

(1995) 07 DEL CK 0012

In the Delhi High Court

Case No : Criminal Revision Appeal No. 4 of 1995

Hindustan Petroleum Corporation Ltd.

APPELLANT

Vs

Madan Mohan Arora and Others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452(1)

Citation : (1995) 60 DLT 549

Hon'ble Judges : A.K. Srivastava, J

Bench : Single Bench

Advocate : B.K. Mehta, Sanjay Kapoor, Rajiv Dutta and Vipin Nair, for the Appellant;

Judgement

A.K. Srivastava, J.

(1) This revision petition u/s 397 read with Section 482 of the Cr.P.C. is against orders dated 16.11.94 and 4.1.95 passed by the Additional Sessions Judge, Delhi in E.C.A. Case No. 21/94. The impugned order dated 16.11.94 says that 761 gas cylinders given on "Superdari" to Hindustan Petroleum Corpn. Ltd. may be returned to Manmohan Arora. Feeling aggrieved with that order the Hindustan Petroleum Corpn. Ltd. moved an application for review but the same was rejected by the impugned order dated 14.1.95. It was again ordered that 741 gas cylinders be returned to Manmohan Arora.

(2) The revisionist is Hindustan Petroleum Corpn. Ltd.

(3) In this revision petition, a legal plea has been raised that the aforesaid cylinders could not have been returned to Manmohan Arora because u/s 452 of the Cr.P.C., the Court had no jurisdiction to pass such an order. The grounds taken are two-fold, firstly, that the cylinders belong to the revisionist and secondly that when there was a special Act, namely, the Essential Commodities Act, to deal with the cylinders seized then the learned lower Court could not have passed an order u/s 452 of the Cr.P.C. which is a general law.

(4) The facts of the case are that Manmohan Arora was prosecuted under the provisions of the Essential Commodities Act on the grounds that he had spurious cylinders with him. Certain cylinders were taken in custody from him. It is an admitted fact that Manmohan Arora has been acquitted of all the charges and the order of acquittal has attained finality. It is also not disputed that the Collector under the provisions of the Essential Commodities Act, did not confiscate the seized cylinders. The orders of the Collector are at Annexure "0" to the petition wherein it was observed that actual ownership of Lpg cylinders is that of the Hindustan Petroleum Corpn. Ltd., but as there was dispute between the said Corporation and Shri Manmohan Arora in the matter of distributorship, the seized essential goods (namely, the cylinders, lying in the custody of Hindustan Petroleum Corporation Ltd. shall remain in the custody of Hindustan Petroleum Corpn. Ltd. as "AMANAT" till the Fir case is finally decided by the Court of Competent Jurisdiction. In Para 13 of the order the Collector further says that his orders were being passed without prejudice to any orders that may be passed by the Court of Competent Jurisdiction pending in the Fir No. 389/93 dated 10.6.93 u/s 7 of the Essential Commodities Act.

(5) On perusal of the aforesaid order of Collector, it would appear that the Collector had left everything to be decided by the Competent Criminal Court and had not confiscated the cylinders though he had such powers under the Essential Commodities Act. The result is that the articles seized were left to be dealt with by the Criminal Court. Learned Counsel for the petitioner in order to advance his argument that the learned lower Court had no jurisdiction to pass any orders in respect of the cylinders in question, relied on Remo Paul Altoe Vs. Union of India (UOI), .

(6) In that case, conviction was made, sentence was given and the goods involved in the case were confiscated by the Magistrate. The High Court confirmed conviction as well as confiscation. SLP was filed in Supreme Court. There the contention of the appellant was that special provisions of the Customs Act regarding the confiscation of goods seized under that Act make the general law as to disposal of property contained in Section 452(1) of the Cr.P.C. inapplicable in respect of such goods. The Hon"ble Judges of the Supreme Court did not find necessary to give their opinion on the aforesaid contention and decided the case on other grounds. Their Lordships observed that there was no necessity or occasion for the Court to make an order for disposal of property and that the order of the Magistrate that the goods involved in this case are confiscated, if not already confiscated, clearly showed that he was not aware what had happened to the goods which were in the control of the Customs Authorities. It was further observed that "it is true that the foreign currency seized from the appellant's possession was property in respect of which an offence was committed, but this fact alone did not call for an order u/s 452(1) in the circumstances of the case, and the order passed, besides being unwarranted, is likely to create complications if in respect of the foreign currency a proceeding under the Customs Act is pending or the Customs Authorities have made any

order with which the Magistrate's order is inconsistent.

(7) In my opinion, the aforesaid decision may not help the revisionist. In the present case, it is not disputed that the Collector did not prefer to confiscate the cylinders and only passed an interim order that the cylinders will remain in the "AMANAT" of Hindustan Petroleum P. Ltd. till the decision of the criminal case by the Criminal Court. The Collector further observed that his orders were without prejudice to any orders that may be passed by the Court of Competent Jurisdiction in respect of the aforesaid criminal case. This order of the Collector was passed on 17.12.93 and the impugned orders passed by the learned Additional Sessions Judge are dated 16.11.94 and 4.1.1995. It may be presumed that the learned Additional Sessions Judge was aware of the order of the Collector dated 17.12.93 when he passed the impugned orders.

(8) When no offence was found to have been committed by Manmohan Arora under the Essential Commodities Act, and the Collector had not confiscated the seized cylinders, I see no legal error on the part of the learned Additional Sessions Judge in passing the impugned orders.

(9) Section 452(1) of the Cr.P.C. provides as under :- "When an inquiry or trial in a Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence".

(10) Under the above provisions the Court may make such orders as it thinks fit for delivery to any person claiming to be entitled to possession thereof, of any property regarding which any offence appears to have been committed or which has been used for the commission of any offence. Therefore, when no offence at all had been committed then it was an incumbent duty on the part of the Magistrate to order for delivery of the seized cylinders.

(11) A plea was raised by the learned Counsel for the revisionist that as per agreement between the revisionist and Manmohan Arora the cylinders belonged to the revisionist after the dealership was cancelled and, Therefore, the cylinders should be delivered to the revisionist. This plea may not be acceptable.

(12) . Whatever be the agreement between Manmohan Arora and the revisionist, Hindustan Petroleum Corpn. Ltd., the disputes relating thereto are to be decided by a Civil Court and not by a Criminal Court. The learned Additional Sessions Judge by his two impugned orders rightly did not enter into the controversy of the Civil dispute between Manmohan Arora and Hindustan Petroleum Corpn. Ltd. in respect of the seized cylinders.

(13) In my opinion, there was no legal error in ordering that the seized cylinders be delivered to Manmohan Arora. The reason being that admittedly the cylinders were seized from Manmohan Arora and Therefore after the conclusion of the

criminal trial ending in acquittal, the cylinders should have been restored to the person from whose possession they were seized.

(14) It has also been brought to the notice of this Court that a civil matter regarding ownership/possession of the cylinders in question is pending in this view of this matter also, it would be appropriate not to enter into the merits of the dispute relating to possession/ownership of the cylinders or of the terms of the agreement between the revisionist and Manmohan Arora and not to prejudice the other pending civil proceedings in this Court.

(15) In view of what has been said above, I do not find any ground to interfere with the impugned orders passed by the learned lower Court and accordingly the revision is dismissed.