

IN THE COURT OF SHIVANK SINGH
SPECIAL JUDICIAL MAGISTRATE (C.B.I.), C.B.I. COURTS COMPLEX
AT GHAZIABAD

CBI
VERSUS
MANOJ GOYAL & ANOTHER.

RC No: 0072007 A 0016

Branch: CBI, SPE, Dehradun

Originally Under Sections: 120-B, 420 of Indian Penal Code, 1860 and Sections 3/7 of Essential Commodities Act, 1955 and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

JUDGMENT

- a) *Serial No. of the case* : 1487/09
- b) *Date of commission of offence* : 31/07/2007
- c) *Name of the complainant* : Sh. Ashok Babu, the then DSP, CBI, ACB, Ghaziabad.
- d) *Name of the accused* :
 1. **Manoj Goyal** s/o Shri G.L. Goyal
R/o H. No. 16/108, Ladli Katra, PS Shahganj, District Agra
 2. **Karan Veer Singh** s/o Shri Dharam Pal Singh
R/o H. No. 23/297, Choti Haveli, Wazirpura, District Agra.
- e) *Plea of the accused persons* : Pleaded not guilty.
- f) *Final order* : Convicted
- g) *Date of such order* : 05.01.2021

Date of Institution of case : 01.06.2009

Date of pronouncing the judgment : 05.01.2021

BRIEF STATEMENT AND THE REASON FOR DECISION:

The Facts:

The case of the prosecution/ CBI in brief is that this case was registered on 31/10/2007 for offence of 120-B, 420 of Indian Penal Code, 1860, Sections 3/7 of Essential Commodities Act, 1955 and Section 13(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 against Karan Veer Singh, Prop of M/s Amit Filling Station, Agra, Shri Manoj Goyal and unknown officials of IOCL, Agra on basis of a written complaint dated 31/07/2007 of Shri Ashok Babu, the then Deputy Superintendent of Police, Central Bureau of Investigation, Anti-Corruption Branch, Ghaziabad. On 31/07/2007 a joint surprise check was conducted by the officials of CBI & IOCL at M/s Amit Filling Station, a terminated retail outlet (Petrol Pump) of Indian Oil Corporation Ltd. (hereinafter referred as IOCL) located at Gandhi Nagar, Bye Pass Road,

Agra owned by Karan Veer Singh. During the surprise check unauthorised sale of petrol was found as the said retail outlet had been terminated by IOCL on 29/09/2006. The sample of petrol being sold there was also found to be adulterated. As such it is stated by CBI that investigation disclosed that a retail outlet was allotted to Karan Veer Singh by IOCL. Subsequently the petrol part of retail outlet was shifted to Gandhi Nagar, Bye Pass Road, Gandhi Nagar, Agra in the land belonging to Manoj Goyal and his family members.

Investigation disclosed that on 01/04/2006, a check was conducted at the said petrol pump and certain irregularities were found and the said petrol pump by the officials of IOCL and on the basis of the same the sale and supply of petrol & other products in respect of the said petrol pump was suspended by the IOCL w.e.f. 03.04.2006 and subsequently the said dealership of M/s Amit Filling Station was terminated by IOCL vide letter dated 29/09/2006.

It is further stated that on 31/07/2007 a joint surprise check was conducted by CBI and IOCL at M/s Amit Filling Station, Agra and it was found that despite the termination of the petrol pump the petrol was unauthorisedly sold by M/s Amit Filling Station. It was found that Amit Filling Station was having around 3000 Lts. of petrol in stock . Sample of the petrol was collected by the joint surprise check team and was sent to IOCL Lab for testing. The samples so collected were found to be adulterated as the same did not meet Research Octane Number (RON) test, as specified.

As per Income-Tax return for 2006-07 filed by Karan Veer Singh with Income Tax authorities, the total quantity of petrol available as on 31/03/2006 was shown as 39394 L whereas actual quantity was found about 3000L. A quantity of 36000L of adulterated petrol was unauthorisedly sold by Amit Filling Station during the period 03/04/2006 to 31/07/2007.

As such it is stated by the CBI that accused Karan Veer Singh in criminal conspiracy with accused Manoj Goyal during the period of suspension and even after termination of M/s Amit Filling Station had cheated the public by displaying the insignia of IOCL on the retail outlet and also by the dispensing units of IOCL. And in the said manner M/s Amit Filling station had also unauthorisedly sold 3133 Lts & 4950 Lts of Petrol to 02 state government departments namely O/o Executive Engineer, Maintenance Division, UP Jal Nigam and O/o Executive Engineer, Construction Division, UP Jal Nigam respectively during the period from 03/04/2006 to 30/07/2007.

It is further stated that Karan Veer Singh in criminal Conspiracy with Manoj Goyal was unauthorisedly selling adulterated petrol to public and government departments. The adulteration and unauthorised sale of petrol is a violation of the "Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005" issued by the Central Government in exercise of the powers conferred by Section 3 of EC Act, 1955.

