
(2008) 04 P&H CK 0151

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 1021-SB

Prem Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: April 21, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Essential Commodities Act, 1955 - Section 7

Citation: (2008) 3 RCR(Criminal) 335

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Jasjit Singh Bedi and Mr. Satish Saini, for the Appellant; Sunil Nehra, Assistant Advocate General, Haryana for the State, for the Respondent

Final Decision: Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

By this Common judgment, two criminal appeals bearing Nos. 1021-SB of 1997 and 1039-SB of 1997, preferred by Prem Kumar and Tarsem Singh, appellants, shall be decided.

2. Both the appellants have been convicted by the Court of Learned Presiding Officer, Special Court, Kaithal, u/s 7 of the Essential Commodities Act (for short "the Act") and sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 1,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for three months, in a case arising out of FIR No. 422 dated 10.12.1993 registered at Police Station City, Kaithal u/s 7 of the Act.

3. FIR Ex.PA/1 was recorded on the basis of ruqa Ex.PA sent by Attar Singh, Sub Inspector, who has stated in ruqa Ex.PA that he along with his companion police officials was present in front of Civil Hospital gate, Kaithal and from reliable sources he learnt that Prem Kumar, appellant, used to sell a bag of Kissan Khad to the

farmers at the rate of Rs. 150/- per bag after he purchased the same from Punjab at the rate of Rs. 100/- per bag and he has brought about 200 bags from village Sangatpura to Kaithal in a truck bearing No. PAT-8945 and since he has been selling the fertilizer without any license, therefore, he has committed the offence u/s 7 of the Act.

4. On 3.6.1994, learned Presiding Officer, Special Court, Kaithal, framed a charge against both the appellants that on 10.12.1993 in the area of City Kaithal at Baba Ladana Chowk, both the appellants were found transporting for sale 200 bags of Urea fertilizer from Patran, Punjab, to the State of Haryana and thereby they contravened the provisions of Sub-clause (iii) of Clause 3 of the Fertilizer (Movement) Order, 1973 (for short "the Order") and thereby they committed an offence u/s 7 of the Act.

5. After registration of the case, vide recovery memo Ex.PC accused along with truck was apprehended and 200 bags in a truck were recovered and accused were formally arrested. The matter was investigated and challan was submitted.

6. Prosecution examined PW.1 Gurcharan Singh, Assistant Sub Inspector, who proved ruqa Ex.PA and FIR Ex.PA/1 and thus, he was witnesses of formal nature.

7. PW.2 Kewal Krishan has stated that on 9.12.1993 some villagers have come to purchase fertilizer and cash memo was issued by his concern and Prem Kumar who was present in the Court had not visited him. On cross-examination by the Public Prosecutor, he reiterated that Prem Kumar accused was not known to him. He also denied that Prem Kumar had purchased 200 bags of fertilizers on 9.12.1993 from his shop at the rate of Rs. 100/- per bag.

PW.3 Vishnu Dutt, Sub Inspector stated that he had prepared the final report u/s 173 Cr.P.C.

8. PW.4 Surinder Singh, Constable, has stated that on that date he was posted along with Attar Singh, Sub Inspector. They had laid a naka and they apprehended one truck bearing registration No. PAT- 8945. On signal truck was made to stop and 200 bags of fertilizer were found and on interrogation driver of the truck told his name as Tarsem Singh. In the Court he stated that he is not able to recognize the accused who is present in the Court. He also stated that he is not able to identify Prem Kumar who was present in the Court.

9. In cross-examination PW.4 Surinder Singh, Constable, admitted that no official from the office of Food & Supplies Department and Sub Divisional Magistrate's office was called at the spot. He further admitted that no person from the public was called by the Investigating Officer even though many persons were coming and going at that time. He admitted in cross-examination that no effort was made to join an independent witness.

10. PW.5 Suresh Kumar, Constable, has stated that the truck was apprehended and 200 bags were recovered and the accused were present in the truck.

