

Before K.C. Puri, J.

ANIL KUMAR—Appellant

versus

STATE OF HARYANA—Respondents

CRA-S-No.1409-SB of 2001

February 11, 2013

Essential Commodities Act, 1955 - S.7 - Kerosene oil - Sale - Appellant a depot holder found selling kerosene oil in black - Five drums of kerosene oil found from Matador - Appellant managed to slip - Co-accused arrested at spot - Trial Court convicted appellant

and acquitted his co-accused - Appeal preferred - Allowed - Held, prosecution failed to prove that Kerosene oil was meant for sale in public distribution system - Source of drums not proved - Appeal allowed - Appellant acquitted.

Held, that accused Anil, Depot Holder on 11.1.1994 was allegedly selling kerosene oil in black and according to secret information that he was carrying some kerosene oil in a Matador bearing registration No.DED-5765 and could be apprehended. Accused Anil managed to slip whereas the matador was found to be driven by accused Pardeep and on search five drums of kerosene oil were found carried by that matador.

(Para 2)

Further held, that prosecution in the present case has failed to prove that the kerosene oil recovered from Pardeep Kumar was meant for sale in public distribution system. Raj Kumar (PW-2) who was a witness for selling the kerosene oil by Anil Kumar in black marketing has not supported the case of the prosecution and he was declared hostile. None of the other witnesses have stated that he has seen Anil Kumar selling the kerosene oil in black market. So much so, the prosecution has not produced the record that kerosene oil was issued for his depot.

(Para 20)

Further held, that otherwise also the case of the prosecution is that the kerosene oil was being transported to Safidon to Panipat. The petitioner was a depot Holder at Panipat. In case the kerosene oil allotted to the petitioner for public distribution system would have been sold than the recovery could have been at Panipat. The prosecution has not tried to trace out the source of five drums stated to be recovered from Pardeep Kumar.

(Para 21)

Further held, that in view of the above discussion the trial Court has ignored the material point while convicting the accused for offence punishable under Section 7 of the Essential Commodities Act. Consequently, the appeal stands accepted.

(Para 24)

Rajiv Kataria, Advocate, *for the appellant*

Amandeep Singh, AAG, Haryana.

K.C. PURI, J.

(1) Anil Kumar-accused-appellant has directed the present appeal against the judgment dated 10.11.2001 and order dated 13.11.2001 passed by Shri Hari Paran Singh, learned Special Judge, Panipat vide which the appellant-Anil Kumar stood convicted under Section 7 of the Essential Commodities Act (in short - the Act) and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months whereas acquitted accused Pardeep Kumar from the charges levelled against him.

(2) The prosecution case in brief is that accused Anil, Depot Holder on 11.1.1994 was allegedly selling kerosene oil in black and according to that secret information that he was carrying some kerosene oil in a Matador bearing registration No. DEED-5765 and could be apprehended. Therefore a naka was put by ASI Hari Singh, In-charge Police Post, Matlaudha. The other police officials namely Chander Singh HC, Prem Singh HC, Constable Ravi Singh and Constable Rattan Singh and Tara Singh Inspector Food and Supply Department were also with him and when the said matador was noticed, it was stopped at Railway Phatak Safidon Matlaudha Road. Accused Anil managed to slip whereas the matador was found to be driven by accused Pardeep and on search five drums of kerosene oil were found carried by that matador. The said drums were fully filled with the kerosene oil and three bottles were taken as '1 sample from each drum and separately sealed with the seal HS. The drums, samples and matador were taken into possession. Seal after use was handed over to Tara Singh Inspector, Food and Supplies. Accused Pardeep could not produce any permit or licence for retaining the kerosene oil and he told that it belonged to Anil accused. FIR under Sections 7/10/55 of Essential Commodities Act was registered against the accused. Statements of the witnesses were recorded. Accused Pardeep was arrested at the spot whereas accused Anil was also arrested on 27.1.1994 but was released in view of anticipatory bail. After completion of the necessary investigation, challan against the accused was presented in the Court for trial of the accused.

