

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A. No.277 of 2000

Judgment reserved on: 3.8.2007

Date of Decision: August 31, 2007

State of H.P.

...Appellant

Versus

Karnail Singh

... Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

***Whether approved for reporting?* No.**

For the Appellant : Mr. J.S.Guleria, Law Officer.

For the Respondent : Mr. K.D.Sood, Advocate.

Deepak Gupta, J.

This criminal appeal under Section 378 of the Code of Criminal Procedure is directed against the judgment dated 29.2.2000 passed by the Special Judge, Una whereby he has acquitted the accused of having committed an offence punishable under Section 7 of the Essential Commodities Act, 1955.

Brief facts of the case are that the complainant Ravinder Kumar Jaswal, Inspector, Food and Civil Supplies was inspecting a shop at Mehatpur on 25.10.1996. In the meantime, a truck halted in front of the shop. Complainant heard the sound of a gas cylinder falling down. He came out of the shop and found that a LPG cylinder was lying on the road. The driver of the truck (accused) was counting some money. The complainant took the money

amounting to Rs.140/- into his possession. He also found that the cylinder was empty and took the same into his possession. One person ran away from the spot. He took into possession the empty cylinder vide memo Ex.PA in the presence of two shop-keepers Satish Kumar and Ravinder Kumar. He thereafter drew up a record of the proceedings vide Ex.PB. He thereafter took into possession bill Ex.PC and sales tax form Ex.PD. According to the voucher Ex.PC, 306 filled cylinders of LPG were loaded in the truck. They were to be taken from the Bottling Plant at Baddi to Palam Gas Service, Palampur. Thereafter all the cylinders in the truck were checked. Four cylinders were found to be empty. According to the complainant, this fact itself showed that four filled cylinders had been sold or other wise parted with by the accused.

The complainant also recorded the statement of the accused Ex.PE and submitted that the accused had violated the provisions of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) order 1993 Ex.PA. He thereafter filed a complaint to the police. The case was registered and challan was filed against the accused. The accused was summoned and charge was framed. He pleaded not guilty and therefore, the trial was held.

The prosecution examined as many as 7 witnesses. Thereafter the statement of the accused under Section 313 Cr.P.C. was recorded.

The learned Special Judge acquitted the accused . The grounds for acquitting the accused can be summarized as follows:

- i) that since the offence under Section 7 of the Essential Commodities Act is non-bailable and cognizable why did

- the complainant delay in reporting the matter to the police and why was the accused not arrested at the spot;
- ii) why was the cleaner of the truck not arrayed as an accused; and
 - iii) why no person was examined from M/s Palam Gas Service to show how many cylinders actually reached the Gas agency.

The State by means of this appeal has challenged the said judgment.

I have heard Shri J.S. Guleria, learned Law Officer for the State- appellant and Shri K.D.Sood, learned counsel for the respondent.

The complainant Ravinder Kumar Jaswal appeared as PW1 and he has repeated the allegations made in the complaint. He also stated that he has recorded the statement Ex.PE of the accused in the presence of Satish Kumar and Rakesh Kumar. He also submits that this statement was read-over and explained to the accused who signed the same after understanding it. According to him, he took into possession five cylinders out of which one was filled with LPG and other were empty and the same were handed over to PW3 Varinder Kumar who was the in-charge of shop of Civil Supplies Corporation at Mehatpur. He has also proved the notification/order Ex.PF. Clause 3(4) of the order reads as follows:-

“Restriction on possession, supply and consumption of liquefied petroleum gas:

- (1).....
- (a).....
- (b).....

(c).....

(2).....

(3).....

(4). No transfer or delivery person shall deliver or cause to be delivered liquefied petroleum gas either in cylinders or in bulk to any person other than the consumer for whom the liquefied petroleum gas is meant for."

This order has been passed under Section 3 of the Essential Commodities Act, 1975. Section 7 of the Act provides that if any person contravenes any order made under Section 3 then he shall be punishable for the contravention. It is further provided that in case the offence is in relation to an order made with reference to clauses (h) or (i) of sub section 3(2) then the punishment may extend up to one year or fine. In case of any other order, the maximum term of imprisonment is 7 years but it is provided that the sentence shall not be less than three months. The present order does not fall under clauses (h) and (i).

