

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-34594-2022

Date of Decision: 11.03.2024

Surinder Kaur

.... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Jagat Vir Dhindsa, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

SUDEEPTI SHARMA, J. (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No.60 dated 26.03.2020 under Section 188 of the Indian Penal Code, 1860 and Section 7 of the Essential Commodities Act, 1955, registered at Police Station City Rupnagar, District Rupnagar (Annexure P-1).

Learned counsel for the petitioner contends that lockdown was imposed in whole of the country on 24.03.2020 and the present complaint is dated 26.03.2020. The allegations made in the complaint are as under:-

“Subject: Regarding taking action against Jyoti Gas Agency, Rupnagar under Essential Commodities Act, 1955.

In connection with above subject, it is written to you that during the corona pandemic, curfew has been imposed in District Rupnagar. In this connection, Jyoti Gas Agency, Rupnagar is not taking supply, nor home delivery is being made to general public, due to which people are coming in gatherings and general public is very much harassed. The crowd of general public is gathering. Therefore, case FIR be registered against Jyoti Gas Agency, Rupnagar under section 7 of Essential Commodities Act, 1955 and

under Section 188 of IPC. Sd/- Harjot Kaur, PCS, Sub Divisional Magistrate, Rupnagar “No.2134-5A-PS/C-RPR Date: 26.03.2020. SI Satinder Kaur 68/RRT for n/action as per law. Sd/- Kulbir Singh, SHO City Rupnagar dated 26.03.2020.” Police proceedings:- Today one letter No.331 dated 26.03.2020 was received from office of Sub Divisional Magistrate, Rupnagar for taking action against Jyoti Gas, Rupnagar marked by SHO, Police Station City Rupnagar vide No.2134-5A-PS/C-RPR dated 26.03.2020. The contents of letter prima facie discloses the commission of an offence under Section 188 IPC and Section 7 of Essential Commodities Act against owner of Jyoti Gas Agency and Manager, Jyoti Gas Agency, Rupnagar”.

Learned counsel for the petitioner further contends that the complainant in the present case is SDM, Rupnagar and on the same date i.e. 26.03.2020 when the complaint against the petitioner was filed, the petitioner was before the same SDM for issuance of curfew pass, which is placed on record as Annexure P-7 with the petition. He has also placed on record Annexure P-4, which is the information under Right to Information Act, 2005 regarding any complaint against Jyoti Gas Service whereby the Public Information Officer-cum-Superintendent Gr-II, Office of Sub Divisional Magistrate, Rupnagar states that no complaint has been received against Jyoti Gas Service. Further, he has placed reliance on the RTI information regarding receipt of any complaint against Jyoti Gas Service, Rupnagar from 01.03.2020 to 26.03.2020 i.e. the date of registration of FIR in question and as per Annexure P-5, from District Controller, Food & Civil Supplies and Consumer Affairs, Rupnagar, no such complaint has been received in the office against Jyoti Gas Service from 01.03.2020 to 26.03.2020.

Learned counsel for the petitioner has shown this Court the circular issued by the Director, Food Civil Supplies & Consumer Affairs, Punjab to all the Deputy Commissioners in the State of Punjab and to all the

Senior Superintendent of Police, Punjab vide memo No.1S(409)-2020/361 dated 27.03.2020, to show the bona fide of the petitioner regarding the confusion in the public at large about the curfew which was imposed and the supply of LPG gas during the curfew in the State of Punjab in the wake of Covid-19, which is reproduced as under:-

“Subject: Regarding supply of LPG and other petroleum products during the curfew in the State of Punjab in the wake of Covid-19 (CORONA VIRUS).

Please refer to the Ministry of petroleum & Natural Gas (MoP&NG), Government of India D.O No.13017(18)/1/2020-OMC-PNG dated 24.03.2020 and the letter received from Sh. Nischay Shankar, Sales Officer (Mohali LPG S/A) Hoshiarpur LPG Region dated 25.03.2020 on the subject cited above (copies enclosed).

