

(2001) 08 P&H CK 0210

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 17659-M of 1997

Arvind Katcoh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 20, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156
- Essential Commodities Act, 1955 - Section 3, 7
- Penal Code, 1860 (IPC) - Section 120

Citation: (2001) 4 RCR(Criminal) 608

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: D.S. Pharuman, for the Appellant; P.S. Tiwana, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.

Through this criminal miscellaneous filed u/s 482 Cr.P.C., by one Arvind Katoch, he has prayed for the quashing of FIR No. 87 of 17.7.1997 at Police Station, Division No. 2, Pathankot, registered under Sections 406/407/411/120-B of Indian Penal Code and Section 7 of Essential Commodities Act, 1955.

2. The prosecution case in brief is that on 17.7.1997, Assistant Sub Inspector Vidya Sagar found two trucks bearing No. HIH-1127 and JK-02-1425 in the area of village Saili Kulian within the jurisdiction of Police Station, Division No. 2, Pathankot. Kerosene was being transferred from tanker No. HIH-1127 to tanker No. JK-02-1425. Assistant Sub Inspector Vidya Sagar took into possession both these trucks alongwith contents thereof. This seizure took place on 17.7.1997 at 1.50P.M. First Information Report was registered at 3.15 P.M. in the police station. Kerosene was being transferred from tanker No. HIH-1127 with the help of the electric motor and plastic pipe to tanker No. JK-02-1425. One end of the plastic pipe was being held by

the driver of tanker No. HIH-1127 and the other end of the pipe was being held by the driver of tanker No. JK-02-1425 and the electric motor was running. Assistant Sub Inspector Vidya Sagar apprehended both the drivers with the said trucks and another person was standing near the tanker and was counting money. Driver of tanker No. HIH-1127 disclosed his name as Ravinder Singh son of Mukhmail Singh, caste Rajput, resident of Nagrot Bhagwan, tehsil and district Kanya. Driver of tanker No. JK-02-1425 disclosed his name as Hans Raj son of Mehanga Ram, caste Ramdasia, resident of House No. 2063, Indira Colony, Ludhiana and the person who was standing near these tankers counting money disclosed his name as Kewal Krishan son of Mohan Lal, caste Arora, resident of Prem Nagar, Saingarh, Pathankot. They were asked as to why they were transferring kerosene from one tanker to another tanker. They could not give any satisfactory reply nor they produced any bill or document in regard to the kerosene in their possession. About 1000 litres of kerosene was found in tanker No. HIH-1127. About 1998 litres of kerosene was found in tanker No. JK-02-1425. One litre each of kerosene was taken out of the contents of each of the trucks. Learned counsel for the petitioner submitted that actually M/s Goverdhan Singh & Sons purchased 12000 litres of kerosene on 16.7.1997 from M/s Indian Oil Corporation Limited, Marketing Division, Pathankot and the same was filled in tanker No. HIH-1127. Filling was completed on July 17, 1997 at 11.43 A.M. in the depot of Indian Oil Corporation at Pathankot. Copy of the bill is Annexure P-2 issued by the Indian Oil Corporation. Consignment of the tanker was to reach the destination of M/s Goverdhan Singh & Sons, Hamirpur. This tanker was loaded with kerosene and it crossed Punjab border and entered Himachal Pradesh on 16.7.1997. This tanker was checked up at the border of Himachal Pradesh by the officials of Excise & Taxation Department and they issued certificate Annexure P-3 to the effect that vehicle was checked at Chakli Barrier on 16.7.1997 and the same entered Himachal Pradesh. This tanker crossed Himachal Pradesh from Punjab border while towards Hamirpur. This tanker became out of order in the area of town Damlal which was within the jurisdiction of Police Post, Damlal, District Kangra. As there was major defect in the tanker, it could not move. Driver of this tanker No. HIH-1127 hired another tanker No. JK-02-1425 from Pathankot. When tanker No. JK-02-1425 was approaching it was stopped for checking by the Punjab Police before entering the territory of Himachal Pradesh. Tanker No. JK-02-1425 was empty and there was no load which crossed the border. Assistant Sub Inspector got suspicious. Police followed tanker No. JK-02-1425. This tanker was stopped at Damlal near truck No. HIH-1127. Within a short span, the police party headed by Assistant Sub Inspector Vidya Sagar reached there and started checking tanker No. JK-02-1425. Nothing was found in the truck. It was submitted that no offence under Sections 406/407/411 of the Indian Penal Code was constituted even if the FIR is taken at its face value because it was neither stolen property nor there was any embezzlement. It was further submitted that Assistant Sub Inspector Vidya Sagar could not conduct this raid and it was held in *Pooran Chand v. State of Punjab*, 1988(1), Recent Criminal Reports 138 that in view of the provisions of Clause 15 of

