

**SUPREME COURT OF INDIA**

M/s. Ipour GKC & RKC & Sons

Vs.

State Rep. by Station House Officer

CrI.A.No.504 of 2001

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

28.08.2008

**JUDGMENT**

**Dr.Arijit Pasayat, J.**

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Madras High Court setting aside the judgment of acquittal rendered by learned Special judge, Pondicherry in STR No. 95 of 1984 so far as the appellants are concerned while upholding the acquittal in respect of five others.

2. The seven accused persons faced trial in the following manner:

“The charges against the accused/appellants are that A1 is a partnership firm and A2 is the partner of the firm, A3 is the Driver of the Vehicle concerned and A4 is Cleaner, while A5, A6 and A7 are said to be retail dealers of Kerosene. The Hindustan Petroleum Corporation Limited from Madras is distributing Kerosene to A1 firm at Pondicherry and A1 firm has to observe Clause 13 of the *Pondicherry Kerosene Control Order, 1969* (in short the `Control Order') and sell the Kerosene only to another wholesale dealer licensed under that order or to registered dealer or to any institution or person approved by the licensing authority. Such sales shall be in such quantities and or such intervals, as the licensing authority may, by general or special order, direct.

The prosecution case is that on 15-07-1984, at about 6 p.m. one tanker lorry PYZ-5699 was brought to the check post from Madras reporting import of 11,000 litres of Kerosene to A1 firm and the driver also paid octroi of Rs.110/- vide receipt No.966260 dated 15-07-1984. After looking at the invoice No. Series, the authorities entertained suspicion because the dispatch was on 14.7.1984 and when they checked the vehicle they found it empty. Therefore, the driver was questioned, who gave statement (Ex.P3) written in his own hand writing, but did not sign and escaped with A4 cleaner. Therefore, a case was registered against A1 firm as well as A2 partner alongwith driver and cleaner besides charging A5, A6 & A7 who are the retail sellers of kerosene to whom A1 claimed to have sold the kerosene.

The trial Court on consideration of the evidence came to hold that the accusations have not been established. The State of Pondicherry filed an appeal before the High Court questioning the judgment of acquittal recorded by the trial court. By the impugned order the High Court set aside the acquittal so far as the present appellants are concerned while dismissing the same qua the other five co-accused persons.”

3. Learned counsel for the appellant submitted that the High Court has lost sight of the fact that the ingredient necessary to bring in application of clause 13 of the Control Order have not been established and, therefore, the conviction as recorded by the High Court cannot be sustained. It is pointed out that the basis for the proceeding against the appellant was alleged statement of A3, who has been acquitted by the trial court and the same has been upheld by the High court.

4. Learned counsel for the respondent-State on the other hand submitted that the appellants produced certain documents to show receipt of the 11,000 litres of kerosene. But on verification it was noticed that those documents are not reliable and, therefore, the High Court was justified in finding the appellants guilty.

5. Clause 13 of the Control Order reads as follows:

“13. Restriction on sale of kerosene - No wholesale dealer shall sell kerosene, except to another wholesale dealer licensed under this order or to registered dealer or to any institution or person approved by the licensing authority. Such sales shall be in such quantities and at such intervals, as the licensing authority may, by general or special order, direct.”

6. A bare perusal of the provision shows that it is reliable to sale. Both the trial Court and the High Court held that A3 is purportedly to have made a statement that he had sold the kerosene on the way. Similar statement was purportedly given by A4. But the officials proceeded to act on the aforesaid statements which were undisputedly not signed statement. Apart from the fact that the said statement did not in any way implicate the appellants, the effect of such statement to find the appellants guilty has been lost sight of by the High Court. The trial court found that there was no evidence to show and no steps were taken and no investigation was focused, as to whether the articles were sold on the way. The categorical findings of the trial Court and the High Court were that no such sale took place. Even if the stand of the prosecution is accepted that the receipt was not established that would in a sense relate to the purchase and not to sale and, therefore, Clause 13 read with Section 7 of the *Essential Commodities Act, 1955* (in short the `Act') do not have any application. The trial Court was, therefore, justified in directing acquittal of the appellant and the High Court without properly analyzing the legal position directed conviction which cannot be maintained.

7. The appeal is allowed. The bail bonds executed by the appellants for release on bail, pursuant to the order dated 20.4.2008 shall stand discharged.