

(2000) 05 AHC CK 0149
In the Allahabad High Court
Case No : C.M.W.P. No. 183 of 1997

Shyam Chaddha alias Krishna Gopal Chaddha	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 40, 95

Citation : (2000) 3 AWC 2010 : (2000) AWC 2010

Hon'ble Judges : I.M. Quddusi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : P.C. Srivastava and Sunil Ambwani, for the Appellant; Mahendra Pratap, R.G. Gupta, S.N. Srivastava and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G. P. Mathur, J.—This writ petition under Article 226 of the Constitution of India has been filed for quashing the F.I.R. lodged on 8.1.1997 u/s 3/7. Essential Commodities Act [for short. E. C. Act), which has been registered as Case Crime No. 58 of 1997 at Police Station Civil Lines. Allahabad.

2. Ram Sharan Rai, Regional Food Officer along with three Supply Inspectors conducted an inspection of the shop of Krishna Sweets House, situate at 28/1, Mahatma Gandhi Marg, Civil Lines on 8.1,1997. They found that a domestic L.P.G. Indane gas cylinder having a capacity of 14.2. kg. was being used for preparation of sweets, samosas and namkeen. Bansh Raj, an employee of the shop gave a statement before the inspecting team that there was only one cylinder of 14.2 kg. capacity in the shop and the sweets and namkeen were being prepared from the same. No document regarding the gas cylinder was shown. The cylinder as well as the regulator were seized and a F.I.R. was lodged at Police Station Civil Lines alleging violation of the Liquefied Petroleum Gas [Regulation of the Supply and Distribution] Order. 1993 (for short the Control

Order). A case was thereafter registered as Case Crime No. 58 of 1997, u/s 3/7 of the E. C. Act against Shyam Chaddha who is the proprietor of the shop.

3. The case set up in the writ petition is that Krishna Sweet House has a commercial gas connection having consumer S.V. No. 780466 and on the date of incident i.e.. 8.1.1997, a commercial gas cylinder was received by it. The employees of the shop resided in the back portion thereof and they used to prepare their food by a domestic gas cylinder. The petitioner also owns a domestic gas connection in his own personal name and the said cylinder was being used by the employees of Krishna Sweet House for cooking their food. The petitioner claims that the provisions of the Control Order have not been violated and consequently, no offence u/s 3/7 of the E. C. Act has been committed by him.

4. A counter-affidavit on behalf of the State has been filed by Sri Ram Sharan Das. Area/Regional Food Officer. Allahabad, wherein it is stated that the petitioner has a commercial gas cylinder but at the time of the inspection of his business premises, it was found that a domestic gas cylinder was being used for preparation of sweets and namkeen. The Indian Oil Corporation (for short, the IOC) issues three different types of gas cylinders for different purposes, viz.. (1) domestic. (2) commercial and (3) industrial. The gas connection is given to a particular individual having a fixed address and a cylinder given to an individual at a particular address cannot be used for a different purpose or at a different place. The domestic gas cylinder given to the petitioner for domestic cooking at his residence could not be used by him at his business premises, namely, Krishna Sweet House for the purpose of preparation of sweets and namkeen which is a commercial purpose. A supplementary counter-affidavit (sworn on 24.10.1997) was filed by Ram Sharan Das wherein it is averred that liquefied petroleum gas (for short. L.P.G.) is supplied for domestic use at Government controlled price through a public distribution system approved by the Central or State Government. Such a gas cylinder is supplied to consumer whose name is registered with a distributor and it contains 14.2 kg. of L.P.G, The commercial gas cylinder has a colour band (blue), contains 19.5 kg. of L.P.G, and is different from a domestic gas cylinder. It is also averred that under the provisions of the Control Order, the L.P.G. can be used only for the purpose for which it has been issued. Another supplementary counter-affidavit (sworn on 5.2.1998) has been filed on behalf of the State and a manual of L.P.G. has been annexed therewith.