In reference to above directions, you are hereby directed to issue the instructions that the following activities must be permitted without any hindrance.

- I) Operation of petrol pump/retail outlets, LPG and oil agencies including their backend activities like refineries, godowns and transportation related activities of LPG, Petrol, Diesel etc.*
- ii) Movement of supplies to oil refineries and petrochemical projects.*
- iii) Supply of natural gas and allied infrastructure including CNG and PNG.*
- iv) Movement of employees/workers based on identity card issued by Corporations/retail outlet owners/distributors for ensuring supplies.*
- v) Assistance in mobilizing truck crew like driver and helper for transporting essential LPG cylinders, whenever required.”*

Learned counsel contends that his case would not fall and would not fulfill the ingredients of Section 188 of the Indian Penal Code, 1860 and Section 7 of the Essential Commodities Act, 1955. He further contends that as

per Annexure P-6, which is a cylinder stock register maintained by the petitioner, the shop was closed only for one day i.e. 24.03.2020 when the lockdown was imposed through out India and the shop was opened on 26.03.2020 when the alleged false allegation against the petitioner was made.

On the other hand, learned State counsel contends that oral complaints were received through telephonic calls against the petitioner.

I have heard learned counsel for the parties at length and perused the whole record of the case with their able assistance.

The complaint made by the Sub Divisional Magistrate, Rupnagar along with RTI information and the record shows that the petitioner has been falsely implicated in the present FIR.

That the FIR is registered under Section 188 of the Indian Penal Code, 1860 and Section 7 of the Essential Commodities Act, 1955.

Section 188 of the Indian Penal Code, 1860 reads as under:-

“188. Disobedience to order duly promulgated by public servant.

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm”.

A bare reading of Section 188 IPC shows that the essential ingredient of the section is that there should be disobedience to the order duly promulgated by public servant. However, in the present case, there is no disobedience of any order by the petitioner, as per the record.

Section 7 of the Essential Commodities Act, 1955 reads as under:-

“7. Penalties: (1) *If any person contravenes any order made under section 3,—*

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;]

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.]

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months.]

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual, shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months, or six months, as the case may be.

(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the court in the order.

Section 3 of the Essential Commodities Act, 1955 is as under:-

“3. Powers to control production, supply, distribution etc. of essential commodities:

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, ¹[or for securing any essential

commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops.

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

[(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,-

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him or,

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1.--An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such

foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2.--For the purpose of this clause, production with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;]

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

[(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefore, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;]

⁵[(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,-

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed and any packages, coverings or receptacles in which such articles are found;

(ii) of any aircraft, vessel, vehicle or other conveyance or animal

used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

[(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.]

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefore as hereinafter provided:-

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

⁸*[(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding, of any food-stuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.*

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor-

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.]

⁹*[(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to-*

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers;

and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

[(3C) Where any producer is required by an order made with reference to clause (f) of subsection (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under subsection (3A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to-

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) a reasonable return on the capital employed in the business of manufacturing of sugar:

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation ¹¹ [I].-- For the purposes of this sub-section,-

(a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;

(b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;

(c) "producer" means a person carrying on the business of manufacturing sugar;

(d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.]

[Explanation II.--For the removal of doubts, it is hereby declared that the expressions "fair and remunerative price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers' co-operative society.]

[(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment,

disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation.--For the purposes of sub-section (3D) and this sub-section,-

(a) "producer" means a person carrying on the business of manufacturing sugar;

(b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;

(c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorize any person (hereinafter referred to as an authorized controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,-

(a) the authorized controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this section shall,-

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual-

*(i) by delivering or tendering it to that individual, or
(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report there of shall be prepared and witnessed by two persons living in the neighbourhood.*

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made”.

