
(2010) 04 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Munish Gupta and
Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 1, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190
- Essential Commodities Act, 1955 - Section 7

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.

Present petition has been filed by Munish Gupta, Vishal Gupta and Pawan Gupta, all residents of New Model Town, Phagwara for quashing of FIR (Annexure P-3) as well as the summoning order dated 16.12.2004 (Annexure P-9) and all subsequent proceedings. FIR No. 76 dated 30.5.2004 was registered at Police Station Sadar, Phagwara u/s 7 of the Essential Commodities Act (Annexure P-3). All the accused - petitioners were placed by the Police in column No. 2 but later on they were summoned vide order dated 16.12.2004 (Annexure P-9) by the trial Court u/s 190 of the Code of Criminal Procedure.

2. In this petition, inter - alia, it is urged that premises were searched and raids were conducted by police party headed by Sub- Inspector and no official of the Food and Supply Department was associated with the raiding party.

3. Sh. K.S. Nalwa, Advocate for the petitioners has referred to the Ministry of Petroleum and Natural Gas Order dated 26.04.2000 (hereinafter called "the Order"). The Clause 13 of the order reads as under:

13. Power of entry, search and seizure:

(1) Any officer of the Central or the State Government not below the rank of Inspector duly authorized by a general or a special order, by the Central Government or the State Government, as the case may be or any officer of a Government Oil Company not below the rank of Sales Officer authorized by the Central Government, may, with a view to securing due compliance of this Order or any other order made thereunder:

(a) stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product,

(b) enter and search any place,

(c) seize stocks of liquified petroleum gas along with container and/or equipments, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been or is being, or is about to be made.

(2) The sales officer of a Government Oil Company shall be authorized to secure compliance of this Order by the distributors appointed under the public distribution system and or by the consumer registered by them.

4. Counsel has referred to Annexure P-2, a Notification issued by the State Government, wherein following officers have been authorized to take action under the provisions of order Annexure P-1.

1. Assistant Food and Supplies Officer;
2. District Food and Supplies Officer;
3. Additional District Food and Suppliers Controller;
4. District Food and Supplies Controller;
5. Deputy Director, Food and Supplies;
6. Joint Director, Food & Supplies;
7. Additional Director, Food & Supplies;
8. Director Food & Supplies.

5. This Court in Crl. Appeal No. 830-SB of 1999 titled as "Nurrudin and Anr. v. State of Haryana", decided on 16.02.2010 relying upon various judgments of this Court, has held that the raid conducted by police officials without associating persons authorized will vitiate the proceedings. This Court had relied upon (i) Ashok Kumar v. State of Haryana 1991(2) RCr R 140, (ii) Arvind Katoch v. State of Punjab 2001(4) RCR (Criminal) 608, (iii) Raj Narain alias Kuka v. State of Punjab 2003 (2) RCR (Criminal) 88 and (iv) Harpal

Singh and Ors. v. State of Punjab 1991(3) R Cri R 307. This Court would have adjudicated upon proposition of law raised in present petition, but a perusal of order dated 21.03.2005 passed in this petition reveals that present petition was dismissed as withdrawn qua accused No. 1. Proceedings are pending against accused No. 1 in the Court of Judicial Magistrate Ist Class, Phagwara. Therefore, this Court at this stage cannot dissect the claim of petitioner Nos. 2 and 3 from the case of petitioner No. 1. The case is now fixed for 3.5.2010 for framing of the charge. To maintain equilibrium and parity, this Court will refrain from deciding this issue. Petitioners have got an opportunity to address this argument and seek adjudication of the trial Court at time of framing of the charge. This Court has no doubt that in case the judgments, as relied upon before this Court and the judgment of Nirudin and Anr. v. State of Haryana (supra) are brought to the notice of the trial Court, the same will apply its mind and will come to the right conclusion. The trial Court is also at liberty to formulate a different opinion if it is so permissible under the provisions of law.

6. The present petition is pending in this Court since 2005. In these circumstances, personal appearance of the petitioners before the trial Court is exempted subject to filing an undertaking that they shall cause appearance as and when required by the trial Court. They shall also file an undertaking that the evidence, if any, adduced in their absence but in the presence of their counsel shall be binding upon them. The trial Court may also incorporate any other condition in the undertaking to be submitted by the petitioners.

7. Disposed of.