

AVTAR SINGH & ANR.

A

v.

STATE OF PUNJAB

(Criminal Appeal No. 1711 of 2011)

MARCH 23, 2023

B

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

Essential Commodities Act, 1955: s. 7 – Penalties – Appellants in unauthorized possession of gas cylinders – Conviction and sentenced u/s. 7, by the courts below – Appellants’ case that gas cylinder were seized by sub-inspector of the police, who was not authorised to do so – On appeal, held: Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all – Other methods are necessarily forbidden – In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him totally unauthorised and have to be struck down – Thus, the order passed by the courts below set aside – Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 – Clause 7.

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Dharani Sugars and Chemicals Ltd. v. Union of India and Ors. (2019) 5 SCC 480 : [2019] 6 SCR 307 – referred to.

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Case Law Reference

[2019] 6 SCR 307

referred to

Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1711 of 2011.

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From the Judgment and Order dated 15.01.2010 of the High Court of Punjab & Haryana at Chandigarh in CRLA No.562-SB of 1997.

Ms. Shalu Sharma, Vishal Arun Mishra, U M Tripathi, Ms. Harshita Nigam, Saurabh Sharma, Kishorilal Pyarelal Gupta, Ujjwal Bhardwaj, Hitesh Shahi, Yashshavi Sharma, Khushhal Agarwal, Ayush Panwar, Advs. for the Appellants.

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Karan Sharma, Rishabh Sharma, Mohit Siwach, Rohit Kaliyar, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

RAJESH BINDAL, J.

1. The judgment of the High Court of Punjab & Haryana in Criminal Appeal No. 562-SB of 1997 dated January 15, 2010 is under challenge in this Appeal.

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2. The appellants are aggrieved of their conviction under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as ‘the Act’).

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3. The Trial Court vide judgment and order dated July 8, 1997 had convicted the appellants and directed them to undergo imprisonment for a period of six months alongwith fine of ₹ 500/- each.

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4. The facts, as are available on record, are that on 26.02.1995, Sub-Inspector of Police alongwith other police officials was present at bus stop, Phagwara. They received a secret information that the appellants were indulging in selling gas cylinders in black. They were charging ₹ 250/- (Rs. two hundred and fifty only) instead of the prescribed rate of ₹ 102/- (Rs. one hundred and two only). Their truck bearing No. HR-05A-4918 was parked in front of Chawla Auto Workshop. Finding the information to be reliable, FIR was registered and police officials went at the spot and apprehended the accused. They were taken into custody.

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5. In the evidence led before the trial court, none of the independent witnesses or the alleged buyers of the cylinders in black supported the case of the prosecution. It was only two official witnesses who deposed in favour of the prosecution.

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6. The only charge which could be proved was unauthorized possession of gas cylinders on the basis of which the trial court convicted the appellants and ordered imprisonment.

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7. The order passed by the trial court was upheld in appeal by the High Court.

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8. The sole argument raised by the learned counsel for the appellants is that in terms of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1988 dated 08.03.1988 (hereinafter referred to as ‘ the Order’), entry and seizure should be in exercise of the powers under clause 7 of the Order. Clause 7 of the Order authorises

certain persons to stop and search any vessel or vehicle which the officer has reason to believe has been or is being or is about to be used in contravention of the order. A

9. Clause 3 of the Order restricts unauthorised possession of gas cylinders. The submission is that as per clause 7, an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensure compliance with the provisions of the Order, for the purpose of satisfying himself that this order or any order made thereunder has been complied with, is authorised to carry out such exercise/seizure. B C

10. In the case in hand, the action has been taken by sub-Inspector of the Police who, as per the Government Order, is not authorised. Hence, the entire case of the prosecution falls. The aforesaid argument has not been considered either by the trial Court or by the High Court. D

11. On the other hand, learned counsel for the State submitted that the appellants have been found in unauthorized possession of the gas cylinders. They have rightly been convicted. Merely for some technical default, they should not be allowed to go scot-free. At that time, there was a huge shortage of gas cylinders and Order was issued to check its black marketing and unauthorised possession. E

12. Heard learned counsel for the parties and perused the relevant referred record.

13. The facts in the case as noticed above as such, are not in dispute. The only argument raised is about the power of the person who had seized cylinder on the basis of which the appellants were prosecuted. Clause 7 of the Order, which is reproduced hereunder, prescribes officers who have the power. F

“7. Power of entry, search and seizure:- G

(1) an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales H

A *Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:*

B *(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this Order;*

C *(b) Enter or search any place with such aid or assistance as may be necessary;*

D *(c) Seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, alongwith the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this Order has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production..... ”*

F 14. It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub-Inspector of the Police was authorised to take action under the aforesaid Order.

G 15. It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to *Dharani Sugars and Chemicals Ltd. Vs. Union of India and Ors.* reported in (2019) 5 SCC 480.

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16. In the absence of the authority and power with the Sub- A
Inspector to take action as per the Order, the proceedings initiated by
him will be totally unauthorised and have to be struck down.

17. For the reasons mentioned above, the appeal is allowed. The
judgment by the High Court of Punjab & Haryana in Criminal Appeal B
No. 562-SB of 1997 dated January 15, 2010 and the order dated
08.07.1997 passed by the Trial Court are set aside. As a consequence,
the conviction and sentence of the appellants under Section 7 of the Act
is set aside. The bail bond stands discharged.

Nidhi Jain

Appeal allowed.