5. Counter-affidavit has also been filed by Sri D. Mitra. Area Manager, I.O.C., Allahabad (respondent No. 6) wherein it is stated that for the purpose of supply of L.P.G., the consumers are treated in two different categories, namely, domestic and commercial. The L.P.G. connection for domestic use is given under the Public Distribution System and gas is supplied at a highly subsidised rate. If a customer takes two L.P.G. connections, one for domestic use under the Public Distribution System and another for commercial use, then such a person is to be treated distinctly and differently qua the particular category for which the connection has been given. He has to fill up different kind of forms for getting

the connection and is subjected to different kind of conditions for the use of the gas supplied to him. One category of consumers cannot use the cylinder meant for another category of consumers. A domestic cylinder supplied under the public distribution system cannot be used for cooking of food items for sale which is a commercial purpose. A supplementary counter-affidavit has been filed wherein it is mentioned that the Ministry of Petroleum and Natural Gas, Government of India, had issued an order on 17.5.1995 fixing the ex-storage price of different categories of L.P.G. which is as under:

Rs./Mt.

(1)

L.P.G. packed (domestic)

Rs. 5309.19

(2)

L.P.G. packed (non-domestic)

Rs. 12881.28

(3)

L.P.G. bulk

Rs. 11601.78

It is further averred that as on 1.1.1998. the retail price of 14.2 kg. domestic gas cylinder was Rs. 145.97 and the retail price of 19 kg. non-domestic gas cylinder was Rs. 392.42. The security amount is Rs. 900 for a domestic gas cylinder and Rs. 1500.00 for a commercial gas cylinder. It is stated in paragraph 7 of this affidavit that there is a relatively free availability of commercial gas cylinder and on a written application by the person concerned a commercial connection is released, but the procedure for release of a domestic connection is different. A copy of the conditions which are printed on the document relating to release of connections of different types has also been annexed.

6. The petitioner has set up a case that at the time of inspection of his shop. Krishna Sweet House, his employees were preparing their own food by the domestic gas cylinder which had been issued to him showing his residential address. The principles on which the High Court may exercise its powers under Article 226 of the Constitution to quash the F.I.R. and further proceedings in pursuance thereof, have been settled by the Apex Court in a catena of decisions, and they have been succinctly stated in State of Haryana and others Vs. Ch. Bhajan Lal and others, The power can be exercised where the allegation made in the F.I.R. or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. Where the uncontroverted allegations made in the F.I.R. or the complaint and the evidence collected in support of the same do not

disclose the commission of any offence or make out a case against the accused, the High Court may interfere under Article 226 of the Constitution to prevent abuse of process of Court or otherwise to secure the ends of Justice. In such a petition the High Court is concerned only with the allegations in the F.I.R. or the complaint and the defence of the accused cannot at all be looked into. Therefore, the present petition has to be decided only on the basis of the allegation made in the F.I.R. and the, case set up by the petitioner in his defence can only be considered in the trial and not at this stage.

7. Sri Sunil Ambwani has submitted that the F.I.R. shows that the gas cylinder was being used for the purpose of preparing sweets and namkeen, which means for the purpose of cooking which is not prohibited under clause 3 (1) (c) and, consequently, there has been no violation of the Control Order and the F.I.R. had been wrongly lodged against the petitioner which is liable to be quashed. Sri Mahendra Pratap, learned A.G.A., has, on the other hand, submitted that an L.P.G. cylinder supplied for domestic use to a person having a different address was being used in a shop for preparation of sweets and namkeen for sale and this clearly amounted to breach of the Control Order. Dr. R. G. Padia, learned counsel for the I.O.C., has submitted that a domestic gas cylinder supplied under the Public Distribution System on a subsidised rate cannot be used for a commercial purpose, the idea wherein is to make profit and such a use is clearly prohibited under the Control Order and, consequently, the petitioner has committed an offence u/s 7 of the E.C. Act.

8. In order to appreciate the contention raised, it will be convenient to refer to clauses 2 (b), 2 (e), 2 (1), 3 and 6 of the Control Order (after its amendment by the Liquefied Petroleum Gas (Regulation of Supply and Distribution) (Amendment) Order. 1996) which reads as under :

"2. Definitions.-- In this Order, unless the context otherwise requires.