A bare perusal of Section 3 shows that ingredients of this section do not apply in the case of the petitioner. Secondly, after examining the RTI information provided at Annexures P-4 and P-5, it reveals that no complaint against Jyoti Gas Service, Rupnagar was received from 01.03.2020 to 26.03.2020. Further, a perusal of Annexure P-7, which is a curfew pass issued by the Sub Divisional Magistrate, Rupnagar, who is the complainant in the present FIR, also shows that the curfew pass was issued to the petitioner on the date of complaint i.e. 26.03.2020 and the perusal of the cylinder stock register shows that the shop was opened on 26.03.2020 which is also the allegation made in the FIR stating therein, that Jyoti Gas Service is not taking supply, nor home delivery is being made to the general public because of which there is a public gathering and public is harassed.

Affidavit of Sh. Tarlochan Singh, PPS, Deputy Superintendent of Police, Rupnagar dated 01.02.2023 is filed in reply to the petition. Para 3 of the reply is reproduced as under:-

“That it is further submitted that on the basis of complaint mentioned above moved by the complainant-respondent No.2, FIR No.60 dated 26.03.2020, under Section 188 of IPC and Section 7 of the Essential Commodities Act, 1955, was lodged at police station City Rupnagar, District Rupnagar, against the owner and

Manager of Jyoti Gas Agency, Rupnagar. It is further submitted that thorough investigation of the case was carried out during investigation it was transpired that the petitioner is the owner of the Jyoti Gas Agency and the gas supply was withheld by the petitioner during pandemic in order to holding or black-marketing the supply during the pandemic declared on the outbreak of corona virus. It is further submitted that during investigation of the case, the petitioner approached Ld. Additional Sessions Judge, Rupnagar, seeking pre-arrest bail in the present case by filing BA No.05 of 2021 and the Ld. Additional Sessions Judge, Rupnagar, vide its order dated 11.01.2021, allowed the petitioner to join the investigation, accordingly, in terms of order mentioned above, the petitioner joined the investigation on 19.01.2021, before the investigating officer. It is further submitted that during investigation of the case, the witnesses acquainted with the facts and circumstances of the case were examined by the investigating officer and relevant record was obtained and on completion of investigation, the final report of the case under Section 173(2) of Cr.P.C. was presented on 17.05.2022, to the court of competent jurisdiction. It is further submitted that now the case is pending before the Ld. Judicial Magistrate Ist Class, Rupnagar, for 07.08.2023, for consideration on framing of charges against the petitioner. Keeping in view the facts and circumstances mentioned hereinabove, the petition of the petitioner is liable to be dismissed”.

Para 7(iii) of the reply is reproduced as under:-

“That in reply to the contents of sub-para (iii) of the petition it is respectfully submitted that under Right to Information of Act, 2005, (RTI Act) only that information is supplied which is available in the concerned office. It is further submitted that there is no mechanism in the offices to keep the record of oral complaints or the complaints received through telephonic calls, therefore, the same cannot be given to an applicant seeking information under RTI Act. It is further submitted that it is a matter of fact that there was nationwide lockdown since

22.03.2020 due to pandemic, and it was not possible for an individual to reach any office during those days for filing written complaint against the agency of the petitioner”.

A perusal of the reply which is filed on affidavit also does not reveal any allegation against the petitioner and Para 3 and 7(iii) show that the reply has been filed without application of mind. In Para 7(iii), it has been specifically mentioned that there is no mechanism in the office to keep the record of oral complaints or the complaints received through telephonic calls, which shows that the respondent-State without enquiring into the facts and making any investigation, registered the present FIR against the petitioner.

In view of above, the present FIR No.60 dated 26.03.2020 under Section 188 of the Indian Penal Code, 1860 and Section 7 of the Essential Commodities Act, 1955, registered at Police Station City Rupnagar, District Rupnagar (Annexure P-1), is an abuse of process of law and is hereby quashed along with all consequential proceedings arising therefrom.

The present petition is hereby allowed.

11.03.2024
D.Bansal

(SUDEEPTI SHARMA)
JUDGE

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