

Amrit Singh Vs. the State

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Court : Delhi

Decided On : May-05-1995

Reported in : 1995CriLJ3771; 58(1995)DLT567

Judge : Mohd. Shamim, J.

Appeal No. : Crl. M. (M) No. 876 of 1995

Appellant : Amrit Singh

Respondent : The State

Advocate for Def. : Ms. Mukta Gupta, Adv.

Advocate for Pet/Ap. : K.G. Bhagat, Sr. Adv. and ; P.N. Bhan, Adv.

Judgement :

ORDER

1. This is an application by the petitioner for release on bail in anticipation of his arrest.

2. Learned counsel for the petitioner has vehemently contended that the petitioner is innocent. He has been falsely implicated in the present case on account of professional rivalry. The case against the petitioner was registered on July 3, 1994. Till then there was no expert report with regard to the factum of alleged adulteration of cement. Hence, no case could have been registered against the

petitioner. No commission of cognizable offence is made out from the F.I.R. registered against the petitioner. Thus the entire investigation is illegal and invalid. Mixing is no offence and as such no case under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act for the sake of convenience) is made out. Cement is not an essential commodity as defined under Section 2(a) of the Act. Hence no offence could have been committed by the petitioner. No notice as required under Section 6-B of the Act was issued. The co-accused persons Gulfam and Anurodh Singh have already been released on bail. The learned counsel thus contends that the petitioner be released on anticipatory bail.

3. Learned P.P., Ms. Mukta Gupta, on the other hand, has urged to the contrary.

4. I have heard the learned counsel for the parties at sufficient length and have very carefully examined the facts of the present case and have given my anxious thoughts thereto.

5. The contention of the learned counsel for the petitioner that there was no expert report with regard to the alleged adulteration of the cement was available in the instant case at the time of the alleged occurrence; hence no case under Section 7 of the Act could have been registered against the petitioner, is without any substance. Admittedly, a raid is laid against a party on the basis of a secret information. It would be thus premature to expect a report of the expert at that relevant time. The report can be secured only later on with regard to the alleged adulterated goods. Admittedly, in the instant case a copy of the report of the CFSL has been placed on record which shows that the samples are not of pure cement samples and are adulterated.

6. The next contention of the learned counsel for the petitioner is that the cement is not an essential commodity as defined under Section 2 of the Act, hence the case of the petitioner does not fall within the domain of Section 7 of the Act. Hence he cannot be prosecuted for the said offence. The contention of the learned counsel does not hold any water. Admittedly, the petitioner is being prosecuted for the violation of the provisions of the Cement (Quality Control) Order, 1962 as amended up to 1994. Section 3 of the said Order provides 'No person shall himself

or by any person on his behalf manufacture or store for sale, sell or distribute any cement which is not of the prescribed standard.'

7. Furthermore, the question as to whether a man can be prosecuted for violation of the provisions of the Cement (Quality Control) Order, 1962 came up for decision before a Division Bench of this Court as reported in *Trans Yamuna Cement Dealers Association v. Lt. Governor of Delhi*, : AIR1988 Delhi247 , wherein it was observed 'The Central Government has declared Cement to be essential commodity for the purpose of the Essential Commodity Act, 1995 by notified order No. SC 3594(ECA)/1/62 dated the 24th November, 1962.

Under Entry 33 in List III the Parliament has power to make laws relating to Trade and Commerce in, and the production, supply and distribution of Cement if its control by the Union has been declared by the Parliament by law to be expedient in the public interest. This has been done by the Parliament by enacting Industries Development and Regulation Act, 1951

Cement is specified in the First Schedule to the Act as required under S. 2. therefore, both the requirements of clause (xi) of S. 2(a) of the Essential Commodities Act have been fulfilled and the Cement is an essential commodity as defined under S. 2(a)(xi) of the Act'.

8. The next contention raised by the learned counsel for the petitioner that no notice under Section 6B of the Act was issued in the instant case, hence the entire investigation is an exercise in futility, is also devoid of any force. The learned PP has led me through the show cause notice dated April 17, 1995 issued by the Collector and the same has been served on the petitioner.

9. The next contention of the learned counsel that the FIR does not disclose a commission of a cognizable offence is devoid of any merit. A perusal of the FIR reveals that the employees of the petitioner Gulfam and Anurodh Singh were found manufacturing adulterated cement on March 3, 1995 at the premises belonging to the petitioner with the help of instruments i.e. iron hopper, iron sieve with wooden frame iron bucket. This manufacturing process was going on under the supervision of labour contractor Shri Gulfam. Empty cement bags were also

found at the spot. A search was made which resulted in the recovery of a large number of suspected adulterated bags, bags containing stone powder as shown in the seizure memo. Hence, prima facie, a case for commission of a cognizable offence is made out.

10. The learned PP has contended that the petitioner is involved in as 17 more cases. The petitioner is not joining the investigation. Thus, according to the learned P.P. the entire racket in cement is to be busted. Hence the presence of the petitioner is required. She further contends that the adulteration of the cement is more serious and heinous an offence even than a murder. In case adulterated cement is used in the construction of a building it may collapse, thereby causing loss of precious human lives and property.

11. I have carefully examined the authorities cited by the learned counsel for the petitioner i.e. H. N. Rishbud v. State of Delhi, : 1955 CriLJ526 , Gurbaksh Singh Sibbia v. State of Punjab, : 1980 CriLJ1125 and State of West Bengal v. Swapan Kumar Guha, : 1982 CriLJ819 . They are of no help to the petitioner.

12. In view of the above, I do not see any force in the present petition. Dismissed.

13. Petition dismissed.

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