Rakesh and Another Vs State of Haryana

Criminal Appeal No. 202-SB of 1991

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 9, 2005

Acts Referred:
Essential Commodities Act, 1955 â€" Section 7

Citation: (2005) 14 CriminalCC 645

Hon'ble Judges: Baldev Singh, J

Bench: Single Bench

Advocate: Narender Hooda, for the Appellant; H.S. Bisla, Assistant Advocate General, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Baldev Singh, J.
Rakesh son of Harish Chand and Rajinder son of Bahadur Singh, both Depot Holders, residents of Rohtak have filed this

appeal against the impugned judgment of conviction dated 23.4.1991 and sentence order dated 27.4.1991 passed by Shri R.P. Bajaj, the then

Judge Special Court Rohtak, vide which they were convicted for the offence punishable u/s 7 of the Essential Commodities Act, 1955 and were

sentenced to undergo R.I. for 3 months and to pay fine of Rs.500/- each and in default of payment of fine to undergo further R.I. for month.

2. Case FIR No.574 dated 31.8.1989 u/s 7 Of the Essential Commodities Act, 1955 was registered in Police Station City Rohtak on the written

complaint fried by Chaman Lal, the then AFSO Rohtak. It was alleged by him that on 31.8.1989 he along with Sh. D.D. Gupta, DFSO raided

kerosene oil business premises of Rajinder-appellant at Sukhpura Chowk, Rohtak. At the time of checking, Rakesh-appellant who was

representative of Rajinder depot holder, was present at the shop. On checking the following serious irregularities were detected:

(1) The stock and rate of kerosene oil was not written on the notice Board. The columns of stock and rate were lying blank.

(2) That on demand Rakesh did not produce record of kerosene oil i.e. stock and sale registers of kerosene for checking purposes.

(3) That there was a stock of 160 litres of kerosene oil in the shop.

(4) That Rakesh-appellant did not cooperative in checking the business premises.

Moreover, he also misbehaved.

3. It was further alleged that in this way Rakesh controverted the provisions of the Haryana Kerosene Dealers Licensing and Price Control Order,

1976 and Haryana Price Marking and Display Order, 1975. Contravention of the aforesaid orders constituted an offence punishable u/s 7 of the

Essential Commodities Act,1955.

4. After registering the case on the basis of the complaint of Chaman Lal AFSO Ex.PA and scribing of the formal FIR PA/1, PW6 Duni Chand SI

then commenced with the investigation of the case. He visited the kerosene oil shop of the appellants on 31.8.1989 and found it closed. Then he

went there on 1.9.1989. Rakesh-appellant was found present, Daily stock register Ex.P2 and two Sale Registers Ex.P3 and P4 were taken into

possession vide recovery memo Ex.PD. A drum containing 160 litres of kerosene oil was taken into possession vide recovery memo Ex.PE. Site-

plan was prepared showing the premises. Rakesh was arrested on 1.9.1989. Rajinder-appellant, in whose name the licence was, was arrested on

11.9.1990 by Gian Chand SI. On completion of the investigation challan was put in against the appellants.

5. The Ld. Special Judge Rohtak on 27.10.1990 framed charge against both the appellants for the offence punishable u/s 7 of the Essential

Commodities Act, 1955 for the contravention of the Haryana Kerosene Dealers Licensing and Pricing Marketing and Display Order, 1975. They

did not plead guilty to the charge and claimed trial.

6. The prosecution at the trial examined PW Rajpal clerk of the office of District Food and Supplies Rohtak. He proved that Licence No.452K

was issued in the name of Rajinder-appellant on 13.8.1987. Ex.Pl is the licence. It was valid upto 31.3.1990. Chaman Lal AFSO was examined

as PW2. He proved his written complaint Ex.PA. Hukam Singh SI was examined as PW3. He had recovered licence Ex.Pl and he proved

recovery memo Ex.PB. PW4 Uma Kant was examined. He is employee of M/s. Shadi Ram Udmi Ram, Mai Gbdown Road, Rohtak. He proved

that on 29.8.1989 he had supplied 3500 litres kerosene oil from his firm to appellant Rajinder. Ex. PC is the copy of the record proving this fact.

PW5 D.D. Gupta DFSO Rohtak was tendered for cross-examination, but no cross-examination was made. Then PW6 Duni Chand SI was

examined. He had gone the investigation in the case, as mentioned above.

