

District Sialkot.

IN THE COURT OF MR. TARIQ MEHMOOD IQBAL KHAN
DISTRICT & SESSIONS JUDGE /PRESIDING OFFICER,
DISTRICT CONSUMER COURT, SIALKOT / NAROWAL.

Case No. 34 /2008

Date of Institution: 31-03-2008.
Date of Decision: 17-07-2008.

The State through Authority (DCO), Narowal.
(Complainant)

Versus.

Muhammad Javid S/O Din Muhammad Rajpoot by caste R/O Dhodho
Chack & Shop situated in Pindi Bhorri, Tehsil Shagr-Garrh District
Narowal. (Service Provider-Respondent)

ORDER:

Instant order disposes of the reference No.12/2008, launched at the instance of Authority (DCO), Narowal, against the above named service provider-respondent (Muhammad Javid S/O Din Muhammad, Rajput by caste, R/O Dhodho Chack & Shop Situated in Pindi Bhorri, Tehsil Shagr-Garrh, district Narowal), for the allegations of faulty and defective service by illegal exposure and sale of inflammatory material (petrol) in open place of Pindi-Borri Market, Tehsil Shagr-Garrh, district Narowal, likely to entail into risk/danger to human life and property.

2. The briefly stated facts of the instant matter, as emerged out of complaint (Ex-A.w.1/A), drafted and sent by (A.w.1) Muhammad Rafique NTR, Shagr-Garrh are that he (A.W.1) on 13-02-2008 in the company of (A.W.2) Nazir Ahmad (C-521) and (A.w.3) Muhammad Hafeez, (Naib-Qasid) raided the shop/spot of episode where a drum alongwith 4-5 bottles, all filled with petrol alongwith a measuring

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scale (although, no article taken into possession), were found in ownership and in possession of respondent (Muhammad Javid) in front of his shop. On query the respondent (Muhammad Javid) failed to produce any permit or license for keeping or sale of inflammatory material (petrol) at open place, resultantly, finding his violatory

action the above mentioned complaint was drafted and was sent to Authority (DCO), Narowal, for lawful proceeding.

3. The Authority (DCO), Narowal sent the instant matter to DDO (R) Shahr-Garrh, for inquiry who while recording statement of respondent Muhammad Javid coupled with his affidavit sworn by him recorded his positive finding against respondent, thus, in pursuance of complete inquiry the instant reference was submitted to this Court as per terms of Sec. 23 (3) of the PCP Act, 2005.

4. In pursuance of receipt of instant reference the respondent Muhammad Javid was called upon to submit his written reply, who while seriously controverting the allegations, submitted his written reply with absolute denial. As per pleadings the whole allegations levelled against him were false, baseless and fabricated.

5. Keeping in view the controvertional stances of both sides, the parties were asked to lead their respective evidence.

6. In support of the allegations/charges against respondent the State produced (A.w.1) Muhammad Rafique (NTR), Shahr-Garrh (A.W.2), Nazir Ahmad (C/521), Muhammad Hafeez (Naib-Qasid) in witness box and closed the evidence.

The respondent in rebuttal examined himself as (D.W.1) in support of his version, whereas, examined Zafar Ali Qazi (D.W.2) and close the evidence in defence.

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7. It is worth to mention that (Muhammad Javid) respondent disclosed a new story in as much as inflammatory material (petrol) was ownership and sold, at the time of raid, by proprietor of Ali PCO, an adjacent shop, accordingly, this Court while exercising its powers, in the ends of justice, requisitioned the attendance of proprietor of Ali PCO, namely Muhammad Anwar (C.W.1) who denied the allegations and supported the version of the State side although granting some favour to respondent.

8. Learned A.D (Legal) in support of the allegations/charges against respondent maintained, I) that all the three (A.Ws) consistently supported and corroborated the allegations/charges against respondent, II) that despite lengthy cross examination by respondent side the veracity/authenticity of the (A.Ws) remained

consistent, unshattered and unrebutted, III) that no serious differences or variations or contradiction are visible or pointed out in the depositions of the (A.Ws), whereas, defence/rebuttal evidence was adduced in total contrast of affidavit sworn by him before the enquiry officer, IV) that no doubt nothing was taken into possession by the raiding party but wholesome of charges are proved and established against the respondent and V) that admittedly petrol is seriously inflammatory material, which may entail into risk/danger to human life and property in open place.

9. On the other hand learned counsel for the respondent while strenuously controverting the arguments advanced by learned A.D (Legal) laid emphasis I) that the entire case against the respondent is fabricated and malicious. II) that no article or petrol was ever taken into possession by the raiding party from the spot of raid to prove

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possession and ownership of respondent. III) that admittedly the place of incident was thickly populatedly where numerous public witnesses were available but none was joined in the proceedings which also reflect the malice of the raiding party. IV) that (A.W.2) Muhammad Nazir C-251 and (A.W.3) Muhammad Hafeez are subordinate to (A.W.1). Muhammad Rafique (NTR) who are not expected to go beyond the instructions of their superiors and V) that State side has miserably failed to prove and establish its allegations and charges against the respondent whereas, (D.Ws) as well as (C.W.1) demolished the evidence of State side.

10. Arguments of both sides heard. Record also perused.

11. It is depicted that complainant Muhammad Rafique (NTR), Shahr-Garrh in the company of (A.W.2) Nazeer Ahmad, C-251 and (A.W.3) Muhammad Hafeez, Naib Qasid, raided at the shop of respondent Muhammad Javid situated in Pindi-Bhorri, on 13-02-2008 and found the respondent indulged a foul and defective as well as illegal business/service of sale of petrol-a high inflammatory material, in open place and there is/was every risk/apprehension of danger to human life, health and property.