the Punjab Light Diesel Oil and Kerosene Dealers Licensing Order, 1978, Assistant Sub Inspector has no jurisdiction whatsoever to search or seize the article in question i.e. kerosene. It was submitted that no officer below the rank of Sub Inspector of Police can enter upon or inspect any business premises of a dealer with a view to secure the compliance of the provisions of this Order or to satisfy himself that the provisions of this order were being complied with. Similarly this clause further lays down that no officer below the rank of Sub Inspector of Police shall seize kerosene found in possession of a dealer in respect of which he has reason to believe that the contravention of this Order has taken place. He drew my attention to Harpal Singh v. State of Punjab, 1991(3) RCR 368, where, it was held that no police officer below the rank of Sub Inspector could act upon or search the business premises of dealer under Clause 15 of the Punjab Light Diesel Oil and Kerosene Dealers Licensing Order, 1978 issued u/s 3 of the Essential Commodities Act, 1955.

3. As per the facts recited in Harpal Singh's case (supra). Assistant Sub Inspector Narender Singh. Police Station Sadar Amritsar, on the basis of secret information organised a raiding party on 8.9.1989 for raiding the premises of the accused-petitioners as the secret information revealed that these accused-petitioners had purchased some drums of kerosene oil from the truck tanker bearing registration Mo. 1305/PAT without any permit, license or authority in order to sell the same in black market. In the return filed by Shri Baljinder Singh, Station House Officer of Police Station Sadar Amritsar, it was admitted that Assistant Sub Inspector Narender Singh had conducted the raid and found 9200 litres of kerosene oil in the possession of the accused- petitioners. It was further averred in the return that the provisions of Section 156 of the Code of Criminal Procedure provide that no investigation conducted by police officer be called in question on the ground of incompetence of such officer to investigate such offence. Clause 15 of the Order reads as under:

"15. Power of entry, search and seizure, etc.

(1) The Director, the District Magistrate, the Assistant Director, Food and Supplies, the Inspector or any other officer not below the rank of Sub Inspector of Police may with a view to secure compliance with the provisions of this Order or to satisfy himself that the provisions of this Order have been complied with and with such assistance, if any, as he thinks fit -

(a) enter upon and inspect any business premises of a dealer or any premises on which he has reason to believe that Light Diesel Oil or Kerosene or both have been, are being or are likely, to be kept, stored, distributed, disposed of or to and from which light diesel oil or kerosene have been or are being or are likely to be removed or transported;

(c) seize light diesel oil or kerosene both found in possession of such dealer or in any vehicle or on any animal in respect of which he has reason to believe that a

contravention of this Order, has been, is being or is about to be committed; and

(d) seize any record pertaining to light diesel oil or kerosene or both in respect of which he has reason to believe that contravention of this Order has been or is being or is about to be committed.

(2) Every person (including his agent or servant) incharge of the vehicle or animal or premises which is searched or is sought to be searched under the provisions of sub-clause (1) shall allow the authority making the demand an access to such vehicle, animal or premises and shall also answer truthfully and to the best of his knowledge or belief all questions put to him.

(3) The provisions of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) as may be apply to searches and seizures under this clause."

4. A bare glance through the above clause leaves no doubt that special provisions have been incorporated in this clause by empowering the Director, the District Magistrate, the Assistant Director, Food and Supplies, the Inspector or any other Officer not below the rank of Sub Inspector of Police to enter upon or search any premises of the dealer or any premises on which such officer has reason to believe that light diesel oil or kerosene or both have been, or being or are likely to be kept, stored, distributed or disposed of in contravention with the provisions of this Order. Admittedly, the Essential Commodities Act as well as the above referred order issued by the State Government u/s 3 of the said Act are special laws whereas the Code of Criminal Procedure is general law. It is well settled law that the provisions of the Special Act or Law will prevail upon the provisions of the general law. It appears that the special protection has been given to the offenders indulging in the sale of light diesel or kerosene oil in contravention with the provisions of this Order by empowering the Officers holding responsible post only to detect the storage of such article in view of the nature of the offence. It is, thus, apparent that Assistant Sub Inspector had no power to search and seize kerosene under Clause 15 of the Punjab Light Diesel Oil and Kerosene dealers Licensing Order, 1978. It will thus be an exercise in futility to continue with this prosecution.

For the reasons given above, this criminal miscellaneous is allowed and FIR No. 87 dated 17.7.1997 is quashed.

5. Petition allowed.