(a)

(b) "Consumer" means a person, firm, company. Institution, association of persons, co-operative society or Organisation, who has been granted liquefied petroleum gas connection or supply, either in bulk or in cylinder, by a distributor or a Government Oil Company or a parallel marketeer ;

(c)

(d)

(e) "distributor" means a person, firm, association or persons , company. institution, Organisation or a co-operative society approved by Government Oil Company or parallel marketeer and engaged in the business of purchase, sale, or storage for sale of liquefied petroleum gas in cylinders to consumers on the basis of an agreement or otherwise with a Government Oil Company or a parallel marketeer, as the case may be ;

(f)

(g)

(h)

(i)

(j)

(k)

(l) "public distribution system" means the system of distribution, marketing or selling of liquefied petroleum gas at Government controlled or declared price through a distribution system approved by the Central or a State Government:

3. Restriction on possession, supply and consumption of liquefied petroleum gas.--(1) Where a person has been granted a connection for liquefied petroleum gas under the public distribution system, then he shall not :

(a) possess more than one connection of liquefied petroleum gas granted under the public distribution system.

Provided that the Central Government or the Chief Executive Officer of a Government Oil Company, namely, Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited may, sanction more than one connection of liquefied petroleum gas under public distribution system in favour of any person, keeping in view the circumstances and the requirement of that person.

(b) possess or use liquefied petroleum gas filled in cylinders or in bulk, unless he has received that supply from a Government Oil Company or a distributor authorised by a Government Oil Company.

(c) Use liquefied petroleum gas for any purpose other than for cooking :

Provided that the Central Government may by a general or special order permit the use of liquefied petroleum gas for such other purposes it may specify in that Order.

(2) No distributor of a Government Oil Company shall supply liquefied petroleum gas filled in cylinders to any person unless he holds a valid authorisation from the Government Oil Company.

(3) No person shall fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorised by the Chief Controller of Explosives.

(4) No transporter or delivery person shall deliver or cause to be delivered liquefied petroleum gas either in cylinders or in bulk to any person other than the

consumer for whom the liquefied petroleum gas is meant for.

.....

.....

6. Possession, supply or sale of liquefied petroleum gas equipments. --(1) No person shall-

(a) unless authorised by a Government Oil Company or parallel marketeer supply or sell filled or empty cylinders, gas cylinder valves and pressure regulators to any person other than a Government Oil Company or a parallel marketeer,

(b) unless authorised by a Government Oil Company or a parallel marketeer, supply or sell empty cylinder, gas cylinder valve and pressure regulator to any person other than a consumer,

(c) possess filled or empty cylinder, gas cylinder valve or pressure regulator, unless he is a distributor or consumer and the same has been supplied by a distributor, a Government Oil Company or a parallel marketeer.

(2) Every manufacturer or cylinder, gas cylinder valve and pressure regulator shall destroy by crushing those cylinders, cylinder valves and pressure regulators which do not conform to the prescribed Indian Standards."

9. Sub-clause (c) of clause 3 (1) provides that where a person has been granted a connection for L.P.G. under the public distribution system, then he shall not use the same for any purpose other than cooking. The contention of Sri Sunil Ambwani is that the preparation of sweets and namkeen for sale in a shop may no doubt amount to a commercial activity but as the gas is used only for the purpose of cooking, there is no violation of the Control Order. The argument at its first blush appears to be attractive, but an analysis of the provisions of the Control Order would reveal that the allegations made in the F.I.R. clearly show a violation of its provisions, which amounts to an offence. The counter-affidavits filed on behalf of the State and the I.O.C. disclose that a domestic gas connection is issued under a public distribution system wherein L.P.G. is supplied at a highly subsidised rate. The gas connection given to a person mentions his name and address and he is allotted a consumer number. The security amount for a domestic connection is Rs. 900 while that for a commercial connection it is Rs. 1,500. The cylinders supplied for domestic use contain 14.2 kg. L.P.G. while that for commercial use contains 19 kg. Not only the sizes of the cylinders supplied under two types of connections are different, but their colours are also different. Under the system, a clear distinction is made between a domestic connection and a commercial connection, and one cannot be substituted for another. A specimen of the subscription vouchers of domestic and commercial connection have been filed along with the counter-affidavit of Sri D. Mitra and they clearly demonstrate the difference between the two types of connections. The address of the consumer, apart from his name, is an integral part of the connection given to a person. The second page of subscription voucher contains