(3) On appearance of the accused, copies of documents relied upon by the prosecution were supplied to the accused free of costs. Notice of

accusation under Section 7 of the Act was served upon the accused, to which the accused pleaded not guilty and claimed trial.

(4) In order to prove its case, prosecution has examined Inspector Brij Bihari, Food and Supplies as (PW-1), Raj Kumr, Consumer (PW-2), HC Chander Singh (PW-3), P.K. Sharma, AFSO as (PW-4), Tara Singh AFSO as (PW-5), ASI Hari Singh, Investigating Officer as (PW-6) and closed its evidence.

(5) In the statements recorded under Section 313 of the Code of Criminal Procedure (in short - Cr. P. C.) accused Pardeep pleaded that he is innocent. The matador in question was owned by Beant Singh, who was a retired Police Inspector. He used this matador for bringing goods from one place to another place on hire charges. Some days before this incident he was employed as driver by said Beant Singh on this Matador. Beant Singh used to make the booking for this matador and to accept the hire charges and to issue the accused necessary directions for bringing the goods in the matador from one place to another. On 11.1.1994 in the morning Beant Singh directed him to take the matador to Safidon for bringing five drums from that place to Panipat and also told him that he had received the hire charges and owner of the drum would be there at Safidon and would accompany him in the matador along with the drums. As per his directions he took the matador to Safidon where five drums along with their owner was present. He went to take tea and in the meanwhile the owner loaded the drums in the matador and when he came back he sat in front seat in the matador along with him. He along with owner of the drums started for Panipat and near Matlaudha on the signal of police he immediately stopped the matador and at that time the owner of those drums came down and slipped away. The police officials unloaded those drums and told him that there were kerosene oil in those drums. Prior to that he was not aware that there was kerosene oil in those drums. He has been falsely implicated in this case.

(6) Accused Anil Kumar denied all the prosecution allegations and stated that he is innocent and he was not at all present at the spot. The kerosene oil was not belonging to him. He was not depot holder at Safidon. No defence evidence was led by either of the accused.

(7) The trial Court, after hearing the learned counsel for the parties convicted accused-Anil Kumar vide judgment dated 10.11.2001 and sentenced vide order dated 13.11.2001, as aforesaid whereas acquitted accused Pardeep Kumar from the charges levelled against him.

(8) Feeling dissatisfied with the aforesaid judgment dated 10.11.2001 and order dated 13.11.2001, the present criminal appeal has been directed by the accused/appellant-Anil Kumar.

(9) I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

(10) Learned counsel for the appellant has submitted that according to the prosecution story the appellant was a dealer of kerosene oil at Panipat. The recovery of five drums of kerosene oil has been alleged to have taken place from Pardeep Kumar, who has since been acquitted. The statement made by Pardeep Kumar to the effect that kerosene oil belongs to the petitioner is inadmissible in evidence. The statement of Pardeep Kumar made under Section 313 of the Cr.P.C., that kerosene oil belongs to the petitioner is also inadmissible in evidence. It cannot be believed that in the presence of so many police officials, the appellant could have slipped away from the place of occurrence.

(11) The learned counsel for the appellant has further submitted that prosecution is required to prove that he was a dealer within the definition of the Haryana Kerosene Dealers' Licence Order, of 1976 of 12.3.1976. (in short - 1976 Order) Dealer, according to the said definition, is a person who engaged in business of purchase, sale or storage for sale of kerosene oil. None of the prosecution witnesses has stated that kerosene oil, alleged to be recovered in the present case, was meant to sell muchless in black marketing.

(12) Learned counsel for the appellant has further submitted that there is non-compliance of Section 104 of the Cr.P.C. in respect of recovery of articles. To support this contention he has relied upon authority *State of Rajasthan versus Mis J. Nagpal & Co. (1)*.

(13) Learned counsel for the appellant has further submitted that in the following cases the accused were acquitted in case of recovery of kerosene oil where the prosecution has failed to prove that the kerosene oil was meant for sale :-

(1) *Sohan Singh* versus *State of Haryana* (2).

(2) *State of Pnniab* versus *Sham Lal* (3).

