

(2014) 09 JH CK 0086
In the Jharkhand High Court
Case No : Cr. M.P. No. 46 of 2002

S.M. Bhasin and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

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

Citation : (2015) 1 Crimes 198

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Rajesh Kumar, Advocates for the Appellant

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and the learned counsel for the State, who represents all the opposite parties, being the Government Officials. The petitioners have filed this application for quashing the F.I.R., being Bokaro Steel City P.S. Case No. 309 of 2001 for the offence under Section 7 of the Essential Commodities Act, as also for quashing the entire criminal proceeding against them on the basis of the said F.I.R.

2. The petitioners have been made accused in Bokaro Steel City P.S. Case No. 309 of 2001 corresponding to G.R. No. 1180 of 2001, describing the petitioners, to be the owners of M/s. K.L. Bhasin Petrol Pump; Naya More, Bokaro, The said petrol pump was inspected in the presence of the S.D.O., Chas, on 11.12.2001 and in the outfits at the petrol pump, short supply of petrol and diesel were found as detailed in the F.I.R. and accordingly, the F.I.R. was lodged.

3. Admittedly, the petitioners are the owners of the petrol pump and they are the dealers of the petroleum products under an agreement with the Indian Oil Corporation Limited. The agreement between the petitioners and the Indian Oil Corporation has been brought on record as Annexure-2. Clause-14 whereof reads as follows:

"14. Corporation shall maintain the outfit in proper working condition at its own expense."

Clause-16 of the said agreement reads as follows:

"16. No repairs to the outfit shall be done by the Dealer unless previously authorised by the Corporation in writing. The dealer shall not interfere with or attempt to adjust the outfit or any part thereof but shall notify the Corporation immediately of the necessity of any repair or adjustment and thereby ensure that the outfit is in proper working order and delivering full and proper measure at all times. The dealer shall not operate the outfit while it is out of order."

4. The inspection reports of the competent authority which are dated 11.12.2011 are also part of the F.I.R. which though show that there were short delivery in the outfits, but the inspection report shows that the dealer was instructed to get the outfits repaired and only thereafter to operate the same after getting the same verified after depositing the prescribed fee. It appear; that on the very next day the F.I.R. has been lodged against the petitioners on 12.12.2001, for the; alleged offence under Section 7 of the Essential Commodities Act. It is the case of the petitioners that pursuant to the said direction in the inspection reports, the petitioners got the outfits repaired through the Corporation and they are operating the outfits after getting them verified after depositing the prescribed fee.

5. Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in this case and no case is made out against the petitioners, as it was the responsibility of the Corporation to main the outfits and even from the inspection reports it would appear that the petitioners were directed to get the outfits repaired which the petitioners did. It is submitted that there was no occasion for lodging the FIR, on the very next day after Inspection, particularly when the direction given to them in the inspection reports was followed. Learned counsel has also submitted that though in the F.I.R. it is stated that the petitioners had committed the offence due to violation of Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order. 1990, but short delivery was not a malpractice under the said order of 1990. Learned counsel has submitted that short delivery has been made malpractice only in Motor Spirit and High Speed Diesel (Regulation or Supply and Distribution and Prevention of Mai-Practices) Order, 2005 and prior to that "short delivery" was not the "malpractice", and on this score also, no offence can be said to be made out against the petitioners, Learned counsel accordingly, prayed for quashing the F.I.R. and the criminal proceeding against the petitioners.

6. Learned counsel for the State on the other hand has opposed the prayer and has submitted that on the basis of the allegations made against the petitioners, the offence is clearly made out under Section 7 of the Essential Commodities Act. It is submitted by learned counsel that the date of occurrence being 11.12.2001, Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and

Distribution) Order, 1998 was actually in force, but in FIR, it has been mentioned that there was violation of the said order of 1990. However, learned counsel upon going through the Motor Spirit and High Speed Diesel (Regulation of Supply And Distribution and Prevention of Mal-Practices) Order, 2005, accepts the position that short delivery has been made malpractice only in the year 2005 and not prior to that.

7. Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, defines malpractice in Clause 2(f) as follows:

"2(e) "malpractices" shall include the following acts of omission and commission in respect of motor spirit and high speed diesel;

- (i) adulteration,
- (ii) pilferage,
- (iii) stock variation,
- (iv) unauthorised exchange,
- (v) unauthorised purchase,
- (vi) unauthorised sale

"Short delivery" does not come within the definition of any of the above expressions, as defined in that order itself.

Clause-5 of the said order states that "The dealer, transporter, consumer or any other person shall not in any manner indulge in any of the malpractices listed in Clause 2(e) above."

Motor Spirit and High Speed Diesel (Regulation of Supply And Distribution and Prevention of Mai-Practices) Order, 2005 defines malpractice in Clause 2(f) as follows:

"2(f) "Malpractices" shall include the following acts of omission and commission in respect of motor spirit and high speed diesel: (i) adulteration,

- (ii) pilferage,
- (iii) stock variation,
- (iv) unauthorised exchange.
- (v) unauthorised purchase,
- (vi) unauthorised sale,
- (vii) unauthorised possession, (viii) overcharging,
- (ix) sale of off-specification product, and
- (x) short delivery."

8. Thus, from a bare perusal of these two orders it is apparent that in Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, violation whereof is alleged against the petitioners, short delivery was not a malpractice and in that view of the matter, I am of the considered view that no offence can be said to be made out against the petitioners under Section 7 of the Essential Commodities Act.

9. This apart, even the inspection reports in the F.I.R., clearly show that the petitioners were directed to get the outfits repaired and to use the same only after verification of the same, which the petitioners complied. In that view of the matter when that the petitioners were asked to get the outfits repaired, there was no occasion for lodging the F.I.R. on the very next day, particularly when according to the agreement between the petitioners and the Corporation, it was the prime responsibility of the Corporation to main outfits in proper working condition at their own expense. For the foregoing reasons, I am of the considered view that, this is a fit case for exercise of the inherent powers under Section 482 of the Cr.P.C., for quashing the FIR, as also the criminal proceeding against the petitioners. Accordingly, the entire criminal proceeding against the petitioners as also the F.I.R. in Bokaro Steel City P.S. Case No. 309 of 2001, corresponding to GR No. 1180 of 2001, are hereby quashed. This application is accordingly, allowed. Petition allowed.