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Court : Rajasthan

Decided On : Jul-15-1987

Reported in : 1988(1)WLN161

Judge : N.C. Sharma, J.

Appeal No. : S.B. Criminal Misc. Application No. 4 of 1981

Appellant : Raj Kumar

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

N.C. Sharma, J.

1. Rajkumar has invoked the inherent powers of this Court in order to quash the order of the Chief Judicial Magistrate, Pali dated August 19, 1980 whereby the Chief Judicial Magistrate upon consideration of the police report and the documents sent with it under Section 173 Cr. PC and after giving the prosecution and the petitioner an opportunity of being heard, formed an opinion that there was ground for presuming that the petitioner has committed offences punishable under clauses 5, 6(i) and (ii) of the Rajasthan (Display of Prices and Stocks of Essential Commodities) Order, 1977 read with Section 3/7 of the Essential Commodities

Act, 1955 and further contravened Rules 3, 32, 83 and 76 of the Petroleum Rules, 1976 punishable under Section 23 of the Petroleum Act, 1934.

2. Facts in brief are that on receiving information, Satyanarain Calla Enforcement Inspector, Jaitaran along with L.C. Samat Khan and Laxmi Narain reached village Balunda Tehsil Jaitaran at about 11 p m. He found that there were 44 barrels placed on plot of Chand Mohammed in front of the shop and Shamlal co-accused who deals in petroleum products. A truck lorry bearing registration No. RRQ 3655 was also standing there and it was filling HSD diesel in the empty barrels. When Satyanarain Calla reached at the spot, the pump attached to the tanker for filling diesel in the barrels was stopped. He found that diesel had been filled in about 41 barrels. On inquiry Hiralal driver of the truck informed him that that tanker lorry No. RRQ 3655 was that of M/s Jyoti Traders, Jodhpur and that he had brought 9000 ltrs. of diesel oil HSD from Jodhpur. This diesel has been sold to Shamlal of village Balunda. The driver did not have in his possession the bill of the diesel which was stated to be with Raj Kumar petitioner who is proprietor of M/s Jyoti Traders, Jodhpur. Satyanarain Calla required Shamlal to produce the licence for storing diesel but the latter told that he did not possess any licence and that he had brought 9000 ltrs. from Jodhpur after purchasing it at rate of Rs. 1.43 per ltr. Shamlal had also not made any entries of this purchase in his account books as he did not maintain any. He had brought the diesel for sale. Although Shamlal dealt with in petroleum products but he neither possessed licence nor had displayed list of price and stocks of articles at a place near to the entrance of his business premises. Satyanarain Calla seized 42 drums in which diesel had been pumped from that tanker, 14 tins containing lubricating oil*and also the tanker lorry and some other articles. It was mentioned that M/s Jyoti Traders Jodhpur was an authorised dealer in petroleum products in Jodhpur District and by selling the diesel to Shamlal, he contravened the direction issued by the Collector Jodhpur and Pali and also contravened Section 29 of the Petroleum Act, 1934. Upon this report being lodged by Satyanarain Calla Enforcement Inspector, the matter was investigated by the police and it submitted a report in the court of the Chief Judicial Magistrate Pali along with certain documents. The documents comprised of memo of checking, the report made by the Enforcement Inspector, the seizure memoes of barrels filled with diesel oil and other articles, the directions issued by the

Collector Jodhpur on November 27, 1978 and those issued by the Collector Pali on November 26, 1978 and a photo-stat copy of the cash memo issued by the Indian Oil Corporation Ltd. Jodhpur in the name of M/s Jyoti Traders with respect to 9000 ltrs. of HSD diesel. Police statements of Satyanarain Calla Enforcement Inspector, Suraj Karan, Bhanwarlal, P N. Malhotra, V.K. Chaudhary, Samdar Khan, Laxmi Narain, Asha Ram and Ramchandra were also produced.

3. It is clear from the police documents that Rajkumar had a diesel pump at Mathania in Jodhpur District and tanker having registration certificate No. RRQ 3655 belongs to him and Hiralal was the driver. V.K. Chaudhary is Sales Officer of the Indian Oil Corporation at Jodhpur. He has stated in his police statement that on January 16, 1979. 9000 ltrs. diesel had been supplied in the name of M/s Jyoti Traders to Hiralal driver in tanker No. RRQ 3655. The Depot Manager informed him that the tanker had not reached Mathania Diesel Pump and the driver Hira Lal took the tanker to Jaitaran. From the documents, prima facie it appears that the petitioner Rajkumar deals in petroleum products in the name of Jyoti Traders and hold tanker No. RRQ 3655. Nine thousand ltrs. diesel had been supplied by the Indian Oil Corporation in this tanker in the name of M/s Jyoti Traders. The tanker was not taken to the diesel or petrol pump of M/s Jyoti Traders at Mathania but was taken by the driver Hiralal to village Balunda in Pali District and the diesel was pumped out in the empty barrels of Shamlal at village Balunda and near the shop of Shamlal.

