

(2003) 08 P&H CK 0050

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 502 of 1993

Karam Chand and Another

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: Aug. 6, 2003

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Citation: (2004) 136 PLR 201 : (2003) 4 RCR(Criminal) 622

Hon'ble Judges: K.C. Gupta, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant; Sudhir Nehra, A.A.G., for the Respondent

Judgement

K.C. Gupta, J.

This appeal has been instituted by Karam Chand and Rajbir-appellants against the judgment and order dated 18.12.1993 passed by Presiding Officer, Special Court Kaithal whereby they were found guilty and convicted u/s 7 of the Essential Commodities Act (for short hereinafter referred to as "the Act") and sentenced to RI for a period of 6 months and fine of Rs. 1000/- each. In default of payment of fine, the defaulter was further sentenced to RI for 3 months.

2. Briefly stated, the facts are that on 19.12.1991, ASI Hukam Chand of Police Station, City Kaithal was present near Pehowa Chowk when he received a secret information. Upon receipt of the same, he constituted a raiding party by including Pirthi Singh and Tek Chand and held a naka bandi near Railway crossing on Karnal Road.

3. At about 5 p.m. a four wheeler No. HR-09-0260 came from Karnal side which was being driven by Rajbir-appellant No. 2 and Karam Chand-appellant No. 1 was sitting by his side. The said four wheeler was stopped and on search, it was found to contain 9 cylinders of LPG out of which 8 were filled and one was empty. The appellants could not produce any licence or permit for keeping the same.

Consequently, ASI Hukam Chand seized those cylinders. He sent a ruqa to the Police Station, upon which a case was registered and statements of the witnesses were recorded.

4. After completion of the investigation challan was put up in the Special Court, Kaithal.

5. Having made out a prima facie case, the appellants were charged u/s 7 of the Act as they had violated the provisions of Liquified Petroleum Gas (Regulation of Supply and Distribution) Order 1988. They pleaded not guilty and claimed trial.

6. In order to prove the allegations, the prosecution examined 2 witnesses.

7. After the close of the prosecution evidence, statements of the appellants were recorded u/s 313 Cr.P.C. wherein they denied the allegations of the prosecution and pleaded false implications as they had refused to oblige ASI Hukam Chand.

8. After hearing PP for the State and the defence counsel, the appellants were found guilty and convicted u/s 7 of the Act, vide judgment dated 18.12.1993 and sentenced vide order of even date as stated in the earlier part of the judgment.

9. Aggrieved by the said judgment and order, the accused have filed the present appeal.

10. I have heard Mr. C.B. Goel, Advocate for the appellants, Mr. Sudhir Nehra A.A.G., Haryana and carefully gone through the record of the case.

11. The only independent witness, namely PW1 Pirthy Singh has not supported the prosecution version. He categorically stated that no recovery had been affected from the appellants in his presence. Now the case depends upon only on the testimony of P.W.2-ASI Hukam Chand. In the absence of independent evidence, statement of PW.1-ASI Hukam Chand can not be relied upon. Even otherwise, PW.1-ASI Hukam Chand had no authority to seize gas cylinders because he was not competent to search or seize the gas cylinders. This has been so held by this Court in Suresh Kumar v. State of Haryana, 1996(2) Recent Criminal Reports 365. It has been observed in para 4 as under:-

"4. To appreciate the contentions of the learned counsel for the petitioners, the provisions of Clause 7 of the order need scrutiny. Under Clause 7 of the order which governs the subject a person who can exercise the power of entry search and seizure has to be an officer of the Department of Food and Civil Supplies of the Government and is not to be below the rank of an Inspector. Such Inspector has to be authorised by the Government and notified by the Central Government or any officer not below the rank of a Sales Officer of an Oil Company or a person authorised by the Central Government or a State Government and notified by the Central Government and in conformity with Sub-clause 1 of Clause 7 of the order. The petitioner had made specific averments in the petition. Reply has been given in

Court, In reply, it has not been disputed that Sub Inspector of Police is neither an Inspector nor a person duly authorised and notified by the State and Central Government in furtherance to the statutory mandate of Clause 7 of the Order."

12. Thus, according to the said authority, it is only the Officer of the Department of Food and Civil Supplies not below the rank of Inspector, who has been specifically authorised by notification, can exercise the powers under the Act. ASI Hukam Chand had no power to seize the gas cylinders, even if the appellants did not possess a valid licence or permit. It is not the case of the prosecution that ASI Hukam Chand was accompanied by the Inspector of the Department of Food and Civil Supplies of the Government specifically authorised by notification.

13. In such circumstances, the seizure by ASI Hukam Chand was illegal. No case is made out against the appellants. Consequently, the appeal is accepted and the appellants are acquitted of the charge. Fine paid by the appellants be refunded to them, after the expiry of period of appeal, if any. The case property, if not already released, be released to the appellants.