7. Both the appellants were examined on the conclusion of the prosecution evidence and their statements were recorded u/s 313 Cr.P.C. They

stated that the case is false against them. The DFSO wanted to obtain illegal gratification from them on monthly basis. They refused. Hence, the

case was made out.

8. Arguments of Sh. Narender Hooda, Ld. Counsel for the appellants and of Sh. H.S. Bisla, Assistant Advocate General, Haryana were heard

and the evidence was perused with their help.

9. It is argued by the Ld. counsel for the appellants that the prosecution case rests solely on the statement of PW2 Chaman Lal AFSO. He is the

complainant, on whose complaint Ex.PA, this case was registered. Sh. D.D. Gupta DFSO Rohtak who had accompanied him for raid in the

business premises of the appellant was not examined. He was simply tendered for cross-examination by the appellants, but the appellants did not

conduct any cross-examination. It is argued by the Ld. counsel for the appellant that simply tendering a witness for cross-examination does not

amount to ""examine"" him. So, the statement of Chaman Lal AFSO is not corroborated by the any other evidence. POW2 Chaman Lal AFSO

admitted in his cross-examination that he did not enquire from the persons, whom allegedly the appellants distributed the kerosene oil. He further

admitted that 160 litres kerosene oil was found in the business premises contained in 2 drums. The kerosene oil was measured. He could not,

however, tell the names of the persons with whose help the kerosene oil was measured. He did not obtain their signatures or thumb impressions.

He also admitted that there were several shops around the depot of the appellants, but he did not feel necessity of calling any person at the time of

search of raid. His cross-examination reveals that independent witnesses were available, but no effort was made at all to join them. Independent

corroborative evidence would have certainly lent credence to the testimony of this official witness, but in the absence of any independent

corroborative evidence, his solitary statement does not inspire any confidence to convict the appellants. The Ld. Trial Judge went out of the way to

attach undue weight to bald statement of P W2 Chaman Lal AFSO. He also took into consideration this fact that PW5 D.D. Gupta was tendered

for cross-examination, but he was not cross-examined by the appellants and, therefore, the defence version was not substantiated. He was

oblivious of this proposition of law that the practice of tendering witness for cross-examination is inconsistent with Section 138 of the Indian

Evidence Act, 1872. This section lays down that witnesses shall be first examined in chief and then if the adverse party so desires, cross-examined

and if the adverse party calling him so desires, re-examined. The evidence of D.D. Gupta DFSO was of vital importance. The procedure of

tendering him for cross-examination certainly should not have been employed in his case, he being an important eye-witness. The cases of

Sadeppa Cireppa Mutgi v. Emperior, AIR 1942 Nag.37 and Emperor Vs. Kasamalli Mirzalli, can be referred in this context. The Apex Court in

the case of Sukhwant Singh v. State of Punjab, 1994 SCC (Cri) 524 has also dealt with this aspect. It is clearly laid down that tendering of a

witness for cross-examination without there being any examination in chief, is not permissible. It amounts to giving up the witness. It was further laid

down that even under the old Code of Criminal Procedure, recourse to such a practice was inconsistent with Section 138 of the Indian Evidence

Act. Under the new Code of Criminal Procedure, recording of evidence in committal proceedings having been dispensed with, tendering of witness

for cross-examination only is no more relevant or available. So on account of this infirmity in the prosecution case, the charge against the appellants

cannot be said to be proved beyond any reasonable doubt.

10. The trial court wrongly conjectured that since the Stock Register was made available to Duni Chand SI on 1.9.1989,160 litres kerosene oil

was entered in it. There was no shortage of kerosene oil. It is not the case of the prosecution that the kerosene oil was found short as compared to

the Stock Register. The evidence of those persons who had taken kerosene oil against their cards was not collected. No card holder ever made

complaint that the kerosene oil was not supplied to him and the Stock Register was irregularly maintained. The defence plea is that the officials of

the Food and Supplies Department wanted to extract illegal gratification from the appellants on monthly basis and they refused to pay it. In cross-

examination PW2 Chaman Lal AFSO admitted that Rakesh-appellant man-handled both, him (Chaman Lal AFSO) and D.D. Gupta AFSO and

they had disclosed this fact to the police. So, there was something fishy at the time of checking the kerosene oil business premises of the appellants.

It was not a fair checking.

11. In view of the above infirmities in this case, the conviction and the sentence order passed against the appellants cannot be sustained in the eyes

of law. This appeal is allowed. The impugned judgment of conviction and sentence order are set aside and the appellants are acquitted of the

charge framed against them u/s 7 of the Essential Commodities Act.