

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 255 of 2005
(Under Section 482 of Cr.P.C.)

Kamlesh Kumar,
son of Sri Bhagwat Singh,
Resident of Gazipur Kutub,
Tehsil – Nazibabad, P.S. – Kiratpur,
District – Bijnor, Owner Ganga Auto Care,
Retail Outlet Najibabad Road Shayampur,
Haridwar, District – Haridwar.

.....Applicant.

Versus

1. State of Uttaranchal.
2. CJM, Haridwar.
3. Shri S.C. Ghildiyal, Purti Nirishak, P.S. – Bhadarabad,
District – Haridwar.

.....Opposite Parties.

Hon'ble J.C.S. Rawat, J

Heard Sri Manish Arora, learned counsel for the applicant and learned counsel AGA for the State.

The applicant has filed the instant petition under Section 482 Cr.P.C. to quash and set aside the impugned order dated 10.02.2005 passed by respondent no. 2 in case crime no. 45 of 2004 (State Vs. Ganga Auto Care, under Section 3/7 E.C. Act, P.S. – Shayampur, District – Haridwar, and further requested to open the seal of the three units of the Petrol Pump in favour of the applicant.

According to the allegation in the FIR, the Supply Officer, Haridwar has seen a tanker no. UR 7 C 7400 having 12,000 litre of kerosene oil filling underground Ganga Auto Care Retail Outlet. Thereafter, a sample was taken from the tanker and from underground tank. The I.O. has filed chargesheet. Application under section 457 of Cr.P.C. was moved by the applicant before respondent no. 2 for opening the lock of the petrol pump and the same was rejected by the said court. The present petition has been filed against the rejection of the order dated 10.2.2005. The first and foremost question is whether

that case has been registered under Essential Commodities Act under Section 6 A is with regard to the confiscation of essential commodities. It has been provided under section 6 A that in case any commodity has been seized that shall be produced for inspection before competent authority and he may released the said commodity.

It was contended on behalf of the applicant that the applicant is seeking permission only to open the locks of the petrol pump and he is seeking permission to open the premises of petrol pump under section 457 of Cr.P.C. and as such, provision of Section 6 A are not applicable in this case.

The present application has been given under section 457 of the Cr.P.C. to the effect that applicant may be permitted to start his business. A perusal of the record reveals that a sample was taken from high speed diesel and the same was not found adulterated whereas it is alleged in the FIR that the applicant was mixing kerosene oil in the said tank. The present application is filed to open the seal of the three units of pump in favour of the applicant. The applicant is the owner of the said pump as alleged in the FIR itself. The report does not contain the diesel of the tank was found adulterated as such it would not be proper to keep the premises of the pump locked. The applicant has the fundamental right to carry on the business and the public interest should also be kept in mind. In view of the aforesaid circumstances I feel that the impugned order is liable to be set aside and the seal of the retail outlet of the applicant may be removed by the respondents and the supply of diesel and petrol may continue subject to availability and relevant policy of the supply and distribution.

I am fortified with the law laid down by the Allahabad High Court in ACC 1996 (33) (Ram Suresh Rai Vs. State of U.P.) and W.P. No. 26001 of 20033 (M/s Laxmi Filling Station and another Vs. Indian Oil Corporation and others)

However, respondents will monitor the activities of the applicant by surprise checks and inspections and taking of samples from time to time. If the applicant is found adulterating the petrol or diesel, the supply to the outlet may be sealed immediately.

In view of the above discussion, the petition under section 482 Cr.P.C. is allowed and impugned order dated 10.02.2005 passed by CJM, Haridwar, is set aside. The respondent no. 1 is directed to open the seal of the oil outlet at the petrol pump in favour of the applicant in accordance with law. However, the finding given in this order will not prejudice the learned Trial Judge while deciding the trial.

(J.C.S. Rawat, J)

26.05.2005
SKS