

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

Reserved on 26.08.2021
Pronounced on 02.09.2021

CRMC No. 361/2012
IA No. 421/2012

Surinder Singh ...Petitioner/Applicant(s)

Through :- Mr. Dhiraj Choudhary, Advocate
v/s

State of J&KRespondent (s)

Through :- Mr. Aseem Sawhney, AAG

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The present petition has been filed by the petitioner under section 561-A Cr. P.C. (now 482 Cr.P.C) for quashing the order dated 08.10.2012 passed by the Principal Sessions Judge, Jammu (hereinafter to be referred as the revisional court) by virtue of which order dated 15.02.2011 passed by the learned Chief Judicial Magistrate, Jammu (hereinafter to be referred as the trial court) discharging the petitioner, was set aside.

2. The present petition has been filed primarily on the ground that there is no order as envisaged under section 3 of Essential Commodities Act that has been contravened by the petitioner and further when the prosecution has not placed on record any such order, the petitioner cannot be prosecuted for the commission of the said offence and convicted under section 7 of the Essential commodities Act.

3. Mr. Dheeraj Choudhary, learned counsel for the petitioner vehemently argued that that no order within the meaning of section 3 of

Essential Commodities Act was placed on record by the Investigating Officer along with the challan and that is why the petitioner was discharged for the commission of offence under sections 3/7 of the Essential Commodities Act and the learned revisional court illegally set aside the order passed by the trial court and observed that the trial court should have granted further time to prosecution to place on record such order. He further submitted that even despite repeated opportunities, no such notification/order has been placed on record the violation of which has been claimed by the respondent, to have been made by the petitioner.

4. Mr. Aseem Sawhney, learned AAG submitted that the learned revisional court has rightly passed the order dated 08.10.2012 and there is no illegality in the order impugned.

5. Heard learned counsel for the parties and perused the record.

6. The allegation against the petitioner is that on 31.05.2008, SHO, Police Station Jhajjar Kotli along with police party was on the patrolling duty in a Government vehicle at Kah Fota area and during patrolling, SHO received information from the reliable sources that the petitioner is indulging in illegal sale of diesel and is earning undue profits and that the petitioner was having in his possession diesel in his Karyana shop. On the basis of said information, the SHO along with police party raided the shop of the petitioner and in the shop five plastic gallons containing about 100 liters of diesel were found. As such, the petitioner by keeping in his shop 100 liters of diesel for illegal sale has committed offence under sections 3/7 of the Essential Commodities Act. Thereafter, FIR bearing No. 57/2008 under sections 3/7 of Essential Commodities Act was registered at Police Station, Jhajjar Kotli. During the investigation, five plastic gallons of 20 liters capacity containing about 100

liters of diesel were seized. After completion of the investigation, the Investigating Officer proved the offences under sections 3/7 of the Essential Commodities Act against the petitioner and thereafter the challan was filed.

7. As the respondent did not place on record any notification/order under section 3 of the Essential Commodities Act, so the petitioner was discharged of the said offences vide order dated 15.02.2011. The respondent preferred revision petition against the said order of the trial court and the revisional Court vide order dated 08.10.2012 set aside the said order and directed the trial court to frame charges against the petitioner for commission of offences under sections 3/7 of the Essential Commodities Act. The revisional court also observed that the trial court should have granted some time to the prosecution to trace the said notification.

8. Thus, it is clear that the notification was neither submitted before the trial court nor before the revisional court and also no such notification/order purported to be issued under section 3 of the Essential Commodities Act, has been placed on record before this Court despite number of opportunities. In order to decide the controversy, it is apt to reproduce section 3 and 7 of the Essential Commodities Act as under:

“Section 3. Powers to Control Production, Supply, Distribution, Etc. of Essential Commodities.

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, [12 or for securing any essential commodity for the defense India or the efficient conduct of military operations 12], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by subsection (1), an order made there under may provide, -

(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether

appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified foods crops;

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity, -

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the other.

Section 7. Penalties. --(1) If any person contravenes any order made under section 3,--

(a) he shall be punishable,

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine.

9. A perusal of both the provisions reveals that there must be a notification/order issued under section 3 of the Essential Commodities Act, violation of which entails the prosecution and if offence is proved, then subsequent conviction under section 7 of the Essential Commodities Act. In the instant case, no such notification has been placed on record.

10. The charge can be framed against the accused even when there is a strong suspicion about the commission of offence by the accused and at the same time, the learned trial court is not expected to merely act as a post office and frame the charge just because challan for commission of a particular

offence has been filed against the accused. The learned trial court can sift the evidence brought on record by the prosecution so as to find out whether the un-rebutted evidence placed on record fulfils the ingredients of the offences or not. But at the same time, the learned trial court cannot conduct a mini trial to find out as to whether the accused can be convicted for a particular offence or not.

11. For launching prosecution under section 3/7 E.C. Act, Investigating Officer was required to place on record a valid notification/order as held by the Supreme Court in **Prakash Babu Raghuvanshi Vs. State of Madhya Pradesh**, (2004) 4 Crimes (SC) 83, which reads as under:

"5. Section 7 refers to contravention of any order made under Section 3. It is essential for bringing in application of Section 7 to show that some order has been made under Section 3 and the order has been contravened. Section 3 deals with powers to control production, supply, distribution etc. of essential commodities. Exercise of such powers, can be done by "order". According to Section 2(c), "notified order" means an order notified in the Official Gazette, and Section 2(cc) provides that "order" includes a direction issued thereunder."

12. Thus, when no notification/order under section 3 of the Essential Commodities Act prohibiting the possession of particular quantity of diesel has been placed on record, the petitioner cannot be prosecuted and convicted under section 7 of the Essential Commodities Act. Needless to say that the present petition has remained pending for 9 years and during this period as well, the respondent has not been able to place on record any such notification/order issued under section 3 of Essential Commodities Act. This Court is of the considered view that in absence of such notification, the continuance of the proceedings under sections 3/7 of the Essential Commodities Act, shall be nothing but an abuse of process of law.

13. In view of above, the present petition is allowed and order dated 08.10.2012 passed by the revisional court is set aside and the order dated 15.02.2011 passed by the trial court is upheld.

(RAJNESH OSWAL)
JUDGE

JAMMU
02.09.2021
Karam Chand/Secy.

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No

