

: Order Below Ex. 1 :

(1) Brief facts of the case is that police found one Auto Riksha having registered number number GRT 1069 and GTH 8492 were found with Kerosene in its petrol tank and the that auto rickshaw driver accused number 2 and 3 were found to fill the Kerosene in its auto rickshaw from the accused number 1 and therefore police found that kerosene in the nature of essential commodities were found without proper permit/license as required for resale/sale as agent or reseller for accused no 1 and for utilizing for accused no 2 and 3 in their respective rickshaw. And therefore police have taken both the accused in custody and investigated the offense and filed the charge sheet.

(2) Now after Considering the chargesheet and record of the case it is found that police official was neither authorized as required for conducting search and seizure and investigation under the Essential commodities act nor police have produced any document with chargesheet which suggest that particular police official was authorized to conduct such searches and investigation under Essential commodities act at the time of search and investigation.

(3) Hon. Supreme court in Avtar singh V. State of Punjab held in para 9,10,14,15 and 16 that “9. Clause 3 of the Order restricts unauthorized possession of gas cylinders. The submission is that as per clause 7, an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensure compliance with the provisions of the Order, for the purpose of satisfying himself that this order or any order made thereunder has been complied with, is authorised to carry out such exercise/seizure. 10. **In the case in hand, the action has been taken by sub-Inspector of the Police who, as per the Government Order, is not authorised. Hence, the entire case of the prosecution falls.** The aforesaid argument has not been considered either by the trial Court or by the High Court.

14. It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorized by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the SubInspector of the Police was authorized to take action under the aforesaid Order. 15. It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden.

Reference can be made to Dharani Sugars and Chemicals Ltd. Vs. Union of India and Ors. reported in (2019) 5 SCC 480. 16. In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorized and have to be struck down. “

(4) Now considering the charge sheet and documents attached with same it is transpired that the accused has alleged to have committed the offence under section 3 and 7 of the essential commodities act as per the the charge sheet and police official has directly searched and seized the muddamal articles and arrested the person and filed the charge sheet without having any authority from the concerned department and therefore as per the above judgment it is found to be an unauthorized action of the police.

(5) Further looking to charge sheet and case papers it is also transpired that accused person is not found selling the articles in the nature of essential commodities, but utilizing the same for personal use in auto rikshaw as and therefore looking to the section 3 of the essential commodities act which is as follows “ 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, 1 [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], 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 sub-section (1), an order made thereunder may provide— (a) for regulating by licences, 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 food-crops. (c) for controlling the price at which any essential commodity may be bought or sold; (d) for regulating by licences, 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; 2 [(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 of 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 order.”

Now taking into consideration section 3 of the act it is also transpired that the accused no 2 and 3 were not selling it but utilizing it in his own auto rickshaw and therefore section 3 of the act is also not attracted. and further as per the above judgment of the Hon. supreme court police without having any authority can not search and seize the Muddamal and such action of the police is illegal and therefore in such case court can not assume the due procedural aspects when police own its own has raided and filed the charge sheet without having any lawful power under this essential commodities act. and therefore following order is passed:

: order :

- (a) Accused No (1) Lakhdhir Sinh prabhat sinh vaghela (2) Laljibhai Bharwad are hereby discharged from the section 3,7 of essential commodities act and as the accused no 3 is dead the case is abated against him.
- (b) Pronounced in the open court today on 14/09/24.

Rajkot

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