As such it is concluded in the chargesheet that the facts disclose commission of offences u/s 120B r/w 420, 420 of IPC, 1860 and u/s 3/7 of EC Act, 1955. Accordingly, the chargesheet was filed against the accused persons and they were sent up to face the trial.

Complete set of copies were supplied to both the accused persons. On 15-06-2011 formal charge was framed by my Ld. Predecessor to which they pleaded not guilty and claimed trial.

Material Evidence in Brief :

Prosecution in support of present case examined 22 witnesses:

PW1 Rajesh Saran deposed that the Joint Inspection committee prepared a report Ex. PW1/1 and such report is signed by Shri K.S. Mishra and he is well known with his signatures. His signatures are marked with mark A. He further deposed that the sale and supplies of Amit Filling station were suspended by letter dated 03.04.2006 and the said letter was signed by Shri BK Pandey and he is acquainted with his signatures. Such letter is exhibited as Ex. PW1/2 and his signatures are marked with mark A. He further deposed that sample signatures of Karan Veer Singh in front of him and that document bears his signatures exhibited as Ex. PW1/3.

PW2 Manmohan Jeet Singh Kukreja deposed that he issued a letter signed by him bearing the fact that he has handed over the copy of agreement entered between IOCL and Karan Veer Singh dated 04-08-1983 to CBI and the same letter was exhibited as PW2/1. He further deposed that the dealership was terminated through a letter dated 29-09-06. The letter is signed by Shri Sharat Meshram. He further deposed that he is well acquainted by his signatures as he has worked under him. Letter of termination was exhibited as PW2/2. He has also deposed that a letter was sent by Shri KS Mishra Chief Vigilance Manager along with the test reports. Letter was exhibited as E. Pw2/3 and test reports as PW2/4. He further deposed that D-36 (Ex. PW2/5) is a seizure memo through which he handed over the documents to Sh. Himanshu Bahuguna. He has also deposed that (Ex. PW2/6) is the document through which details of supplies were given to CBI and it bears the signatures of Shri Ranjan Srivastava. Shri Shrivastava was posted at Mathura. It is written in such document that no supplies were made to said retail outlet after 03.04.06.

In his cross examination he admitted that no complaint regarding any irregularity was registered in terms of the said retail outlet by the officials of IOCL. He further admitted that he was posted in Agra Zone in IOCL from 2007 to 2011 and said that it is in his knowledge that Manoj Goyal is running other petrol pumps also in name of his sister and father. He further denied the suggestion that as he is an employee of IOCL therefore to make the versions of IOCL, he is making false statements.

PW3 Manoj Gupta deposed that after 03-04-2006 the supply of petrol and diesel was stopped to M/s Amit filling Station.

Further his cross examination is consistent and natural.

PW4 is Raghuveer Singh Rawat. He deposed that he was working as Chief Manager (Lab) in IOCL, Delhi. He submitted that the samples of petrol and diesel were sent to their Lab under the Code- A and Seal No. A-15019. He further deposed that the samples failed in the RON (Research Octane Number) Test and a report was prepared for the same which is exhibited as Ex. PW2/4._

In his cross examination he admitted that there were no signatures on the samples by the person who collected the sample. He further admitted that the density of the petrol was found correct.

PW5 is Sampooranad. He deposed that through the letter Ex. PW5/3 he handed over the ITR details of Karan Veer Singh during the Assessment Years 2006-2007 and 2007-2008 to CBI. These documents are available on the judicial file Paper No. 28a/1 to 28a/33 as Ex. PW5/4. He further deposed that through letter Ex. PW5/5 he handed over the ITR details of Manoj Goyal to CBI. These documents are available on judicial file Paper No. 29A/1 to 29a/20 as Ex. PW5/6.

His cross examination is consistent and natural.

PW6 Kapil Goyal (CA) deposed that Manoj Goyal and Karan Veer Singh gave him cash-books, general stock registers, bills etc to prepare the audit reports. He further deposed that Karan Veer Singh did not give him any document which shows that Karan Veer Singh made Manoj Goyal as authorised signatory.

His cross examination is consistent and further he denied the suggestion that he prepared the audit reports wrongly.

PW7 is Raj Kishore Khandelwal. He deposed that he filed the ITR for Manoj Goyal (Ex. PW5/2). He further deposed that Manoj Goyal declared Rs. 36,000 as income for AY 2005-06 which he received in form of salary from M/s Amit filling Station. He also deposed that he filed ITR for Karan Veer as well (Ex.PW4/5). He further deposed that the stock of petrol at the ending of financial year on 31-03-06 was 3268 Ltrs. His cross examination is consistent and natural.

