



UPKJ010020702026

In the Court of Sessions Judge, Kannauj

Presiding Officer-Narendra Kumar Jha (H.J.S.) UP02007

Criminal Appeal No. 36 of 2026

Harpreet Singh Sabharwal s/o Ajit Singh Sabharwal, resident of House No. 535, Sector 33B, Chandhigarh.

.....Appellant.

State of Uttar Pradesh.

.....Opposite Party.

JUDGMENT

The present Criminal Appeal has been preferred against the order dated 25.04.2026 passed by the learned District Magistrate/Collector Kannauj, in connection with Case No. 392 of 2026, whereby and whereunder the learned District Magistrate, in exercise of powers under Section 6A of the Essential Commodities Act, confiscated the petrol tanker along with the petrol contained therein and other seized materials, which had been seized by the S.T.F. team.

Initially, the Forensic Science Laboratory (F.S.L.) report was sought for, but the despite given time, the State did not produce the F.S.L. report. The learned counsel for the appellant, on 23.07.2026, submitted before the Court that he was ready to advance his arguments even in the absence of the F.S.L. report. Accordingly, the arguments were heard without the F.S.L. report being brought on record, and the matter is being disposed of on merits.

FACTS

As per the recovery memo, the prosecution case in brief is that the informant, Inspector Dilip Tiwari, In-charge of the S.T.F. Team, Lucknow, received specific information that an organised gang engaged in the illegal theft of ethanol and its adulteration with petrol for the purpose of unlawful trafficking was operating in the area. Acting upon the said information, the S.T.F. team conducted ground surveillance as well as electronic surveillance. Thereafter, on the basis of a confidential informer's tip, on 03.02.2026, the informant along with the police team reached near the Hardoi Flyover on the Kanpur–Aligarh Highway. The confidential informer informed the police party that behind Yash Dhaba, situated near the Kanpur–Aligarh Highway in the open field of Village Manimau, a tanker bearing registration No. **UP 78 LT 3313**, displaying the name "**Nayara Energy**", was stationed, where certain persons were engaged in stealing petrol from the tanker and illegally adulterating the same by mixing it with certain chemicals. Believing the information furnished by the confidential informer to be reliable, the informant/Inspector constituted a joint raiding team and in a well-planned manner, the team proceeded to conduct a raid at the indicated location. Upon reaching the spot, the police party found one person siphoning fuel from the tanker into drums. On noticing the arrival of the police, the said person became perplexed and attempted to flee, however, he was apprehended by the police party after the use of necessary force. Meanwhile, certain other suspicious persons, taking advantage of the darkness and dense fog, escaped towards the adjoining fields and the village and could not be apprehended.

From the spot, the person apprehended was found in possession of six blue-coloured drums, one tanker bearing

registration No. **UP 78 LT 3313**, one pickup vehicle bearing registration No. **UP 74 AT 5484**, one generator, two pipes, and one funnel, all of which were recovered and seized. A recovery memo (Fard Baramadgi) was prepared at the spot in accordance with law, and 27 samples were collected. All the materials, including both vehicles, Drum No. 1 containing 40 liters of adulterated chemical, Drum No. 2 containing approximately 200 liters of petrol, Drum No. 3 containing a 200-liter liquid container, Drum No. 4 containing a 200-liter container of adulterated chemical, Drum No. 5 (empty), and Drum No. 6 containing approximately 170 liters of petrol, were seized by the S.T.F. team, and the matter was reported to the District Magistrate, Kannauj, who initiated proceedings under the Essential Commodities Act.

FINDING OF TRIAL COURT

From the perusal of the order dated 25.04.2026 it appears that Tanker No. UP78 LT 3313, along with approximately 20,000 liters of blended petrol; Pickup No. UP74 AT 5484, along with Drum No. 1 containing 40 liters of adulterated chemical, Drum No. 2 containing approximately 200 liters of petrol, Drum No. 3 containing a 200-liter liquid container, Drum No. 4 containing a 200-liter container of adulterated chemical, Drum No. 5 (empty), and Drum No. 6 containing approximately 170 liters of petrol, were confiscated under Section 6A of the Essential Commodities Act (in short, the E.C. Act).