(14) Learned counsel for the appellant has further submitted that it is not the case of the prosecution that kerosene oil recovered from the place of occurrence was meant for selling at public distribution system. To support this contention, learned counsel for the petitioner has relied upon authority *Babu Lal* versus *State of U.T. Chandigarh* (4).

(15) Learned counsel for the appellant has further submitted that non-joining of independent witness is fatal for the prosecution. To support this argument learned counsel for the appellant has relied upon authority *State of Haryana* versus *Leeln Ram and another* (5).

(16) The learned State counsel has supported the judgment of the trial Court. It is submitted that accused was present in the vehicle from which the kerosene oil was recovered. Mere fact that he slipped away is not a ground to disbelieve the prosecution version that kerosene oil was not belong to him. Pardeep Kumar (acquitted accused) in his statement before the police as well in his statement recorded under Section 313 of the Cr.P.C. stated that kerosene oil belongs to present appellant. The appellant was a Depot Holder and as such is a dealer within the ambit of the said control order. The appellant has been rightly convicted.

(17) I have given my thoughtful consideration to the rival submissions made by both the parties and have gone through the records of the case with their able assistance.

(18) The five drums of kerosene oil were recovered from the Matador being driven by Pardeep Kumar accused, who has since been acquitted by the trial Court. The reasoning given by the trial Court for

(2) 1987 (1) RCR (Cr.) 316

(3) 2000 (3) RCR (Cr.) 686 (DB)

(4) 2008 RCR (Cr.) 71

(5) 2006 (4) RCR (Cr.) 337

acquitting him is that there was no material collected by the prosecution to show that on other occasions also he used to take kerosene oil of accused Anil Kumar. The reasoning given by the trial Court for convicting the appellant Anil Kumar is that kerosene oil belongs to Anil Kumar. Pardeep Kumar acquitted accused in his statement recorded under Section 313 Cr.P.C., has not given the name of Anil Kumar as the owner of the kerosene oil. He has simply stated that owner of the vehicle was with him and had slipped away. Otherwise also, the Hon'ble Apex Court in authority *Jatinder Kumar versus State of Haryana (6)*, held that statement of the co-accused against another, accused under Section 313 Cr.P.C., is not admissible. It is not possible that in the presence of so many police officials Anil Kumar could have given a slip at the spot.

19. This Court in authority Babu La. 's case (supra) held that in case, prosecution failed to prove that kerosene oil in question belongs for public distribution, is liable to be acquitted.

(20) The prosecution in the present case has failed to prove that the kerosene oil recovered from Pardeep Kumar was meant for sale in public distribution system. Raj Kumar (PW-2), who was a witness for selling the kerosene oil by Anil Kumar in black marketing has not supported the case of the prosecution and he was declared hostile. None of the other witnesses have stated that he has seen Anil Kumar selling the kerosene oil in black market. So much so, the prosecution has not produced the record that kerosene oil was issued his Depot.

(21) Otherwise also the case of the prosecution is that the kerosene oil was being transported to Safidon to Panipat. The petitioner was a Depot Holder at Panipat. In case the kerosene oil allotted to the petitioner for public distribution system would have been sold than the recovery could have been at Panipat. The prosecution has not tried to trace out the source of five drums stated to be recovered from Pardeep Kumar.

(22) In authority *Sohan Singh's case (Supra)* the accused were acquitted where the prosecution has failed to prove that kerosene oil was meant for sale.

(23) In authority *State of Haryana vs. Leelu Ram and another's case (Supra)*, this Court held that in some cases non-joining of independent witnesses fatal for the prosecution. No doubt, joining of independent witnesses is not the rule of law but the rule of prudence. Courts sometimes insist on independent corroboration where the prosecution story is otherwise carry some doubt.

(24) So, in view of the above discussion the trial Court has ignored the material point while convicting the accused for offence punishable under Section 7 of the Essential Commodities Act. Consequently, the appeal stands accepted. The judgment and order stand set aside. The accused stands acquitted after giving him benefit of doubt from the charges levelled against him.

A copy of this judgment be sent to the trial Court for strict compliance.

J.S. Mehndiratta