4. The Collector (Supply) Jodhpur had issued directions on November 27, 1978 in pursuance of clause (6) (i) and (ii) of the Rajasthan (Display of Prices and Stocks of Essential Commodities) Order, 1977 to the effect that the dealer in petrol and diesel in Jodhpur District would keep in reserve 1000 ltrs of diesel and will distribute it at the head quarters in accordance with the directions of the Collector or the District Supply Officer, Jodhpur and in relation to Phalodi Tehsil in accordance with the directions of the Sub-Divisional Officer and in other Tehsils in accordance with the directions of the respective Tehsildars. It was further directed that at a time diesel more than 100 ltrs. will not be given by the dealer The dealer will send weekly information to the District Supply Officer, Jodhpur regarding the stock-position of diesel and petrol and about its sale.

5. The State Government has issued the above Order of 1977 in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 with the prior concurrence of the Central Government. Clause 6 of this Order gives power to the State Government or the Collector or any competent officer, if so authorised in writing by the State Government, to issue directions in respect of any essential commodity to any dealer or class of dealer that such essential commodity shall be sold by him in such quantity or number subject to such condition after such intervals and in such manner as may be specified in such direction. On and from the receipt of such direction, the dealer shall be bound to comply with (he directions. There were, therefore, ground for presuming that the petitioner sold 9000 ltrs. diesel to Shamlal in contravention of the directions issued by the Collector Jodhpur under clause 6 of the Order. No cash memo or bill was issued with respect to the sale of this 9000 ltrs. diesel and thus there were grounds for presuming the contravention of clause 5 of the Order. Rule 3 of the Petroleum Rules, 1976 provides that no person shall deliver or despatch any petroleum to any one in India other than the holder of a storage licence issued under the Rules. Shamlal did not hold any licence for the purpose. Rule 76 provides that no person shall load or unload a tanker vehicle with any class of petroleum except at a place which is situated within the premises licenced under these Rules. Rule 83 provides that except where approved electric lights as specified in Chapter IV are exclusively used, the loading or unloading of tanker-vehicle carrying petroleum shall be performed between the hours of sun rise and sunset. Contravention of the provisions of any of the Rules contained in Petroleum Rules, 1976 is made punishable by Section 23(1)(b) of the Petroleum Act, 1934. In such circumstances, it cannot be said that the charges against the petitioner were groundless so as to warrant a discharge On the other hand, there were grounds for presuming that the petitioner had committed the offences for which he has been charged with.

6. One of the grounds taken by the petitioner in his petition is that 9900 ltrs. diesel was found in village Balunda in Tehsil Jaitaran in the possession of Shamlal. The matter was investigated by the Deputy Superintendent of Police Circle, Jaitaran. It has been alleged that there had been contravention of the directions of the Collector Pali and Collector Jodhpur which they had issued under clause 6 of (he Order of 1977. It was urged that from the facts stated in the charge-sheet, no case

triable by the Chief Judicial Magistrate Pali, his been made out because the allegations are that the petitioner had sold 9000 ltrs of diesel at Jodhpur to the co-accused Shamlal. According to the learned counsel, it was only at Jodhpur that a trial could be held and not at Pali because whatever acts have been alleged against the petitioner were acts committed at Jodhpur and not at Pali. It would be sufficient in this connection to refer to Section 184(b) of the Cr.PC which provides that where an offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of Section 223, the offence may be enquired into and tried by any Court competent to enquire into or try any of the offences. Section 223 of the Code provided about persons who may be tried jointly. Clause (d) of Section 223 provides that persons accused of different offences committed in the course of the same transaction can be charged and tried together. The various offences committed by Shamlal, petitioner and Hiralal were committed in the course of the same transaction and, therefore, they could be tried either at Jodhpur or at Pali. The Chief Judicial Magistrate, Pali, therefore, had jurisdiction to try the petitioner along with other co-accused persons. This petition has no merit in it and it is hereby dismissed.