"Terms and conditions governing the loan of Indane Cylinder(s) and Regulator(s) to customer", and condition No. 4 reads as follows :

"If the consumer removes the equipment to any address other than shown on the front hereof, he should immediately inform the Corporation/Distributor from whom the equipment was supplied." In fact, the petitioner has himself stated in paragraphs 3 and 7 of the writ petition that he has a commercial gas connection bearing Consumer SV No. 780466 and Card Sl. No. 1384542 in the name of Krishna Sweet House and another connection bearing Consumer No. 1761. Card Sl. No. 2718012 in his own name showing his address as Luxmi Guest House. Copies of these subscription vouchers have been filed as Annexures-1 and 2 to the writ petition. In Annexure-1, the customer name is mentioned as Krishna Sweet House and the address is mentioned as 28/1, Civil Lines. There is a further endorsement of five cylinders in a month on the voucher. In Annexure-2, the name of the customer is shown as Sri Shyam Lal and the address is shown as Luxmi Guest House. Thus, it is clear that under the prevailing system a gas connection is given to a person, having a fixed address and for a particular purpose.

10. Clause 6 (1) (c) of the Control Order lays down that no person shall possess filled or empty cylinder, gas cylinder valve or pressure regulator, unless he is a distributor or consumer and the same has been supplied by a distributor, Government Oil Company or parallel marketeer. In the context of the present case, the words, no person shall possess a cylinder unless he is a consumer and the same has been supplied by a distributor are important and have to be given full meaning. The import of this clause is absolutely clear and it imposes a bar upon a person to possess a cylinder which has not been supplied by a distributor and, therefore, it obviously means that a person cannot keep in his possession a cylinder which has not been supplied to him by a distributor. The result, therefore, is that if a person has been granted a commercial connection, he can only keep in his possession a cylinder supplied to him in such a capacity, namely, a commercial cylinder and he is not entitled to keep a domestic gas cylinder in his possession. The possession of a domestic L.P.G. cylinder by a person who has not been granted such a connection would be a violation of clause 6 (1) (c) of the Control Order. It is the own case of the petitioner that Krishna Sweet House has been granted a commercial gas cylinder and not a domestic gas cylinder. The petitioner as a proprietor of Krishna Sweet House was found in possession of a domestic gas cylinder and, therefore, he has violated the provisions of clause 6 (1) (c) of the Control Order. On the allegations made in the writ petition, he has a dual capacity, one, in relation to the business premises, namely, Krishna Sweet House, where he has been granted a commercial gas connection, and, the other, in his own private capacity, namely, at his residence at Luxmi Guest House where he has been granted a domestic gas connection. In terms of the provisions of clause 6(1) (c), the possession of domestic gas cylinder in Krishna Sweet House would amount to violation of the provisions of the Control Order as the said cylinder has not been supplied to it. Therefore, there is no escape from the

conclusion that on the facts alleged in the F.I.R. namely, that a domestic gas cylinder of 14.2 kg, capacity was being used for preparation of sweets and namkeen, a commercial activity in Krishna Sweet House, the provisions of the Control Order have been violated and it amounts to an offence u/s 7 of the E. C. Act.

