

2023 Scej 434

SupremeCourtOnline 445604

SUPREME COURT OF INDIA

Before: Justice Abhay S. Oka and Justice Pankaj Mithal.

Suresh & Ors. – Appellants

Versus

State of Madhya Pradesh – Respondent

Criminal Appeal No. 3512 of 2023.

24.11.2023.

Criminal Procedure Code, 1973 Section 482 – Evidence Act, 1872 Section 27 – Expert report not produced – Mixing of petrol/diesel – Proceedings quashed.

FIR was registered on 14th October 2021, and a charge sheet was filed on 11th February 2022 – As of today, there is no expert's report on the nature of the liquid found in the seized tanker – The charge sheet's foundation is based on the assumption that the seized liquid is a hydrocarbon mixture resembling petrol and diesel in appearance and smell – However, the respondent did not provide an expert's report confirming the precise nature of the liquid – Despite sending samples for testing over two years ago, no report has been received – Without this report, there is no evidence to support that the liquid in the tanker was anything other than diesel or petrol – The allegation of cheating is also based on the assumption that customers were supplied with this mixture instead of petrol or diesel – Without material in the charge sheet to demonstrate the liquid's nature, no offense is established – It's now too late for the State to file a report after more than two years have passed – The respondent was notified by the Court on 27th March 2023 regarding the failure to produce the report – Despite this notice, the respondent has not made any effort to obtain the report in the last seven months – This lack of action could lead to an adverse inference being drawn against the respondent – Therefore, continuing with the prosecution would be an abuse of the legal process.

For the Appellant :- Mr. Vinam Gupta, Advocate. For the Respondents :- Mr. Pashupathi Nath Razdan, Ms. Maitreyee Jagat Joshi, Mr. Astik Gupta, Ms. Akanksha Tomar, Ms. Priyanka, Mr. Argha Roy, Mr. Gaurav Kumar, Advocates.

JUDGMENT

Abhay S. Oka, J. –

FACTUAL ASPECT

The appellants invoked the jurisdiction of the High Court under section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') for quashing First Information Report (for short, 'FIR') registered against them for offences punishable under Sections 420 and 120B of the Indian Penal Code, 1860 (for short, 'the IPC') and sections 3 and 7 of the Essential Commodities Act, 1955 (for short, 'the EC Act'). By the impugned judgment, the High Court has dismissed the petition seeking quashing of the FIR.

2. On 7th October 2021, invoices were issued by Bharat Petroleum Corporation Ltd. ('BPCL') in the name of MP Bombay Auto Service Petrol Diesel Pump owned by the third appellant for the sale and transportation of 9 Kilolitres each of petrol and diesel through a particular tanker. It is alleged that the subject fuel was shifted to another tanker due to the valve failure in the original tanker. The first appellant was the driver of the tanker, which carried the subject fuel. On 11th October 2021, the SHO of Police Station Kishanpura District, Indore, intercepted the truck while unloading the subject fuel at the third appellant's petrol pump. The SHO recorded the disclosure statements of the first and the second appellants. The second appellant was the manager of Shivam Industries. The truck was seized with the liquid inside. The police collected samples from the four compartments of the tanker. The appellants were given arrest memos on 13th October 2021. On the same day, the samples collected by the SHO were sent to State Forensic Laboratory. The Collector (Food) instructed on the same day to send the samples collected from the subject tanker to BPCL Quality Assurance Laboratory, Indore. On 14th October 2021, the aforesaid impugned FIR was registered. The Forensic State Laboratory at Indore recommended sending the samples to the Indian Institute of Petroleum, Dehradun. According to the appellants' case, BPCL Quality Assurance Laboratory submitted a test report on 19th October 2021, recording that the samples conformed with the required specifications. In the meanwhile, there was a show cause notice issued to the third appellant under Section 6(b) of the EC Act, which culminated in an order imposing a fine on the ground that the third appellant could not produce an invoice authorising transportation through the tanker in question and he did not seek permission for opening the seal and lock of the tanker. The charge sheet was filed on 11th February 2022.

SUBMISSIONS

3. The learned counsel appearing for the appellants has invited our attention to the material forming part of the charge sheet. He pointed out that in the chargesheet, the allegation is that fuel oil mixed with Hexin, C-09, Pentane and rover process oil were procured from Mumbai and Hazira through Shivam Industries. The allegation is that if these hydrocarbons are mixed in different proportions in a mixing machine, the mixture looks exactly like petrol and diesel and has the same smell. The allegation is that on 11th October 2021, the hydrocarbon mixture was loaded in the intercepted tanker. The learned counsel submitted that, admittedly, there is no report obtained by the prosecution of any expert agency about the nature of the liquid found in the intercepted truck. Learned counsel invited our attention to the finding recorded in the impugned order, which records that, though samples were sent to the laboratory in charge of BPCL, a report from the

laboratory has not been received. He submitted that taking the charge sheet and material therein as correct, there is no material to show the nature of the liquid found in the tanker at the time of its interception. Hence, no offence was made out.