SUBMISSION

Learned counsel for the appellant submits that the appellant is the registered owner of Tanker No. UP78 LT 3313. The appellant is neither an accused in the present case nor is there any material on record establishing his involvement or complicity in the alleged

offence. It is further submitted that the petroleum contained in the aforesaid tanker was not adulterated. No sample was drawn from the tanker for chemical examination to ascertain any adulteration or violation of the provisions of the Essential Commodities Act or the Rules framed thereunder. Consequently, there is no material on record to establish any adulteration, nor has any Forensic Science Laboratory report been produced in support of the allegations.

Learned counsel further submits that the appellant had entrusted the tanker to its driver in the ordinary course of business. It is also argued that there was an inordinate and unexplained delay in initiating proceedings under Section 6A of the Essential Commodities Act, 1955, which renders the entire proceedings doubtful. Placing reliance upon the judgment of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, it is contended that seized vehicles ought not to be kept in idle custody for an indefinite period. However, the learned District Magistrate passed the impugned order without duly considering the objections raised by the appellant.

Learned counsel further submitted that the Superintendent of Police, Kannauj, in his report to the District Magistrate did not recommend the confiscation of the petrol. However, the learned District Magistrate, in exercise of powers under Section 6A of the Essential Commodities Act, confiscated the petrol as well, which is beyond his jurisdiction and, therefore, liable to be set aside.

It is also submitted that the learned District Magistrate purported to exercise powers under the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000, as is evident from the impugned order. Since the said Order relates to liquefied petroleum gas and not to petrol, the impugned order has been passed under an inapplicable provision, thereby rendering the

exercise of jurisdiction by the learned District Magistrate unsustainable in law. Learned counsel further submits that, in the absence of any Forensic Science Laboratory (F.S.L.) report, it cannot be said that the petrol was adulterated or contraband. Therefore, the order passed by the learned District Magistrate is bad in law. It is further submitted that the learned District Magistrate directed that the petrol be sold to Nayara Energy, which itself indicates that the petrol was neither controlled nor contraband. It is also urged that the tanker is loaded with a highly inflammable substance, namely petrol, and its continued seizure and storage in an open place is not only contrary to law but also poses a serious threat to public safety. Accordingly, it is prayed that the order dated 25.04.2026 passed by the learned District Magistrate be set aside and that Tanker No. UP78 LT 3313, along with the petrol contained therein, be released in favour of the appellant.

POINT FOR CONSIDERATION

In sum and substance, the learned counsel has basically raised the following 4 points for consideration:

1. Whether the jurisdiction of the District Magistrate, Kannauj, under Section 6A of the Essential Commodities Act is subject to the recommendation of the Superintendent of Police?
2. Whether merely passing an order under a wrong provision of law, particularly in a circumstances if such power is vested in the authority under other provision of law, makes the order without jurisdiction?
3. Whether the satisfaction of the District Magistrate under Section 6A of the Essential Commodities Act is subject to any forensic report, or whether such satisfaction can be recorded on the basis of the material available on record?
4. Whether the appellant is entitled to any relief?

DETERMINATION

1. Whether the jurisdiction of the District Magistrate, Kannauj, under Section 6A of the Essential Commodities Act is subject to the recommendation of the Superintendent of Police?

For the purpose of determination of this issue it is necessary to take note of Section 6A(1) of Essential Commodities Act, 1955-

Confiscation of foodgrains, edible oilseeds and edible oils.-Where any [essential commodity is seized] in pursuance of an order made under Section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency-town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector, [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him and if he is satisfied] that there has been a contravention of the order [may order confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

From the provisions of Section 6A of the Essential Commodities Act, it is clear that where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, the Collector of the District, whether or not prosecution is instituted for

the contravention of such order, may, if he thinks it proper to do so, direct that the essential commodity so seized be produced for inspection before him, and if he is satisfied that there has been a contravention of the order, he may order its confiscation. From the aforesaid provision, it is clear that the jurisdiction of the Collector of the District commences the moment an essential commodity is seized in contravention of the order and the matter is reported to him. The provision does not create any embargo upon the powers of the District Magistrate. It nowhere provides that the powers of the Collector under Section 6A are subject to the report or recommendation of the reporting authority. The submission of the learned counsel for the appellant to the effect that the Collector exceeded his jurisdiction merely because the Superintendent of Police, Kannauj, did not recommend the confiscation of the petrol is not only misconceived but, if accepted, would lead to devastating consequences as reporting authority may, for any reason, intentionally or otherwise, omit to recommend confiscation of a particular commodity. Acceptance of such a contention would amount to reading into the statute a condition which the legislature has never contemplated.