11. Sri Sunil Ambwani and Sri P. C. Srivastava have urged that a statute enacting an offence or imposing a penalty should be construed strictly and a clear language is needed to create a crime. They have further urged that it is a settled principle of law that in a criminal statute, one must be quite sure that the offence charged is within the letter of the law, and if there are two reasonable constructions, then the Court must lean towards that construction which exempts the subject from penalty, rather than the one which imposes a penalty. In support of their submission, they have placed reliance on State of Bihar Vs. Bhagirath Sharma and Another, , where "tyres and tubes of motor cars and motorcycles" were held to be not comprehended in the expression "component parts and accessories of automobiles" for the purpose of Bihar Essential Commodities Act other than the Food grains--Price and Stocks (Display and Control) Order, 1967, on the ground that the dealer was not in a position to know with certainty that the items of tyres and tubes of motor cars are included in the scheduled items of which the price list and stock position are to be displayed in conspicuous part of their business premises and, therefore, they could not be held guilty in criminal court of an offence under the E. C. Act. In our opinion, the contention raised and the authority cited by the learned counsel for the petitioner can have no application in the present case. On a plain reading of clause 6 (1) (c), the only interpretation possible is that it creates a bar against a person possessing a cylinder unless the same has been supplied by a distributor. The emphasis is on the words unless the same has been supplied by a distributor. In terms of the Control Order, no person can keep in possession a cylinder which has not been supplied to him by a distributor. This will clearly imply that if a person has been supplied a commercial gas cylinder by the distributor, he can only keep such a cylinder in his possession but cannot keep a domestic gas cylinder. If we look to the entire scheme of the Control Order, it will show that the type of cylinders supplied by a distributor has a special significance, Clause 2 (b) defines a consumer and it lays emphasis on the words who has been granted liquefied petroleum gas connection by a distributor. As mentioned earlier, the domestic and commercial connections are entirely distinct and separate type of connections and the procedure for granting the connection are also different. The domestic gas is supplied under the public distribution system at a highly subsidised rate and in a different type of cylinder having a capacity of 14.2 kg. in contradistinction to commercial connection where the gas is supplied at normal market rate in cylinders of 19 kg. or upwards having a different colour. Therefore, a consumer is identified by the type of gas connection he has been granted. An individual carrying on some commercial activity requiring use of L.P.G. can have a dual capacity as a consumer, one, as a consumer of

commercial gas in his business premises and the other as a consumer of domestic gas at his residence for the purpose of domestic cooking. Normally, a consumer whose name is recorded under the public distribution system for getting supply of an essential commodity cannot divert the commodity to another person or put it to a different use. It is well-settled principle of interpretation that a purposive construction should be given to a statute and the Court must adopt the construction which shall suppress the mischief and advance the remedy, it is the duty of the Court to identify the mischief which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified (see *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, L.P.G. is a petroleum product. The production of petroleum and gas in the country is not sufficient to meet the requirement and a substantial quantity is imported by the Government which involves expenditure of a huge amount of scarce foreign exchange. On account of shortage of L.P.G.. there is a long waiting list of several years of persons desirous of getting a connection. The L.P.G. is supplied to a domestic gas consumer under a public distribution system at a highly subsidised rate. The Government spends huge amount of money in meeting the cost of L.P.G. supplied to domestic gas consumers. Use of this kind of gas for purposes other than domestic is detrimental to public interest. One of the objects of the Control Order is to check the said mischief and to regulate its supply and distribution to domestic gas consumer at Government controlled price. Learned counsel for the petitioner have contended that the only requirement of clause 6 (1) (c) is that if a person is registered as a consumer, his possession of any type of cylinder without regard being had to the type of the connection he has been sanctioned would not amount to violation of Control Order. In our opinion, such an interpretation will defeat the very purpose of making the Control Order and make it otiose. Therefore, the constructions suggested by the learned counsel cannot be accepted.