PW8 Surendra Kalra is an employee of IOCL who was present with the Joint surprise check team. He deposed that he was instructed by B.P. Bagchi (DSP, CBI) to buy the petrol for his car number DL-13C- AJ 0718. He further submitted that he bought petrol for Rs. 250/- and obtained a receipt (Ex. PW8/2) for the same from M/s Amit Filling Station, Agra on 31-07-2007. He further deposed that samples were taken at that time from underground tank, dip readings were also taken. He further deposed that Shri Bagchi asked for the Dealership agreement from the pump officials but they did not provide the same. The documents which

were available on the retail pump like IT Return, cash booklet were sealed by me and the data from computer was taken in a Kingston Pen Drive. Further a joint report (Ex. PW8/1) was prepared for the same which was signed by all the members of the inspection team and employees of the retail pump who were available at that time. And the signatures of Shri Surendra Kalra, Atul Bhatnagar and BP Bagchi are marked by point A, B, & C respectively and the signatures were obtained in front of him.

He further deposed that the receipt which was obtained by him on buying the petrol of Rs. 250/- is present on the judicial file as paper number D-13 exhibited as Ex. PW 8/2 was handed over by me to CBI. A receipt memo for same was prepared (Ex. Ka PW 8/3).

He also deposed that on 31-07-07 samples were also taken at Amit Filling Station, Agra and a Sample Memo was prepared exhibited as Ex. Ka PW8/4. He further stated that the samples which were taken by him from the ground tank are exhibited as Ex.8/1 at Point B which is signed by Atul Bhatnagar in front of him.

PW9 Prem Prakash has deposed that document D-29 (Ex.PW9/1) is sample of handwriting and signatures were given by Manoj Goyal without any pressure and with his consent. His cross examination is consistent.

PW10 Arvind Kumar has deposed that he was posted as Executive Engineer in Jal Nigam Agra on 27-08-2008. He further deposed that the record relating to payment of petrol which was bought by his department from M/s Amit Filling Station was handed over by him to CBI (Ex. PW10/1). He further deposed that the details of the payment of petrol bought by UP Jal Nigam from M/s Amit Filling Station was also handed over by Shri A.K. Gupta (Executive Engineer) to CBI (Ex. PW10/2).

He admitted in his cross examination that during his tenure no agreement was made between his department and Amit Filling Station.

PW11 Shashank Dinkar deposed that on 15-05-2008 he handed over the documents mentioned in seizure memo dated 15-05-08 exhibited as Ex. PW11/1. His cross examination is consistent and natural.

PW12 Jitendra Agarwal deposed that he has worked as accountant at M/s Amit Filling Station, Agra. Manoj Goyal was manager there and the petrol pump was owned by Karan Veer Singh. He admitted in his cross examination that he used to manage only personal account of Manoj Goyal. He did not deal with any affairs of the retail pump outlet.

PW13 Satish Kumar deposed that he has seen seizure memo Ex. PW13/1 vide which he handed over the documents to CBI.

PW14 Krishna Swaroop Mishra deposed that he was posted as Chief Vigilance Manager, IOCL, Northern Region, New Delhi. He stated that the samples were sent by CBI to his department for testing and the same was received by department and code-A was given to it. And the same was sent by him to Delhi Lab of IOCL. He further stated that after the testing

of the sample was done a report was sent by the Lab to me which is exhibited as Ex. PW2/4 and he recognised his signatures at the point A. He further deposed that the sample was found substandard and was not according to the set standards. He further deposed that on 01-04-06 he alongwith other officials of IOCL went for surprise inspection at M/s Amit Filling Station and a report was prepared which is already exhibited as Ex.PW1/1.

His cross examination is consistent and further he denied the suggestion that he has not done any surprise inspection on Amit Filling Station, Agra.

PW15 is Omkar Nath Jha. He was posted as Senior Manager in Oreintal Bank of Commerce, Sanjay Place, Agra. He deposed that D34 is the seizure memo Ex. PW15/1 vide which he handed over the documents to CBI. He has also deposed that D-36 (Ex. PW15/2) is a certified copy Account Opening Form and the same was certified by him only. He further deposed that D-37 Ex. PW15/3 is seizure memo through which documents were seized by SC Khanna which bears signatures of Shri Khanna and he is well conversant with the signature and handwriting of S.C. Khanna as he has worked with him. His cross examination is consistent and natural.

PW16 Mahendra Pratap deposed that paper number D-15 (Ex. PW18/4) was submitted by M/s Amit Filling Station. He further stated that in this form Karan Veer Singh is shown to be propreiter and Manoj Goyal is shown as Manager of the said retail pump. His cross examination is consistent.

PW17 Jeewan Singh deposed that Register (Ex. PW17/1) related with Form-9 of M/s Amit Filling Station was under his custody in office of Asst. Provident Fund Commissioner, Agra. As per this form, authorised signatories of M/s Amit Filling station were Karan Veer Singh and Manoj Goyal. His cross examination is consistent.

