

A M/S. IPOUR GKC & RKC & SONS & ANR.  
V.  
STATE REP. BY STATION HOUSE OFFICER  
PONDICHERRY & ORS.  
(Criminal Appeal No. 504 of 2001)

B AUGUST 28, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

C *Pondicherry Kerosene Control Order, 1969/Essential  
Commodities Act, 1955 – Clause 13/ s.7 – Violation of the  
provisions – Vehicle reporting carrying kerosene for the  
D accused firm found empty at check-post – Driver and cleaner  
of the vehicle stated to have sold the kerosene on the way –  
Prosecution of the firm, its partner, driver, cleaner and retail  
dealers on the basis of the statement – Trial court acquitting  
all the accused – High Court convicting the firm and its partner  
– On appeal, held: The provisions are not applicable to the  
present case so as to warrant conviction of the firm and its  
E partner.*

Seven accused were charged for having violated  
Clause 13 of Pondicherry Kerosene Control Order, 1969.  
Appellant-A1 was a partnership firm-wholesale dealer of  
kerosene. Appellant-A2 was the partner of the firm, A3  
F and A4 were the driver and cleaner respectively of the  
vehicle in which the kerosene was being imported to A1  
firm. A5, A6 and A7 were the retail dealers of kerosene.

According to prosecution, the vehicle reporting  
import of 11,000 litres of kerosene, when was stopped  
G and checked at the checkpost, it was found empty.  
Statement of A3 (driver) was recorded to the effect that he  
had sold the oil on the way. The statement, however, was  
not signed by him. Prosecution was initiated. Trial court  
acquitted all the accused. High Court convicted A1-firm

and A2-Partner and upheld acquittal as regards other accused. Hence the present appeal. A

Allowing the appeal, the Court

HELD:Both the trial Court and the High Court held that A3 is purported 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 of Pondicherry Kerosene Control Order, 1969 read with Section 7 of the Essential Commodities Act, 1955 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. [Para 6] [895 H 896 A,B,C,D] B  
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CRIMINALAPPELLATE JURISDICTION : Criminal Appeal  
No. 504 of 2001

From the final Judgment and Order dated 22.11.2000 of the High Court of Judicature at Madras in Criminal Appeal No. 401 of 1993 G

M. Karpaga Vinayagam, Anil Kaushik, Shiv Prakash Pandey and Gopal Singh for the Appellants.

V. Kanakraj, S.J. Aristotle, V.G. Pragasam and H

A Prabhuramasubramanian for the Respondent.

The Judgment of the Court was delivered by

B **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.

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

D 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.

F 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. 6124 dated 01-07-1984, which has been marked as Ex.P2 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

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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 ingredients 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 relatable 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 relatable to sale. Both the trial Court and the High Court held that A3 is

A purported 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

B 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

C 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

D in directing acquittal of the appellant and the High Court without properly analyzing the legal position directed conviction which cannot be maintained.

E 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.

K.K.T.

Appeal allowed.