12. We would, however, like to add that the word "possess" in clause 6 (1) (c) should be understood in the sense "possess for use" and not possess "simpliciter" otherwise a wholly innocuous act may amount to a criminal offence. As a general rule, every crime requires a mental element, the nature of which will depend upon the definition of particular crime in question. It is difficult to ascribe any particular meaning to the term *mens rea*, but concepts such as those of intention, recklessness and knowledge are commonly used as the basis for criminal liability and in some respects may be said to be fundamental to it. Generally, subject to both qualification and exception, a person is not to be made criminally liable for serious crime unless he intends to cause or foresees that he will probably cause, or at the lowest, that he may cause, the elements which constitute the crime in question. Although *prima facie*, and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule and a statute may relate to such a subject-matter and may be so framed so

as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not. Whether any enactment is to be construed in this sense or with the qualification ordinarily imported into the construction of criminal statutes, that there must be a guilty mind, depends upon the subject-matter of the enactment and the various circumstances that may make the one construction or the other reasonable or unreasonable. Looking to the object of the Control Order and the mischief which it sought to prevent, it will be reasonable to hold that the word "possess" in clause 6 (1) (c) should be understood in the sense "possession for use", A person having possession, temporary or otherwise, of a domestic gas cylinder but without any intention of using it, does no injury or harm. Unless the meaning of the word "possession" is restricted, it may amount to breach of the Control Order which may make him liable for prosecution under the E.C. Act. Therefore, in order to make the Control Order meaningful and to avoid the possibility of innocent people getting into its net on account of a wholly innocuous act, it is necessary to interpret in the manner suggested above.

13. Dr. R. G. Padia, learned counsel for IOC, has submitted that the word "cooking" in clause 3 (1) (c) should be read as "domestic cooking" in order to give full effect to the object of the Control Order. In this connection, he laid emphasis on various provisions of the Control Order and specifically to clause 2 (1) which provides that public distribution system means a System of distribution or selling of LPG at Government controlled or declared price through a distribution system approved by the Central or the State Government. He also referred to sub-clause (1) of clause 3 which casts some obligations on a person who has been granted an LPG connection under a public distribution system and to sub-clauses (2) and (4) of the same clause which prohibits the distributor from supplying gas to a person other than consumer for whom it is meant for. Reference has also been made to clauses 7, 8 and 9 which cast a duty upon a distributor appointed under a public distribution system to display the stock and price of the gas, and not to refuse to sell the gas on any working day during working hours to a consumer whose name is registered with the distributor and also to maintain proper accounts of daily purchase, sale and storage of gas. According to Dr. Padia, the object of the Control Order can be achieved only if the word "cooking" in clause 3 (1) (c) is read as "domestic cooking". We are afraid that the interpretation suggested by the learned counsel cannot be accepted. It is well-settled that as far as possible, meaning should be given to the plain language of the statute and neither anything should be added nor subtracted. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See. *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad*, and *Director-general, Telecommunication and Another Vs. T.N. Peethambaram*, When we have held that the word "possess" in clause 6 (1) (c) should be read as "possess for use", the idea is to restrict the area of operation of the Control Order and exclude from its purview wholly innocent act of

possession which causes no injury lest such possession simpliciter may become an offence. The clause 3 (1) (c) is couched in negative form and reading the words "cooking" as "domestic cooking" would further limit the exception to this clause and consequently expand or enlarge the prohibition contained therein. The result thereof would be that what according to the language used was not prohibited will become prohibited. It will be highly improper to interpret a penal statute in a manner which expands its area of operation and brings within its fold those acts which are otherwise outside on its plain language. Therefore the contention raised by Dr. Padia cannot be accepted.

14. During the course of argument, some examples were suggested like boiling a small quantity of water for shaving or for medicinal purpose and it was urged that clause 3 (1) (c) should be so interpreted so as to include this kind of use within the exception. We are afraid that without doing violence to the language used, it may not be possible to do so. However, the problem posed is not insurmountable as the maxim "de minimis non curat lex" which means the law does not take account of trifles will come to the aid of the person concerned. In view of clause (2) of Section 40, I.P.C.. the provisions of Section 95. I.P.C. will also become applicable to E.C. Act as it is a special law and consequently the harm being so slight that no person of ordinary sense and temper would complain of it, it will not be an offence.

15. In view of the discussion made above, there is no merit in this petition which is hereby dismissed. The stay order is vacated.