PW18 Dr. BA Vaid deposed that he was working as Examiner of Questioned Documents, Directorate of Forensic Science, Shimla. He stated that the documents were received by the letters of SP, CBI, Dehradun dated 22/09/08 and 03/09/2000 which are present on the judicial file as Ex.PW17/1. He further deposed that sample signature and handwriting in the documents S-1 to S-16 are related with Karan Veer Singh. He further stated that signatures S-38 to S-60 Ex. PW9/1 are related wit Manoj Goyal. He further deposed that he carefully tested the records and gave his opinion in Opinion No. CX-230/08. Shri RS Rana the then AG (Questioned Documents) also examined them and he assented with his opinion. He stated that he is well conversant with the signatures of RS Rana as he has worked with him. The reports are exhibited as Ex. Ka PW18/7 and Ex. PW18/8 and reports mentioning reasons for supplementary opinion are exhibited as ExPW18/9 and Ex. PW18/10 which was signed by him. He also deposed that he is also well conversant with signatures of Shri RS Rana as he has worked with him. His cross examoination is consistent and he has denied the suggestion that he has prepared false reports.

PW19 S.C. Khanna deposed that Ex.19/1 Specimen Card was received in his branch of Oriental Bank of Commerce. He further deposed that the documents mentioned in Ex. PW15/3 were handed over by him to CBI for investigation.

PW20 Ranjan Srivastava deposed that he was working as Senior Terminal Manager in IOCL Mathura. He stated that in 2006 oil was supplied to M/s Amit Filling Station on 27-02-06, 13-03-06, 21-03-06 & 31-03-06.

PW21 Akhilesh Kumar Gupta deposed that he was posted as Exec. Engineer in Jal Nigam at Agra in 2008. He further deposed that vide Ex. PW10/2 he handed over the details of the cheques given to M/s Amit Filling Station for the payment of oil which was bought by his department for the govt. vehicles.

PW22 is the IO of the present case. He has deposed regarding the investigation conducted in the present case.

Accused persons were examined under section 313 of CrPC on 05/07/2016. They have pleaded innocence and they have submitted that they have been falsely implicated by the CBI.

This case was listed for defence evidence on 22.08.2016. Thereafter, proceedings of the trial were stayed by Hon'ble High Court in Application u/s 482 No. 10817 vide order dated 18.01.2017. On 20.07.2020 stay was vacated by this court vide a speaking order in light of Asian Resurfacing of Road Agency Versus CBI (2018) SCC Online 310 and the case was again listed for defence evidence on 20/07/2020. Opportunity for Defence Evidence was closed vide order dated 23.11.2020 as defence did not give any witness in their support.

I have heard the arguments from Ld. Counsel for Karan Veer Singh and prosecution. I have gone through the case file. It is argued by Shri Ripudaman Singh Tanwar Ld. APP for CBI that prosecution has proved the case beyond reasonable doubt. The deposition of witnesses along with the documents has proved the case of prosecution.

On the other hand Ld. Counsel Shri Ravinder Tyagi for accused Karan Veer Singh has submitted that it was the Accused Manoj Goyal who was operating and was involved with the daily affairs of the said retail outlet. He has further submitted that Code A was not mentioned on the samples anywhere and reports of false samples are submitted to this court by the prosecution. He has also submitted that accused Karan Veer Singh did not show any income from M/s Amit Filling Station in AY of 2006-07. Ld. Counsel has also admitted that it is undisputed that Karan Veer Singh was the Proprietor and Manoj Goyal was the Manager of M/s Amit Filling Station. He has concluded his arguments by submitting that accused Karan Veer Singh cannot be held liable for the above mentioned reasons and hence deserves acquittal.

Charges were framed by my Ld. Predecessor on 15-06-2011 against both the accused under Sections 120B, 420 of IPC and Section 3/7 of EC Act, 1955. Both the accused pleaded not guilty and claimed trial.

At this stage it would be appropriate to deal with the provisions of all substantive offences one by one.

Section 420, IPC :

Section 420 IPC states that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, Section 420 IPC deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients. Deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or a property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of transaction itself.

Such offence of cheating is made punishable by sections 417 and 420 IPC. Section 417 provides punishment for a simple case of cheating whereby the person cheated is injured otherwise than by being induced to part with property.

Section 420 deals with certain aggravated forms of specified classes of cheating. It deals with the cases of cheating, whereby the deceived person is dishonestly induced (a) to deliver any property to any person; or (b) to make alter or destroy (i) the whole or any part of valuable security; or (ii) any thing which is signed or sealed, and which is capable of being converted into valuable security. It is required to prove that the victim has parted with the property due to dishonest inducement of the accused. The property so delivered must have some money value to the person cheated.

Thus the offence of cheating is made of two ingredients. Deception of person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property.

Coming to controversy in hand, Exhibit PW1/2 is the letter which was sent by IOCL to M/s Amit Filling Station through which the sale and supplies of all products were suspended with immediate effect. The letter is dated 03.04.2006 and is signed by Sh. BK Pandey. PW1 proved this document and identified his signature and in his cross examination he admitted that it is not IOCL but District Supply Office which provides license for sale of petroleum. However the question of license issuing authority is irrelevant in the present case as the

alleged acts of the accused (Unauthorised sale etc.) constitutes substantive offences by virtue of the Control Order promulgated under Section 3 of the EC Act, 1955.

