already acquitted by the learned Additional Sessions Judge, Ludhiana vide judgment dated 20.02.2023, which even attained finality, there being no challenge against it till date. Relevant findings from the judgment dated 20.02.2023 are reproduced hereunder:-

“From perusal of the evidence led by the prosecution, it reveals that on checking in the gas agency on 23.10.2010, officials of the Food and Supply department found 150 gas cylinders missing

which were received from the LPG Bottling Plant, Lalru and shortage of 13 cylinders of 14.2 kg and shortage of 38 cylinders of 19 Kg each was found in the record. However, it has come in the cross-examination of PW-10 Deep Garg, AFSO that as per the record Ex.PW-4/2, the cylinders were allotted from Lalru bottling Plant on 23.10.2010 at 7.15 PM, whereas, the checking in the gas agency was made on 23.10.2010 at about 3.30 PM. So, when 150 cylinders started from Lalru bottling plant at about 7.15 PM on 23.10.2010, the same were meant to be received in the gas agency on 27.10.2010. The accused therefore have not received 150 LPG cylinders by the time when the checking was made. So, there is no question of shortage of said 150 gas cylinders. Further, it has also come in the cross-examination of this witness that the cylinder having weight of 19 kg falls in the category of commercial cylinder. The said cylinder does not fall in the ambit of Essential Commodities Act. So, it cannot be held that gas agency was found short of 38 cylinders of 19 kg as due to shortage of the same if any, no offence under the Essential Commodities Act is made out. It has come in the cross-examination of PW-7 Sham Sunder, Assistant Food and Supply Inspector that he cannot tell how many total filled cylinders were in the godown. He volunteered to say that Incharge, Assistant Food Supply Officer can tell about the same. So, the report given by the officials of the Food and Supply department is not correct as per the record. During the evidence, the original stock register has not been produced. So, without going through the original stock register, it cannot be held that the shortage of the gas cylinders was found in the gas agency. The godown incharge Jai Singh has not been examined by prosecution. Moreover, the three officials of the Food and Supply Department made checking in the gas agency on 23.10.2010 and they have submitted report regarding irregularities, but they have failed to join any independent person from the locality at the time of checking.”

7. The only allegation against the present petitioner was that she

was the owner/allottee of the gas agency, whereas, admittedly, she already executed a power of attorney dated 16.01.2003 in favour of her sister authorizing her to deal with the same, who was thus managing the affairs thereof and once the accusation against Manjit Kaur and her husband-Sukhwant Singh were not proved, resulting into their acquittal of the charges framed against them, no offence at all was made out against the petitioner, against whom even the evidence remained the same. In this view of the matter, continuation of criminal proceedings against her clearly amounted to misuse of process of law. Even otherwise, in the wake of acquittal of the main accused Manjit Kaur and her husband-Sukhwant Singh, continuation of proceedings against the petitioner in terms of the findings recorded vide judgment dated 20.02.2023 would cause miscarriage of justice to her. Moreover, the uncontroverted allegations as made in the FIR besides even the evidence collected in support during investigation, even if taken at their face value and accepted in their entirety do not prima facie constitute any offence against the petitioner. Accordingly, once the ingredients of offences as set out in the FIR are not made out, the exercise of power under Section 482 Cr.P.C. becomes absolutely essential to prevent injustice towards the rights of the petitioner especially when she is residing in Canada and has not even visited India since 2008.

8. Thus, in the given facts and circumstances, the continuation of proceedings arising out of the FIR in question being a futile exercise which would result in the wastage of precious time of the Court even, the present petition is allowed and FIR No.187 dated 26.10.2010, registered under Section 7 of the Essential Commodities Act, 1955 and Section 420 IPC, at Police Station Model Town, Ludhiana as well as challan/charge sheet dated

09.05.2010 (Annexure P-10) alongwith all the subsequent proceedings
arising therefrom qua the petitioner are hereby quashed.

April 04, 2024

(HARKESH MANUJA)
JUDGE

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No