The complainant has clearly stated that when he came out of the shop of Satish Kumar, he found that there was one cylinder lying on the road and he found it to be empty. The accused was having Rs.140/- in his possession and the person who had given the money ran away. This version has been supported by PW2 the shop keeper who has also stated that LPG cylinder was thrown out from the truck and the driver was having Rs.140/- which was taken by the complainant PW1. Three more empty cylinders were found in the truck. He has stated that memos were prepared in the godown of the Civil Supplies Corporation and the counting of the cylinders and verification of the cylinders as to which cylinders are empty and which are filled with LPG was done in the godown. He also stated

that the accused had signed the statement Ex.PE. A suggestion has been put to this witness that a cylinder had fallen out from his truck on its own. He has denied this suggestion. This suggestion itself indicates that the accused admits that a cylinder was lying outside the truck.

PW3 Varinder Kumar has also supported the prosecution and has submitted that the truck was checked in his presence and the cylinders were counted in the godown by the complainant in his presence. He submits that three empty cylinders were found in the truck in addition to one empty cylinder at the spot. He has denied the suggestion that the cylinders were not empty. A suggestion has been put to this witness that the gas was leaked out by the complainant in order to implicate the accused in a false case for harassing him on account of business rivalry.

PW7 is the Manager of the Indian Oil Corporation, Baddi. He has proved from the record that 306 filled LPG cylinders were issued to M/s Palam Gas Service, vide receipt Ex.PC on 25.10.1996 and sent in the truck in question.

Keeping in view the entire evidence, I am of the view that the learned trial Court has gravely erred in acquitting the accused on hyper technical grounds. Even if the accused was not arrested on the spot, no prejudice was caused to him. The learned trial Court has lost sight of the fact that what is prohibited under the notification Ex.PF is that no transporter or delivery person shall deliver LPG cylinders to any person other than the consignee or consumer. Admittedly, the cylinders had to be delivered to M/s Palam Gas Service, Palampur. The truck was stopped in the middle

of the road and even as per suggestion made by the accused, one cylinder was lying on the road. There is no explanation as to how there were four empty cylinders in the truck. PW7 has clearly stated that 306 filled cylinders had been sent in the truck. There is no explanation as to how four cylinders were empty.

The fact that the cleaner has not been arrayed as an accused is of no consequence since the complainant had proved that the money was in the hands of the driver and it is the driver alone who can be termed to be the transporter/delivery person in terms of clause 3 & 4 of the order.

The learned trial Court while acquitting the accused has placed great emphasis on the fact that no person was examined from the Palam Gas Service. As already held by me, it stands proved that 306 filled gas cylinders were loaded at Baddi and out of these, four were found to be empty. Therefore, non examination of any witness from Palam Gas Service, is not material at all.

Another fact which has been totally ignored by the learned trial Court is that the accused had made a statement Ex.PE which has been proved on record. This was a confessional statement. It was not made to a police officer and, therefore, there was no bar on this statement being used against the accused.

PW1 was not a police officer and he had in his statement before the Court stated that the accused had made a confessional statement to him and he had recorded the same. Admittedly, PW1 did not have the power to arrest the accused or to detain him. In fact as pointed out by the trial court even the case was to be registered by the police and investigation was to be conducted by

the police. Reference in this behalf may be made to the judgment of the Apex Court in **Percy Rustomji Basta v. The State of Maharashtra**, AIR 1971 SC 1087. In that case, the apex Court held that the custom officers are not police officers within Section 25, even though they have powers of the police officers for certain purposes. Their duties are different from those of police officers. In the present case also, I am of the considered view that PW1 Inspector, Food & Supplies could not be said to be a police officer and, therefore, the confession made to him was admissible.

Keeping in view all these facts and circumstances of the case, I am of the considered view that the prosecution has proved beyond reasonable doubt that the accused had violated the provisions of clause 3(4) of the notification issued under Section 3 of the Essential Commodities Act, 1955 and as such has committed an offence punishable under Section 7 of the Essential Commodities Act. He is, therefore, convicted and sentenced to undergo simple imprisonment of three months and to pay a fine of Rs.2000/-. In default of payment of fine, he shall undergo simple imprisonment for one month.

The bail bonds furnished by the appellant/accused stand cancelled.

August 31, 2007

(Deepak Gupta), J.

s.