Further Ex. PW2/2 is the letter issued by IOCL through which the dealership was terminated. The letter is dated as **29.09.2006**. PW2 is the witness to such document. He has deposed that such document is signed by Sh. Sharat Meshram and he is well acquainted with the signatures of Sh. Meshram as he has worked under him. In his cross examination he has deposed that explosive license was valid during that period. He has further deposed in cross examination that for sale of petrol no license is required in Uttar Pradesh, only dealership of IOCL is required. No question or suggestion regarding the authenticity of said letter of termination was asked. However the witness denied the suggestion that officials of IOCL saved their employees in the present case. Here also question of license for sale is irrelevant as it is proved by the Ex. PW2/2 that the dealership of the said RO (Retail Outlet) was terminated from 29.09.2006 and still unauthorised sale was going on.

Ex. PW8/2 is the cash memo receipt of Rs/- 250 by which petrol was bought by the joint inspection team on the day of surprise check. PW8 has deposed that on 31.07.2007 he bought petrol of Rs 250/- from M/s Amit Filling Station as per the instructions received from Joint Surprise Check Team. He deposed that he was instructed by B.P. Bagchi (DSP, CBI) to buy the petrol for his car number DL-13C- AJ 0718. He further submitted that he bought petrol for Rs. 250/- and obtained a receipt (Ex. PW8/2) for the same from M/s Amit Filling Station, Agra on 31-07-2007. He further deposed that samples were taken at that time from underground tank, dip readings were also taken. He further deposed that Shri Bagchi asked for the Dealership agreement from the pump officials but they did not provide the same. The documents which were available on the retail pump like IT Return, cash booklet were sealed by me and the data from computer was taken in a Kingston Pen Drive. Further a joint report (Ex. PW8/1) was prepared for the same which was signed by all the members of the inspection team and employees of the retail pump who were available at that time. And the signatures of Shri Surendra Kalra, Atul Bhatnagar and BP Bagchi are marked by point A, B, & C respectively and the signatures were obtained in front of him. In his cross examination he again reiterated that he was the one who bought petrol of Rs. 250/- on the day of surprise inspection. He also admitted that the performance of his car was not affected by such petrol. His cross Examination is natural and consistent. Thus, Prosecution has proved that on 31.07.2007 sale of petrol was going on the said retail outlet despite the dealership being terminated w.e.f. 29.09.2006.

Ex.PW2/6 is the letter issued by Senior Terminal Manager of IOCL to Inspector of CBI which shows the details of supplies made to M/s Amit Filling Station. It says that no supplies to M/s Amit Filling Station have been made after 03.04.06. PW2 is witness to such document. In his cross examination he has admitted that the petroleum which is supplied to

dealer by the IOCL a little variation in density of that petroleum is natural. He further admitted that the dealership of M/s Amit Filling Station was terminated on 29.09.06. He further admitted in his cross examination that it is true that a dealer can sell his product till the time his dealership remains in existence. His cross examination is natural and consistent.

Ex. PW10/1 is the letter issued by Shri Arvind Kumar (PW10) to CBI which provides the details of petrol purchased by the office of Executive Engineer, UP Jal Nigam, Agra from M/s Amit Filling station. The said letter is signed by him. Perusal of the document reflects the payment was made by the Department of UP Jal Nigam to said Retail Outlet for sale of Petrol even after the termination of the dealership. However, In his cross examination he has admitted that no complaint was made before me regarding the oil used in the jeeps of his department. Therefore the testimony of PW10 has proved the Ex. PW10/1.

Ex. PW18/4 is Form No. 5A of The Employees' Provident Fund Scheme, 1952 of M/s Amit Filling Station. Karan Veer Singh is described as Propreiter and Manoj Goyal is described as Manager in such document. PW18 Dr. BA Vaid is witness to such document. He was posted as Govt. Examiner of Questioned Documents at GEQD, Shimla. Signature of Manoj Goyal are at Point Q17. And as per GEQD report Ex. PW18/7 signature at point Q17 and S38-S60 (Specimen Signature of Manoj Goyal) are written by one and the same person, which means such Form 5-A (Ex. PW18/4) is signed by Accused Manoj Goyal.

Ex. PW18/5 is 'Letter of Authority for Operation of Account' of Oriental Bank of Commerce. In such document, Karan Veer Singh has signed in the capacity of Prop. Of M/s Amit Filling Station at points Q18, Q19 and Q22 and Manoj Goyal has signed in the capacity of manager at points Q20 and Q21. In such document Karan Veer Singh has authorised Manoj Goyal to operate his account. PW18 Dr. BA Vaid is witness to such document. He was posted as Govt. Examiner of Questioned Documents at GEQD, Shimla. As per GEQD report signatures at point Q18, Q19, Q22 and S1 to S16 (Specimen signatures of Karanveer Singh) are done by one and the same person. And also as per GEQD report signatures at point Q20, Q21 and S38- S60 (Specimen Signatures of Manoj Goyal) have been written by one and the same person. In his cross examination his deposition remains consistent to what he deposed during examination-in chief. This way, it is proved that Accused Karan Veer Singh in capacity of Propreiter of M/s Amit Filling Station has authorised accused Manoj Goyal in capacity of Manager of M/s Amit Filling station to operate his bank account.

