

(1999) 09 AHC CK 0200

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3617 of 1999

Ajai Kumar Agarwal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1999) 3 ACR 2138

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Ashwini Kumar Awasthi and Manish Tiwari, for the Appellant; B.K. Tripathi, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—Heard Sri Manish Tiwary, learned Counsel for the Petitioner, Sri B.K. Tripathi, learned Counsel for the opposite party No. 2 and the A.G.A. for opposite party No. 1.

2. A request has been made in this petition u/s 482, Code of Criminal Procedure to set aside the order dated 7.8.99 passed by the special Judge, Azamgarh in Case Crime No. 12 of 1999 initiated on the application of opposite party No. 2.

3. The facts giving rise to this application are that opposite party No. 2 moved an application u/s 156(3), Code of Criminal Procedure: before the special Judge, Azamgarh, who directed the police to register the case u/s 3/7, E.C. Act against the Petitioner and to investigate. In brief, it was alleged by him that on the basis of transfer vouchers L.P.G. gas connections were demanded by the Petitioner, who is a dealer of the area, but he demanded illegal gratification of Rs. 3,000 and refused to give the supply of the cylinders without accepting the gratification. The learned special Judge, Azamgarh, called for a report from the police. In that connection, the police made an enquiry from the Petitioner and when he came to know regarding this matter, he filed objections. After hearing

the parties, the learned special Judge by an order dated 7.8.99 directed the police to register a case and to investigate. Aggrieved by it, the present petition has been preferred.

4. It is contended that no offence under E.C. Act is made out and complaint has been lodged with false allegations. That there was no demand of any illegal gratification. However, it is a question of fact to be decided after evidence. It is further contended that the application does not disclose the commission of any cognizable offence. It is further contended that the contravention of any Control Order has not been mentioned. The learned special Judge on 1.4.99 ordered that enquiry be made regarding the Control Order from District Supply Officer. However, no report was received, the learned special Judge has observed that the L.P.G. is an essential commodity and the price of the same has been fixed by the Government and over-charge of price amounts to the offence u/s 3/7, E.C. Act.

5. The other contention of the learned counsel for the Petitioner is that the order u/s 156(3), Code of Criminal Procedure can be passed only by the Magistrate and the special Judge has no jurisdiction to pass any order. It is contended that the Courts of special Judges have been constituted only for the trial of offences under E.C. Act. That the special Judge cannot exercise the powers of the Magistrate u/s 156(3), Code of Criminal Procedure and cannot pass any order to register the case. The learned Counsel for the Petitioner has also referred to the Circular Letter No. 5/Admn. A3 dated Allahabad 30.3.99 issued by the Registrar of this Court. In this letter, it has been mentioned that after consideration of the amendment in the Essential Commodities Act by Ordinance of 1998, according to the amendment made by the Ordinance, the new cases instituted after 8.7.98 under Essential Commodities Act shall be cognizable by the Magistrate having jurisdiction of the cases. Therefore, after 8.7.98 the special Judge cannot take cognizance of the case u/s 190, Code of Criminal Procedure. The order of this case has been passed on 7.8.99, i.e. after 8.7.98. Therefore, according to this Circular Letter, which has been issued on the basis of amendment by Ordinance 1998 in the E.C. Act, cognizance of offence u/s 190, Code of Criminal Procedure under E.C. Act can be taken by the Magistrate and not by the special Judge. The special Judge, therefore, had no jurisdiction to pass order u/s 156(3), Code of Criminal Procedure directing the police to register a case and to investigate. The order is, therefore, fit to be set aside.

6. It is also contended by the learned Counsel for the opposite party No. 2 that in pursuance of the order of the special Judge dated 7.8.99, an F.I.R. has already been recorded and the case has been registered. The photostat copy of the same has been filed. It is, therefore, contended that the order has exhausted and now it cannot be set aside. I am unable to accept this contention as well. The correction of a decree or order cannot be refused to be examined on the ground that it has already been executed. If the order or decree is set aside, the natural consequences will follow and the parties shall be put in a position as if the decree

or order was never passed. In the present case, if the case has been registered, it can be scraped after setting aside the order by which it was registered. The argument that the order has exhausted and, therefore, cannot be set aside, cannot be accepted and the court is not debarred from examining the correctness of the order. Therefore, the contention of the learned Counsel cannot be accepted.

7. The petition is, therefore, allowed and the impugned order of the special Judge, Azamgarh dated 7.6.99 passed u/s 156(3), Code of Criminal Procedure is set aside.