

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

Crl. Revision Petition No.120 of 2002  
Date of Decision: 28.2.2007

Jai Singh.

..... Petitioner.

Versus

State of Haryana.

..... Respondent.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Shri Hari Om Attri, Advocate for the petitioner.

Shri S.K.Hooda, Senior Deputy Advocate General, Haryana  
for the State.

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Mahesh Grover,J.

This is a revision petition for quashing of the charge sheet dated 23.10.2001 (Annexure P2) along with order of the same date vide which the petitioner along with one Kapil Dev has been charged for having committed an offence punishable under Section 7 of the Essential Commodities Act, 1955 (for short, 'the Act').

The facts of the case are that on 14.11.2000, samples of black oil were seized from the petitioner and Kapil Dev when a raid was conducted by Shri Ramesh Kumar, S.I., S.H.O., who was accompanied by A.S.I. Bishamber Dayal and Constable Krishan, upon receipt of a secret

information.

On chemical examination, the oil was found to be “used automotive internal combustion engine lubricating oil in grade SAE-30”.

After completion of investigation, challan was presented in the Court and the trial Court, as noticed hereinabove, charge sheeted the petitioner and Kapil Dev.

Learned counsel for the petitioner raised two -fold arguments. Firstly, he argued that the sample which was seized did not attract the provisions of the Act as it was used automotive oil and was not covered by the definition of 'petroleum and petroleum products' and consequently, no licence was required to deal in the same. He drew the attention of the Court to the Lubricating Oils and Greases (Processing, Supply and Distribution Regulation), Amendment Order, 1988 (hereinafter described as 'the '1988 Order') to support his contention. Secondly, he contended that the power to search was vested only with an officer not below the rank of an Inspector or equivalent rank or a higher rank so authorised by the Central Government.

The aforesaid contentions were sought to be refuted by the learned counsel for the State, who contended that the charge against the petitioner and Kapil Dev is under the Act and under Section 10-AA of the Act the S.H.O., who is Incharge of the Police Station, was authorised to arrest any person found violating the provisions of the Act.

I have heard the learned counsel for the parties and have perused the record.

Concededly, the petitioner and Kapil Dev were found in possession of what is being termed as 'black oil'. The trial Court has framed

a charge against the petitioner and Kapil Dev on the strength of the material before it.

As to whether the black oil is a lubricating oil or a petroleum product, would be a matter of evidence which is likely to come up on record during the course of trial. The evidence so adduced would also determine as to whether the petitioner was entitled to invoke the provisions of 1988 Order or whether the offence was covered under the provisions of the Act.

The contention of the learned counsel for the petitioner that since the Chemical Examiner's report has come, which has described the oil seized as “used automotive internal combustion engine lubricating oil in grade SAE-30”, the provisions of the Act are not attracted cannot be accepted at this stage because this would be a matter to be determined by the trial Court on the basis of the evidence which would establish as to whether it is a lubricant so as to attract the provisions of the 1988 Order or a petroleum product covered under the provisions of the Act.

At the time of framing of charge, the trial Court was only required to see the material before it to establish as to whether the offence is prima facie made out against the accused or not.

The argument that the entire proceedings are vitiated because the officer who had seized the oil was not competent to conduct the search and seizure under the Act does not have force because for the reasons aforesaid, it is yet to be determined as to whether the offence attributed to the petitioner is covered by the provisions of the Act or the Order of 1988.

On the basis of the above discussion, there is no merit in the present petition, which is hereby dismissed. Needless to say that the

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petitioner shall be at liberty to raise all the aforementioned pleas before the trial Court during the course of trial.

February 28,2007  
“SCM”

( Mahesh Grover )  
Judge