Accordingly, the first submission advanced by the learned counsel for the appellant is rejected, and it is held that the powers of the learned Collector under Section 6A of the Essential Commodities Act are not subject to the recommendation of any authority.

2. Whether merely passing an order under a wrong provision of law, particularly in a circumstances if such power is vested in the authority under other provision of law, makes the order without jurisdiction?

The law is fairly well settled that, merely quoting a wrong provision at the time of passing the order does not make the order without jurisdiction if the power is vested in that authority under

other source of law. It is true that the Collector, in its order dated 25.04.2026, has referred Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000, but that itself does not make the order bad in law if the power is vested in the Collector under some other provision of law.

The Hon'ble Supreme Court in Vikram Singh Junior High School v. District Magistrate, (2002) 9 SCC 509, has held that merely because a wrong provision has been quoted by the authority while exercising its power would not invalidate the order if it is shown such an order can be passed under the law.

Further, the Hon'ble Supreme Court in Ram Sunder Ram v. Union of India, (2007) 13 SCC 255, has held that if an authority has the power under the law, merely because, while exercising that power, the source of such power is not specifically referred to, or reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power, so long as the existence of such power can be traced to a valid source of authority in law.

From the above settled principle of law, it is clear that quoting a wrong provision of law does not render an order without jurisdiction. Rather, the Court is required to ascertain whether the power to pass such an order exists under any other source of law.

The Government of India, in exercise of its powers under Section 3 of the Essential Commodities Act, has issued the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. Under the said Order, the power is to be exercised by the District Magistrate if it is found that any malpractices have been committed. The term "malpractices" has been defined under Clause 2(f) of the said Order, which includes adulteration, unauthorized exchange, unauthorized purchase, and unauthorized sale. Thus, the Order 2005 clearly

confers that power upon the District Magistrate. If the above settled position of law is applied to the facts of the present case, it would be evident that, although the Collector has quoted a wrong provision, the source of law under which the Collector has exercised that power is available. Thus, the wrong provision quoted by the learned Collector does not render the order without jurisdiction. Hence, the argument advanced by the learned counsel for the appellant is rejected.

3. Whether the satisfaction of the District Magistrate under Section 6A of the Essential Commodities Act is subject to any forensic report, or whether such satisfaction can be recorded on the basis of the material available on record?

The recovery memo itself suggests that the tanker was not seized by the local police; rather, it was seized by the S.T.F. team with the help of the local authorities. The recovery memo clearly suggests that when the joint team of the S.T.F. and the local police reached at the place where the tanker was situated, it was found that one person was busy stealing petrol from the tanker and the same was being filled into drums. That person was arrested, and he was none other than the driver of the tanker, i.e., the incharge of the tanker and the tanker belong to the present appellant. The recovery memo further suggests that in Drum No. 2, 200 litres of petrol were found, in Drum No. 3, 200 litres of petrol were found, in Drum No. 4, 200 litres of contraband chemicals were found and in Drum No. 6, 170 litres of petrol were found. At the spot, another vehicle bearing registration No. UP74 AT 5484 was also found. Thus, when the S.T.F. team reached the place of occurrence, it was found that the tanker of the present appellant was involved and petrol from the said tanker was being shifted into drums. Three drums were found containing 200 litres, 200 litres and 170 litres of