Ex. PW5/3 is the letter of Shri Sampooranand (PW5) forwarding the certified copies of income tax return of Karan Veer Singh for AY 2006-07 & 2007-08. In such documents Karan Veer Singh has shown himself as Prop. of M/s Amit Filling Station. Similarly, Ex. PW5/1 and Ex. PW5/5 are ITR details of Manoj Goyal for the assessment years 2006-07 and 2007-08 respectively. In such documents Manoj Goyal has shown himself as Manager of M/s Amit Filling Station. Witness to such documents is Shri Sampooranand, Dy. Commissioner

of Income Tax. In his cross examination his deposition remains consistent to what he deposed during examination-in chief. Hence the testimony of PW5 has corroborated Ex. PW5/1, 5/3 and 5/5.

Thus, In the present case it is proved through various witnesses as discussed above that the accused Manoj Goyal in capacity of Manager of retail outlet and Karan Veer Singh in capacity of Proprietor continued the sale of petrol despite the fact that their dealership was terminated by IOCL. Moreover, they sold the same by using the signage of Indian Oil, which they were not authorised to use, after the termination of their dealership by IOCL. They were unauthorisedly selling the petrol to the public including government departments like U.P. Jal Nigam. It is further proved by Ex.PW8/2 cash receipt memo of Rs. 250/- dated 31.07.2007 which was given to Shri Surendra Kalra (an employee of IOCL) for sale of petrol on 31/07/2007 during the joint surprise check.

Their acts are fraudulent as it resulted into monetary gain to both of them and wrongful loss to to Indian Oil and general public. Further their actions are deceitful as they wrongly claimed that such retail outlet belongs to Indian Oil Corporation Ltd. Accordingly accused Manoj Goyal and Karan Veer Singh are found guilty of Section 420 of IPC.

Section 120 A :

Definition of criminal conspiracy.- *When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an element is designated a criminal conspiracy. Provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.*

The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily flows that unless the statute so requires, no overt act need be done in furtherance of conspiracy and the object of the combination need not be accomplished, in order to constitute an indictable offence.

Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment.

Further it is settled law that in the case of conspiracy there cannot be any direct evidence. Privacy and secrecy are more characteristics of a conspiracy, than of a loud

discussion in an elevated place open to public view. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal.

Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that the direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the concurrence have to be considered to decide about the complicity of the accused.

The inferences are normally deduced from the acts of parties in pursuance of a purpose in common between the conspirators. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

In this background of law it may be noted that the prosecution has proved that Karan Veer Singh in criminal conspiracy with Manoj Goyal was unauthorisedly selling petrol to public including government departments. As discussed above it is proved that the retail outlet dealership was terminated by IOCL on 20.09.2006. The communication of such termination of dealership was made vide a letter(Ex. PW2/2) which was referred to M/s Amit Filling Station. Moreover, a letter regarding suspension of sale and supplies was also issued to retail pump (Ex.PW1/2). Therefore, it is impossible that both Proprietor as well as Manager were not aware of the fact that their dealership had been terminated. Thus, it appears, on the basis of evidence on record that both the accused have not acted separately. Further, regarding conspiracy it must be remembered that law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of means. The encouragement and support which co-conspirators give to one-another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. Present case is perfect example of same. It would have been utmost difficult for any of the accused, to execute alone such conspiracy or cheating. But with the combined efforts they were able to do the same. Under these circumstances, it is held that ingredients of section 120-B IPC are satisfied . Accordingly accused Karan Veer Singh and Manoj Goyal are convicted u/s 120-B IPC.

Section 3/7 of E.C. Act, 1955 :

The Central Government in exercise of power conferred by section 3 of the Essential Commodities Act of 1955 has made "Motor Spirit and High Speed Diesel (Regulation of

Supply, Distribution and Prevention of Malpractices) Order 2005” (hereinafter referred as Control Order). It is this Control Order which makes adulteration and unauthorised sale of petrol and diesel a criminal offence and will govern the controversy in hand.

At this stage it would be appropriate to deal with the provisions of the Control Order. Section 2 of the Control Order is definitions clause which defines :

Section 2 (a) : “**adulteration** means presence of marker in motor spirit and high speed diesel and/or introduction of any foreign substance into motor spirit or high speed diesel illegally or unauthorisedly with the result that product does not conform to the requirements of Bureau of Indian Standards Specification Numbers IS 2796 and IS 1460 for motor spirit and high speed diesel respectively or any other requirement notified by the Central Government from time to time.”