4. The learned counsel appearing for the State relied upon the statement under section 27 of the Indian Evidence Act, 1872 of the first appellant stating that he used to pick up 'concocted fuel' from Shivam Industries for distribution to the fuel stations. He submitted that the issues raised by the appellants can be decided only after the evidence is adduced. He submitted that there is a violation of the Motor Spirit and High-Speed Diesel Oil (Regulation of Supply and Distribution and Prevention of Malpractices) Order 2005 (for short, 'the Motor Spirit Order'). He would, therefore, submit that no case was made out for quashing the FIR, as all the issues raised can be decided only at the time of trial.

CONSIDERATION OF SUBMISSIONS

5. We have carefully perused the chargesheet. The allegation in the chargesheet is that hydrocarbons mixed in different proportions by using mixing machines create a mixture that looks exactly like petrol and diesel. It is alleged that such a mixture smells like petrol and diesel. It is alleged that Shivam Industries supplied the mixture and sold it to the petrol pumps instead of petrol or diesel. It is alleged that by cheating ordinary customers, the appellants are causing illegal losses to the customers. Even the Government is deprived of the tax which can be levied on petroleum and diesel. It is alleged that after a search of Shivam Industries' factories, it was found that there were several tanks of thousands of litres capacity, out of which five were found to be filled with different hydrocarbons. As per the chargesheet, on 11th October 2021, the hydrocarbon mixture was loaded in the tanker in question.

6. Thus, the prosecution's case is that a hydrocarbon mixture was found in the seized tanker, which was being sold by the appellants, representing it to be petrol or diesel. Along with a letter dated 13th October 2021, the police forwarded four samples of the liquid seized from the tanker to the Forensic State Laboratory at Sagar in Madhya Pradesh, requesting the laboratory to submit an opinion on whether petrol in the samples at Exhibit A and B is of human grade used as a normal fuel in vehicles. The second question posed to the laboratory was whether there is any standard level petrol or diesel used as a normal fuel in samples C and D or if the liquid has been adulterated. Similarly, the Collector (Food) sent another set of samples to the State Level Coordinator, IOCL, Bhopal, for testing. The impugned judgment notes that along with the letter dated 3rd November 2021, samples were also sent to the Laboratory Incharge, BPCL, Indore. It appears that the laboratory in charge of the BPCL laboratory has not submitted the result of the analysis. That is the specific observation in the impugned judgment. By the order dated 27th March 2023, the learned counsel appearing for the respondent was granted time to ascertain whether a report was received from the laboratory of BPCL. The learned counsel for the respondent stated on instructions that till date, the report of analysis has not been received.

7. The appellants rely on the test report dated 19th October 2021 submitted by Quality Assurance Laboratory, Mangliya Depot, Indore of BPCL. The report confirms that the

samples conform to the HSD (BSVI) specifications. The submission of the learned counsel appearing for the respondent is that the said report is not a part of the charge sheet.

8. Though FIR was registered on 14th October 2021 and the charge sheet was filed on 11th February 2022, even as of today, the expert's report on the nature of the liquid found in the seized tanker has not been produced. The entire foundation of the charge sheet is that there was a hydrocarbon mixture in the seized tanker, which looks precisely like petrol and diesel and smells like petrol and diesel. Along with the charge sheet, the respondent did not produce an expert's report regarding the precise nature of the liquid in the tanker. An expert's opinion showing that the liquid was neither petrol nor diesel, but the hydrocarbon mixture has not been placed on record. As stated earlier, samples were sent more than two years back for testing, and a report has not yet been received. In the absence of the report, taking the charge sheet as it is, no material is placed on record to show that the liquid in the tanker was neither diesel nor petrol but a mixture of hydrocarbons. The allegation of cheating is also made on the footing that thousands of customers were supplied with the said mixture instead of petrol or diesel. Unless there was a material forming part of the charge-sheet to show the nature of the liquid, no offence is made out. Now, it is too late for the State to file a report after a gap of more than two years. The respondent was put to notice by this Court by the order dated 27th March 2023 about the failure to produce the report. However, the respondent has not attempted to get the report during the last seven months. Even an adverse inference can be drawn against the respondent. Hence, the continuation of the prosecution will be an abuse of the process of law.

9. The appeal succeeds, and the same is allowed. We set aside the impugned judgment of the High Court. The FIR No. 727 dated 14th October 2021, registered with Kishanpura District, Indore, and the consequent charge sheet filed thereon are quashed and set aside.

10. The appeal is accordingly allowed on the above terms.