

Neutral Citation No. - 2023:AHC:217166

A.F.R.

Reserved On: 07.07.2023

Delivered On: 08.11.2023

Court No. - 50

Case :- CRIMINAL REVISION No. - 4752 of 2022

Revisionist :- Vishnu Kumar Saini

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ankit Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard Sri Ankit Agarwal, learned counsel for the revisionist, Sri Sameer Shanker, learned AGA-I for the State and perused the material placed on record.

2. Instant criminal revision has been preferred against the impugned judgement and order dated 29.9.2022, passed by Special Judge (E.C.) Act/Additional Session Judge, Court No.14, Bulandshahr in Criminal Appeal No.110 of 2022, Vishnu Kumar Saini vs. State of U.P., whereby the appeal filed against the order dated 21.5.2022, passed by Additional District Magistrate (Administration), Bulandshahr, in Case No.1667 of 2021, State of U.P. vs. M/s Gold Shan Bhog Aata Flour Mill (Proprietor Vishnu Kumar), under Section 6-A of Essential Commodities Act has been dismissed and impugned order passed by A.D.M. (Administration) has been affirmed.

3. The factual matrix of the case in brief are that the action in present case was initiated at the instance of Letter No.1155/Enforcement/2021 dated 23.7.2021 of District Supply Officer, Bulandshahr, in which he informed that on 21.6.2021, he led

a raid alongwith Tehsildar (Judicial), Khurja, Sri Rakesh Kumar Sharma, Ashish Srivastava, Supply Inspector and Police Officials on directions of U.P. Zila Adhikari, Khurja at 4:30 P.M. and found that illegal sell and purchase of food grains of Public Distribution System/Mid Day Meal was being carried out there. The Proprietor of said flour mill, Vishnu Kumar Saini and his brother Narendra Kumar Saini were found there, who produced the license of flour mill and documents relating to G.S.T. As many as 400 sacks were found in disarranged manner on the floor of said flour mill, which included 180 quintal wheat and 3 quintal rice kept in five sacks were also found. These sacks were tied by handmade thread. Apart from that, 6 sacks, the opening thereof was sealed by Government stitches were produced at the flour mill, at that time by Mrs. Neeraj Goswami, a Primary School Teacher, who could not give any plausible explanation for the same and stated that she had come there to return said wheat, as the wheat was allotted by the Government, under Mid Day Meal Scheme in lieu of 'Atta', borrowed by school from said flour mill.

4. Case under Section 3/7 of E.C. Act was registered against proprietor of Goldson Bhog Aata, Flour Mill namely, Vishnu Kumar Saini and his brother, as they failed to give any explanation of storing this huge amount of rice and wheat in the flour mill. As Mid Day Meal does not come within the purview of Public Distribution System, the departmental action was initiated by said school teacher. It was found that the Proprietor of flour mill was converting the nature of food grains of PDS system to earn unlawful gain and this was black marketing of food grains, which belongs to P.D.S. System. All the food grains which included five quintal of flour, 50 sacks of 12.50 quintal chokar, 180 quintal wheat, 3 quintal rice and

Government stitched 6 sacks of wheat (3 quintal) brought by said school teacher found in flour mill were kept by Searching Officer in the flour mill and its doors were closed and sealed and security thereof was intrusted to S.H.O., concerned.

5. A notice under Section 6-B of E.C. Act was issued to proprietor of Flour Mill namely, Vishnu Kumar and his brother Naredhra Kumar Saini by Additional District Magistrate, (Administration), Bulandshahr on 28.7.2021. They appeared and filed their reply on 2.8.2021 before ADM (Administration), in which they have stated that they had not violated any control order or regulation issued under E.C. Act. The Supply Inspector has sealed their flour mill in illegal manner and all the food grains which were brought for grinding were kept inside the mill, which was sealed. Some food grains, supplied to school under Mid Day Meal were brought to the mill for grinding, but same was illegally detained and sealed due to which the opposite parties were facing much loss. They have moved an application for opening of the seal of their flour mill and also filed application for release of the food grains seized by District Supply Officer and his team. The statement of Supply Inspector and Neeraj Goswami, the Head Master, Primary School No.15 was recorded before ADM. The opposite party/revisionist produced receipt of Mandi Samiti dated 15.6.2021 and bill of firm Kali Charan Sanjiv Kumar dated 15.6.2021, which was sent for verification of Sachiv, Mandi Samiti. Mandi Samiti, in its report informed that agricultural produce wheat amounting Rs.57.60 quintal was sold to M/s God Sambhog Mill, Khurja, at the rate of Rs.22,00/- per quintal. However, online form No.6 and 9 were not issued to firm M/s Kali Charan Sajiv Kumar for entry of wheat. The seized food grains were inspected in presence of opposite party Vishnu Kumar. A Criminal