Section 2 (d) : “**dealer** means a person duly appointed by an oil company to purchase, receive, store and sell motor spirit and high speed diesel oil whether or not in conjunction with any other business and shall include his representatives, employees and agents.”

Section 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;

Section 2 (q) further defines “**unauthorised sale**” as it means sale of product by a dealer or consumer to another dealer or consumer or to any other person in contravention of the directive issued for the purpose by the state government or the oil companies or in contravention of any provision of this order.

Section 2 (h) defines “oil company” as “It means the Indian Oil Corporation Ltd., the Hindustan Petroleum Corporation Ltd., the Bharat Petroleum Corporation Ltd., the IBP Co. Ltd. Or any person, firm or company duly authorised by Central Government.....”

Section 3 of the said control order provides substantive offences which also penalises Malpractices.

Section 3 (4) says “No person other than the dealer or oil company shall be engaged in the business of selling product.”

Section 3(6) says “No dealer, transporter, consumer or any other person shall indulge in any manner in anyone or more of the malpractices.”

Section 3(7) says that “The delivery or sale of motor spirit and high diesel shall be made by a dealer of oil company only from authorised retail pump outlet.”

Coming back to controversy in hand, Exhibit PW1/2 is the letter which was sent by IOCL to M/s Amit Filling Station through which the sale and supplies of all products were suspended with immediate effect. The letter is dated 03.04.2006 and is signed by Sh. BK Pandey. PW1 proved this document and in his cross examination he admitted that it is not IOCL but District Supply Office which provides license for sale of petroleum. However the question of license issuing authority is irrelevant in the present case as the acts alleged constitutes substantive offences irrespective of the same by the Control Order promulgated under Section 3 of the EC Act, 1955.

Ex. ॐ-1 is the document through which sanction for prosecution of accused under E.C. Act was given. Such document was admitted by both the accused persons.

Further Ex. PW2/2 is the letter issued by IOCL through which the dealership was terminated. The letter is dated as **29.09.2006**. PW2 is the witness to such document. He has deposed that such document is signed by Sh. Sharat Meshram and he is well acquainted with the signatures of Sh. Meshram as he has worked under him. In his cross examination he has deposed that explosive license was valid during that period. He has further deposed in cross examination that for sale of petrol no license is required in Uttar Pradesh, only dealership of IOCL is required. No question or suggestion regarding the authenticity of said letter of termination was asked. However the witness denied the suggestion that IOCL saved their employees from the present case. Thus, it is proved by the Ex. PW2/2 that the dealership of the said RO (Retail Outlet) was terminated w.e.f. 29.09.2006.

Ex. PW8/2 is the cash memo receipt of Rs/- 250 by which petrol was bought by the joint inspection team on the day of surprise check. He has deposed that on 31.07.2007 he bought petrol of Rs 250/- from M/s Amit Filling Station as per the instructions received from Joint Surprise Check Team. His cross Examination is natural and consistent. In his cross examination he has deposed that he bought petrol for Rs. 250/- and obtained a receipt for same. He has further deposed that samples were taken from each container by him and other members of the joint team. Thus Prosecution has proved that on 31.07.2007 sale of petrol was going on the said retail outlet despite the dealership being terminated w.e.f. 29.09.2006.

Ex. PW2/6 is the letter issued by Senior Terminal Manager of IOCL to Inspector of CBI which shows the details of supplies made to M/s Amit Filling Station. It says that no supplies to M/s Amit Filling Station have been made after 03.04.06. PW2 is witness to such document. He deposed that such letter bears the signature of Shri Ranjan Srivastava and he

was posted at mathura that time. In his cross examination he again deposed that no supply was made to M/s Amit Filling station after 03.04.06.

Ex. PW2/3 and Ex. PW 2/4 are the test reports in which it is shown that the samples taken from Amit Filling Station did not meet the requirements in respect of RON test. PW2 is the witness to such document. In his cross examination he has said that the density as per D-39/4 available on judicial file is 735.02. However no question or suggestion regarding the RON test was asked. Therefore the testimony of PW2 has been duly corroborated by the Test Report (Ex. PW2/3) that the samples did not meet the specifications of RON test.

Ex. PW10/1 is the letter issued by Shri Arvind Kumar (PW10) to CBI which provides the details of petrol purchased by the office of Executive Engineer, UP Jal Nigam, Agra from M/s Amit Filling station. The said letter is signed by him. Perusal of the document reflects the payment was made by the Department of UP Jal Nigam to said Retail Outlet for sale of Petrol even after the termination of the dealership. In his cross examination he admitted that no agreement was made between his department and M/s Amit Filling Station. However, absence of any agreement cannot rule out the fact that petrol was being sold to that department. Hence it is proved that unauthorised sale was made by the retail pump to UP Jal Nigam also.

This way prosecution has proved that M/s Amit Filling Station has committed the offence of '**Malpractice**' by doing '**Unauthorised Sale**' which is prohibited under Section 3(6) of the Control Order promulgated under Section 3 of the EC Act.