petrol, respectively. The reason for the withdrawal of the petrol from the tanker was not explained. The recovery memo further states that 27 samples were collected. At this stage, it would be profitable to take note of Clause 2(f) of the Order, 2005, which clearly provides that "malpractices" include adulteration, unauthorized exchange, unauthorized purchase, unauthorized possession and unauthorized sale. If the recovery memo is taken into consideration, it clearly suggests that even if it is presumed that the petrol was not adulterated, malpractices were being committed by the driver of the tanker, as he had unauthorizedly lifting the petrol and taking unauthorized possession of the petrol to the extent of 570 litres. Thus, even in the absence of the FSL report on record, the material available was sufficient for the Collector to exercise the power under Section 6A of the Essential Commodities Act, read with the Order, 2005. Therefore, the argument of the learned counsel for the appellant to the effect that, in the absence of the FSL report, the Collector ought not to have confiscated the tanker and the seized commodities is also liable to be rejected.

So far as the argument of the learned counsel for the appellant to the effect that the petrol was not adulterated, which is evident from the order of the Collector whereby the same was directed to be sold to Nayara Energy, is concerned, it is to be recorded that the exercise of power by the Collector under Section 6A of Essential Commodities Act will always be read with the Order, 2005. Though the State has tried to justify the sale to Nayara Energy as Nayara has mechanism to dispel the allegation of adulteration part of the petrol, this Court is of the opinion that the Collector can confiscate the petrol not only in cases of adulteration but also in cases involving other malpractices under order 2005.

The recovery memo clearly shows that the tanker incharge/driver was involved in unauthorized exchange, unauthorized sale, or unauthorized possession. Thus, the said argument also fails, as the exercise of power is not confined only to cases of adulteration of petrol but extends to other malpractices as well.

During the course of arguments, the learned counsel also contended that whatever was done had been done by the driver and that the present appellant had no connection with the same. Hence, it was argued that his tanker and the petrol ought not to have been confiscated.

To deal with this argument, Section 6B(2) assumes importance which is as follows-

Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under Section 6-A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

From the provision, it is clear that the no knowledge of malpractices can be invoked only if the owner satisfies the Collector that the owner of the vehicle or incharge of the vehicle had taken all reasonable and necessary precautions against such use. Thus, the owner is supposed to prove or satisfy the Collector that the owner of the vehicle or incharge of the vehicle had taken all reasonable and necessary precautions to avoid all malpractices as defined under the Order, 2005.

It is not in dispute that the driver of the tanker, at the relevant point of time, was the employee of the owner and incharge of the vehicle. The malpractices were alleged to be committed by him or in his presence. Section 6(B)(2) purports that even agent or incharge of the vehicle has to take reasonable and necessary precaution. It is not the case of the appellant that his driver had taken all the reasonable and necessary precaution against what has taken place. Hence, even this, the argument advanced by the learned counsel for the appellant is liable to be rejected.

4. Now, the only issue which requires consideration is whether the appellant is entitled to any relief.

The second proviso to Section 6A of the Essential Commodities Act provides as follows:

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

The aforesaid provision clearly provides that in the case of a vehicle, vessel or other conveyance used for carrying the seized essential commodities, the owner of such conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price, as on the date of seizure, of the essential commodities sought to be carried by such vehicle or vessel.

The learned Collector has not exercised this power and has not given an opportunity to the owner of the vehicle to opt for the release of his vehicle in lieu of payment of fine, as provided under Section 6A of the Essential Commodities Act. Thus, if the appellant wants to get his vehicle released, he may move an application before the Collector in terms of the second proviso to Section 6A. If he deposits the fine as provided under the said provision, the

Collector may release only the vehicle and not the other seized essential commodities.

From the above discussion, this Court does not find any merit in the appeal, and the same is liable to be rejected. Any Interim order, if any, also gets vacated.

ORDER

Criminal Appeal No. 36 of 2026, Harpreet Singh Sabharwal v. State of U.P., filed by the appellant, is rejected, subject to 2nd proviso of the above modification in terms of the provisions contained in Section 6A of the Essential Commodities Act.

Dated: August 01, 2026.

(Narendra Kumar Jha)
Sessions Judge, Kannauj.
J.O.Code UP02007

I signed, dated and pronounced this judgment in open Court today.

Dated: August 01, 2026.

(Narendra Kumar Jha)
Sessions Judge, Kannauj.
J.O.Code UP02007