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Court : Allahabad

Decided On : Jan-12-1976

Reported in : 1976CriLJ1208

Judge : H.L. Capoor, J.

Appellant : K.C. Sachdeva

Respondent : State

Judgement :

ORDER

H.L. Capoor, J.

1. K.C. Sachdeva has preferred this application in revision against the order, dated 23rd November, 1971, of Sri P. N. Roy, Civil and Sessions Judge Allahabad, dismissing the revision and upholding the order of the learned Magistrate, dated 6th August, 1972, refusing the prayer of the applicant to dismiss the complaint and quash the proceedings.

2. It is not disputed that Criminal Case No. 63 of 1969 had started against the applicant at the instance of the State through the City Magistrate Allahabad, on the allegation that Ram Sajiwan, driver of truck No. UPC 8690 went to the District Magistrate, City Magistrate and other officers sitting in the District Election Office, Allahabad, at 10.30 P. M. on 3rd February, 1969, and reported that M/s. Modern

Service Station had supplied diesel oil mixed with kerosene oil to his truck and also to other vehicles meant for election duty. The learned Magistrate, however, after considering the evidence on record arrived at the findings that from the statements of the witnesses examined in the case it was proved that diesel was supplied to the pump of the applicant by Caltex Company who also drew supplies from IOC Depot, that the City Magistrate drew the samples of diesel oil from the pump of the applicant on 3rd February, 1969, and from the trucks of Ram Sajiwan and Mohd. Qasim, drivers, on 3rd February, 1969; that the City Magistrate drew samples of diesel from the IOC Depot that according to the report of the Chemical Examiner it was found that the diesel which was found in the truck of Ram Sajiwan was adulterated to the extent of 30%; that the diesel found in the truck of Mohd. Qasim was found adulterated to the extent of 40%. that the diesel found in the pump of the applicant was found adulterated to the extent of 35%; that it was also proved that the samples of diesel which were sent to the Chemical Examiner were found adulterated to the extent as mentioned above. that in the absence of Ram Narain. Peon and Moharrir, Malkhana, being produced it could not be proved that the same samples which were taken by the city Magistrate were sent to the Chemical Examiner and that in the absence of specific evidence to the same effect it could not be said with certainty that they were actually the samples which were examined by the Chemical Examiner. The applicant was, therefore, given the benefit of doubt by the learned Magistrate in that earlier case started against the applicant. It further appears that the then City Magistrate and others in connection with the said earlier case had raided the petrol pump of the applicant and had found 10 drums of yellow kerosene oil present in the premises of Modern Service Station whose proprietor is the applicant. On checking it was found that diesel oil was in excess by 2338.5 bulk litres. The prosecution case accordingly was that it was possible only when kerosene oil was mixed with it, but as indicated earlier that case against the applicant ended in an acquittal.

3. It further appears that another case out of which the present revision arises had started against the applicant by the police under the orders of the City Magistrate on the allegations that on 3rd February, 1969, during checking of the petrol pump of the applicant it was found that 10 drums of kerosene oil were lying there and that the applicant did not possess any licence for it. The learned Sessions Judge

being of the view that this second charge-sheet submitted against the applicant to the effect that ten drums of kerosene oil were lying in the premises of the applicant without possessing any licence could not be tried in view of Section 403, Criminal Procedure Code, dismissed the revision against the said order of the Magistrate.

4. Irrespective of the fact as to whether the provisions of Section 403, Criminal Procedure Code would apply to the facts of the present case, the main point urged by the learned Counsel for the applicant is that in view of the provisions of Section 7 of the Petroleum Act, 1934, it is obvious that 'a person need not obtain a licence for the transport or storage of non-dangerous petroleum if the total quantity in his possession at any one place does not exceed five hundred gallons and none of it is contained in a receptacle exceeding two hundred gallons in capacity.' Section 2(c) of the U. P. Kerosene Control Order, 1962, hereinafter called 'the Order', defines 'kerosene' to mean mineral oil prepared for illuminating purposes distilled from petroleum. Section 3 of the Order provides that 'no person shall sell, offer for sale or store* 'for sale, kerosene except under a licence granted by the Licensing Authority of the district in which he carries on business'. Section 2(a) of the Petroleum Act says that 'petroleum' means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon. Under the Liquid hydrocarbons or mixtures of hydrocarbons 'kerosene' is also included. In this view of the matter, the word 'petroleum' also includes 'kerosene' although it is not stated in so many words under the Petroleum Act as to whether kerosene could be said to be a dangerous petroleum. On the other hand common sense gives out that kerosene would be included only in non-dangerous petroleum. As indicated earlier, in view of Section 7 of the Petroleum Act no licence was needed if the quantity of kerosene oil did not exceed five hundred gallons at any one place. It is not disputed that ten drums of kerosene oil were found in the premises of the applicant. The capacity of one drum is equal to less than 50 gallons and hence the said ten drums could not have more than five hundred gallons. Thus, the applicant was not required to obtain a licence for the said quantity. Learned Counsel for the State could not show anything contrary to what has been stated above to prove that ten drums could have contained more than five hundred gallons. 'It is no doubt true that in the Order it is nowhere provided that the Petroleum Act would be applicable to it, but

learned Counsel for the State has conceded that the Petroleum Act being a Central Act would prevail over the Order which is only issued by the Governor of Uttar Pradesh.

5. Pursuant to what has been stated above and in view of the fact that the charge against the applicant is only that he possessed the said quantity of kerosene oil without having a licence, it fails, and if the case is allowed to proceed against the applicant it would, in my opinion, amount to unnecessary harassment to him particularly when a case against the applicant in respect of the said ten drums of kerosene oil being possessed by him for mixing it with diesel had proceeded and had ended in an acquittal.

6. Accordingly, the revision is allowed, the proceedings against the applicant are dropped and he is discharged.

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