Ld. Counsel for accused Karan Veer Singh has contended that the date on which sample was is not mentioned on the report of sample. He has further contended that the samples which were taken on date of joint surprise inspection were not sent to the lab for sampling and the test report cannot be relied upon. He has further argued that any income was not shown in ITR of Karan Veer Singh for the assessment year 2006-07. This way Ld. Counsel for Karan Veer Singh has maily contended for the ground of adulteration. If for the sake of arguments it is considered to be true that petrol was not adulterated, still the accused persons were not authorised to sell petrol by virtue of the Section 3 (6) of the Control Order. Also. it is proved by the prosecution that the dealership of the retail outlet was terminated on 29.06.2009. Further, Ld. Counsel for the accused has relied on a judgment of Hon'ble Supreme Court in Criminal Appeal No. 524 of 1989 namely Sham Sunder and others v. State of Haryana dated 21 August, 1989. This judgment relates to the criminal and civil liability of partners of a partnership firm and hence is not applicable to this case.

Section 6 of the EC Act, 1955 says that "*Any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this act or any instrument having effect by virtue of any enactment other than this act.*"

Normally a delegated legeslation like a Rule or Regulation cannot have overriding effect *vis-a-vis* an act of Parliament or state legislature and is always subsurvien to them.

However on account of the special provision of Section 6 of the E.C. Act in the event of any inconsistency the control orders will prevail over other acts whether made by the Parliament or the State Legislatures.

This shows the significance and importance given by legislature to the orders made under Section 3 of EC Act. Further, it is common knowledge that there is widespread adulteration in Petrol and Diesel and shortage of liquified petroleum has given rise to a black market in this commodity.

The **Preamble of The Essential Commodities Act, 1955** says : “An Act to provide in the interests of genral public for the control of production, supply and distribution of and trade and commerce in certain commodities.” The power conferred under the act is for maintaining or increasing supplies of essential commodities and for securing their equitable distribution and availability at fair prices. The act is of the prime importance and it is for this reason that it has been placed in Ninth Schedule making it immune from challenge by virtue of Article 31-B of the Constitution of India.

In the instant case from the available evidence on record it is found that the prosecution side has clearly established that the Accused Karan Veer Singh and Manoj Goyal have violated the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 promulgated under Section 3 of the E.C. Act, 1955 which entails punishment under Section 7 of the Act. Accordingly accused Karan Veer Singh and Manoj Goyal are convicted under Section 3/7 of E.C. Act, 1955.

Both the accused Karan Veer Singh and Manoj Goyal stands convicted for offences under section 120B r/w 420, 420 of Indian Penal Code, 1860 and Section 3/7 of Essential Commodities Act, 1955.

Convict Karan Veer Singh is present. Convict Karan Veer Singh be taken into custody. Convict Manoj Goyal is not present in court. Issue Non Bailable Warrants against him.

Announced in open court on 05/01/2021 and all the pages from 1 to 16 are signed by me.

Sd/-

(SHIVANK SINGH)
Special Judicial Magistrate (CBI)
Ghaziabad

05.01.2021

Present: Shri Ripudaman Singh Tanwar
Ld. APP for State through CBI
Shri Ravinder Pal Tyagi
Ld. Counsel for accused Karan Veer Singh

ORDER ON SENTENCE

It was argued by Sh. Ripudaman Singh Tanwar that convict Karan Veer Singh be given maximum punishment as he has cheated general public including government departments by selling unauthorised petrol.

Ld. Counsel for convict has argued that the convict is a old person therefore he shall be given minimum punishment.

Convict has cheated a Public Sector Undertaking (Indian Oil Corporation Ltd.) and general public as well by unauthorisedly selling petrol. Considering the entire facts and circumstances;

1. Convict Karan Veer Singh for the offence under Section 420 IPC shall undergo simple imprisonment of three years and pay fine of Rs 5000/-, in default to pay the fine amount shall further undergo simple imprisonment for three months.
2. Convict Karan Veer Singh for the offence under Section 120-B IPC shall undergo simple imprisonment for 6 months and pay fine of Rs.2,000/-, in default to pay the fine shall further undergo simple imprisonment for one month.
3. Convict Karan Veer Singh for the offence under Section 3/7 of EC Act, 1955, shall undergo simple imprisonment for 3 years and pay fine of Rs. 5,000/- in default to pay the fine shall further undergo simple imprisonment for three months.

All the sentences shall run concurrently. Convict is entitled to set off u/s 428 CrPC, for the period already undergone in Judicial Custody, if any. Convict be taken into custody. Copy of Judgment and sentence be given free of cost to convict and Ld. APP for CBI.

Convict Manoj Goyal is not present. Issue Non Bailable Warrants against him. Put up on 06/01/2021 for hearing on sentence for Convict Manoj Goyal.

Sd/-

(SHIVANK SINGH)
Special Judicial Magistrate (CBI)
Ghaziabad