On asking by the complainant (A.W.1) respondent failed to produce any permit/license regarding the sale of petrol in open place which culminated into the drafting of complaint (Ex-A.W.1/A).

12. While calculating the testimonies of the A.Ws, it is manifest that all the three A.Ws not only supported the complaint (Ex-A.W.1/A) but also corroborated each other without any service, lacuna, difference or inconsistency, even, despite lengthy cross examination the respondent side failed to shatter or injure their veracity.

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13. While keeping the allegations/charges of the State regarding illegal service/sale of petrol by respondent in open place and version of respondent viz-a-viz at his goldsmith shop he used to do the business of rent a Motor-Cycle for which he had kept petrol in bottles for his own business, in juxtaposition the Court has no other option but to draw an irresistible conclusion that under the shelter of business of rent a Motor-Cycle the respondent used to sell the petrol i.e. a highly inflammatory material but he had to try the repel the allegations/charges of State on account of non recovery/taken possession of case property by the complainant, while twisting the facts.

14. While further dilating on this aspect, it is also evident from the deposition of respondent, Muhammad Javid (D.W.1) that at the relevant time his neighborer Ali PCO was used to sell/supply petrol and that a pillar of his shop showed a writing that Petrol is available, while taking a somersault in order to create doubt in the mind of Court, thus, in order to deliver complete justice Muhammad Anwar (C.W.1) was summoned and examined who frankly denied such allegations and also stated that it was respondent who was indulged in keeping petrol at his shop in 5-6 bottles round the clock, for his Motor-Cycles.

It is also in the evidence of (C.W.1) as well as respondent (D.W.1) that a common pillar between his shop and of respondent Ali PCO the words were painted.

In addition to above both (D.Ws) consistently and categoriously disclosed that respondent had business of Rent a Motor-Cycle where he used to keep petrol in the bottles.

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In view of all these circumstances the Court has no other option but to repel and disbelieve the evidence of (D.Ws), even otherwise,

the written reply placed by Muhammad Javid respondent is silent about the business of rent a Motor-Cycle as well as keeping of petrol in bottles. All this shows that initially the respondent Muhammad Javid denied the allegations/charges of the State in totally but during evidence he took exception from the pleadings and it is settled by superior Courts of Pakistan that none is allowed to take exception or deviations from his initial version setup in the pleadings, failing which any volume of the evidence adduced will not be considered by the Court of justice.

So far as the evidence of (C.W.1) Muhammad Anwer, proprietor of Ali PCO that the respondent had no drum of petrol or measure is no more than blatant concession to his neighborer, is hereby excluded from the consideration.

15. Again adverting to allegations/charges of the State, it is apparent that no article was taken into possession by the State machinery or complainant (A.W.1) at the time of the raid but this aspect cannot be left unnoticed that complainant, Naib Tehsildar was not skilled in investigation as a result of which he failed to take the same into possession i.e. entire illegal material/case property. Be that as it may where a case is otherwise proved particularly from defence/rebuttal evidence the recovery of such article become of no value.

16. The objection taken by learned counsel for the respondent that no public witness was ever joined at the time of raid by complainant (A.W.1) and that (A.W.2) Nazeer Ahmad C-251 and as well as (A.W.3) Abdul Hafeez are subordinate to complainant as such are

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interested witnesses but this Court is not in agreement with the objection raised by the respondent side in the absence of any provisions malice, hostility or amenity, even, such witnesses are not expected to fabricate false and fake stories against common citizen.

17. So far as the objection of non sending of fake customers is concerned is against normal policy set down by superior Courts of Pakistan as well as Islamic Injunctions, accordingly, this objection is, hereby, ruled out of the consideration.

18. While concluding the above mentioned circumstances this Court is of the fortified view that allegations/charges levelled against respondent, Muhammad Javid at the instance of State regarding defective and illegal sale/service of petrol in open place by respondent (Muhammad Javid) without any adequate measures and in the absence of any permit or license is gross contravention of Sec. 7 of the PCP Act, 2005.

19. It is not disputed that product of petroleum or petrol itself lying in open space in the possession of a person without prescribed warning rules, is of such characteristics that it may cause damage to human life, health and property, even, respondent had failed to mention anywhere in his pleadings as well as evidence that he had taken reasonable care and provided adequate warning during the handling of such service, accordingly, this Court has no other option but to impose Fine in sum of Rs. 30,000/- (Rupees Thirty Thousands) depositable in the *State Treasury within Five days* positively, failing which he will be dealt strictly as per terms of Sec. 32 of PCP Act, 2005, and that respondent is directed to restrain such illegal service in future with the clarification that Authority (DCO), Narowal not

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only will keep his eyes open upon his shop in order to control respondent's such illegal service in future and will also take every possible and reasonable steps to remove such products in the illegal possession of any person within his jurisdiction, under intimation to this Court. A copy of this order be transmitted to the Authority (DCO), Narowal for compliance. The Authority (DCO), Narowal, is also asked to his officers, deputed on such raids, to take into possession such illegal articles in order to protect the consumers' life and property. File be consigned to the record room after its due compilation.

Announced:

17-07-2008.

Presiding Officer,
District Consumer Court
Sialkot/Narowal.

CERTIFICATE

Certified that this order contains eight pages and each of page is dictated, corrected and signed by me.

Announced:
17-07-2008

Presiding Officer,
District Consumer Court
Sialkot/Narowal.