11. PW.6 Attar Singh, Assistant Sub Inspector, stated regarding nakabandi, apprehension of truck, recovery of 200 bags and arrest of the accused.

12. In the cross-examination, PW.6 Attar Singh, Assistant Sub Inspector stated that he tried to join private witnesses but they refused to become witness.

13. The appellants were examined u/s 313 Cr.P.C. Appellant Prem Kumar stated that he was falsely implicated and he was called from the shop at the instance of Prem Kumar Shorewala. He was not present in the trade nor the fertilizer belongs to him. Tarsem Singh appellant stated that he has been falsely implicated at the instance of Gurcharan Singh, Sarpanch. He was not driver of truck No. PAT-8945.

14. In defence accused examined DW.1 Bhag Singh. He stated that on 9.12.1993 he along with Sohan Singh and Mehanga Singh had gone to Pattran to purchase the fertilizers. 50 bags belong to him, 75 bags belong to Sohan Singh and 75 bags belong to Mehanga Singh. He stated that separate receipts were issued to the owners of the bags of fertilizer. To the same extent is the statement of DW.2 Sohan Singh and DW.3 Mehnga Singh.

15. DW.4 Randhir Singh, Clerk in the office of Excise and Taxation Department, Kaithal, has been examined to prove that there was one Prem Chand Shorewala who used to deal in fertilizer and he was partner of the firm Aggarwal Timber Store and his father's name was Om Parkash. This witness has been examined to fortify the statement made u/s 313 Cr.P.C. by Prem Kumar appellant that instead of Prem Kumar Shorewala appellant has been implicated.

16. I have heard Mr. Jasjit Singh Bedi, and Mr. Satish Saini, Advocates, for the appellants and Mr. Sunil Nehra, learned Assistant Advocate General, Haryana.

17. PW.2 Kewal Krishan who is having a shop at Pattran has specifically stated that he had not sold the fertilizer to the appellant Prem Kumar. Rather the defence witness DW.1 Bhag Singh, DW.2 Sohan Singh and DW.3 Mehnga Singh, stated that they had purchased fertilizer from Pattran. PW.4 Surinder Singh, Constable has stated that it is correct that DW.1 Bhag Singh, DW.2 Sohan Singh and DW.3 Mehnga Singh, were also present in the truck and receipts Ex.P1 to Ex.P3 were taken by the Investigating Officer from them.

18. It emerges from the reading of the evidence and the arguments of the parties that at the relevant time, fertilizer bags were cheap in the State of Punjab than the State of Haryana. It has been also stated that Pattran falls in the State of Punjab, no doubt is at a short distance of Kaithal from where the recovery of fertilizer bags were made. It cannot be ruled out that the agriculturists of the area in order to save have been purchasing fertilizer from the Punjab and transporting the same. DW.1 Bhag Singh, DW.2 Sohan Singh and DW.3 Mehnga Singh are the agriculturists. DW.1

Bhag Singh had taken a definite stand that he had purchased 50 bags of fertilizer, whereas DW.2 Sohan Singh and DW.3 Mehnga Singh stated that they had purchased 75 bags of fertilizer each. They have also stated that the receipts of purchase Ex.P1 to Ex.P3 were recovered from them. Prosecution witness PW.4 Surinder Singh, Constable, has also stated that all the three defence witnesses were in the truck when the recovery was effected and the receipts were also taken in possession from the defence witnesses. PW.2 Kewal Krishan from whose shop according to the prosecution fertilizer was purchased has stated that the appellant Prem Kumar had not purchased the fertilizer from his shop. From the entire evidence including the defence evidence, it can be inferred that there was no sale at the instance of the appellants. Nobody has been produced to prove the fact that the appellants were effecting any sale. At the best it can be stated that the appellants were engaged for transportation of the fertilizer for the farmers who wanted to use the same for their own agricultural purposes.

19. Hence, it is not safe to maintain the conviction of the appellants and the benefit of doubt can be extended to them. Therefore, the present appeals are accepted, conviction and sentence of the appellants are set aside and they are acquitted of the charges.