Case under 3/7 of E.C. Act was lodged against Vishnu Kumar and his brother Narendra Kumar Saini for hoarding food grains. However, learned ADM (Administration) vide impugned order dated 21.5.2022, confiscated the case property, which consisted of 2.5 quintal flour (atta), 12.5 quintal chokar, 180 quintal wheat, 8 quintal rice and 6 sacks consisting of 3 quintal wheat brought by said school teacher in favour of Government and District Supply Officer, Bulandshahr was directed to get the seal of flour mill opened and bring the said food grains recovered therefrom to auction. It is also directed that the sale proceeds were deposited in State Exchequer, which will be subject to final order by the competent Court in Case Crime No.797 of 2021.

6. Feeling aggrieved by the said confiscation order, the revisionist, who is proprietor of said flour mill preferred a Criminal Appeal No.110 of 2022 before the Court of Session, which was dismissed vide order dated 29.9.2022 by learned Special Judge (E.C.) Act/Additional Session Judge, Court No.14, Bulandshahr. Learned appellate court has found no factual or legal error in impugned order and affirmed the impugned order.

7. Learned counsel for the revisionist submitted that the learned courts below have rejected his release application in illegal manner. This fact is not established that the seized food grains from flour mill operated by the revisionist were part of Public Distribution System. Therefore, no case under Section 3/7 of E.C. Act is made out. The revisionist was made accused in criminal case registered under Section 3/7 of E.C. Act, vide Crime No.797 of 2021, wherein he is enlarged on anticipatory bail by orders of this Court dated 4.1.2022, passed in Criminal Misc. Anticipatory Bail Application U/S 433 Cr.P.C. No.13861 of 2021, till submission of police report. In show

cause notice issued under Section 6-B of EC Act, learned ADM failed to specify as to which particular provision of U.P. Scheduled Commodities Distribution Order, 2004 and U.P. Essential Commodities (Regulation of sale and distribution control) Order, 2016 has been violated by the revisionist, hence, the case of the revisionist is covered by the decision laid down in 1982 ACC 514 and 1992 (EF), in which this court held that the show cause noticed issued under Section 6-B of EC Act must state the grounds under which the confiscation is intended to be made. The revisionist used to purchase food grains from shop keepers and sell the same to the customers. A true copy of the bill issued in favour of the revisionist has been filed as Annexure No.7 of the affidavit. Without specifying the breach of particular control order issued by State or Central Government, no proceeding under Section 3/7 of E.C. Act, can be launched against a person. The opposite party has failed to connect the alleged recovered food grains to any ration dealer or any Government godown as nobody can obtain food grains except the ration dealer or godown owners. No ration dealer has reported any case of theft with regard to said food grains. Even, no report has been lodged at the instance of school regarding shortage of grains allotted under Mid Day Meal. There is no evidence against the revisionist in respect of the allegations of black marketing. In fact the alleged food grains belongs to revisionist and same is liable to be released in his favour. He lastly submitted that a copy of final/closure report filed by the Investigating Officer of concerned criminal case registered vide Crime No.797 of 2021, under Section 3/7 registered against the revisionist in which final report has been filed in favour of the revisionist on 28.4.2023 and no offence has been made out in respect of seized food grains. Therefore, due to subsequent developments

also, the impugned orders are not sustainable and the seized food grains are liable to be released in favour of the revisionist.

8. Per contra, learned AGA-I submitted that the detailed objections are filed by way of counter affidavit dated 20.4.2023 by Sub Inspector of Police. A huge quantity of food grains were seized from flour mill of the revisionist and he could not give plausible explanation for restoring the same, in the mill in disarranged manner. The impugned confiscation order passed by ADM is just, proper and in accordance with the provisions of law. However, he did not deny the fact that the revisionist is a proprietor of firm registered in the name of M/s Goldson Bhog Aatta and a license and GST was issued to the firm by the Government. He also could not deny the fact that a final report has been filed in favour of the revisionist by the Investigating Agency with finding that during investigation, sufficient evidence could not be found against the accused persons, namely, Vishnu Kumar Saini and Narendra Kumar Saini.

9. From perusal of record, it appears that the revisionist filed a Writ C No.6421 of 2022 (Vishnu Kumar vs. State of U.P. and 2 others), before this court against sealing order of his flour mill by the Government and officials wherein, this court directed the respondent No.3 to file a copy of control order which has been allegedly violated by the petitioners and also to disclose the evidence as to how goods found lying in the petitioner's flour mill have been linked with the food grains under the Mid Day Meal Scheme. In case the goods reserve for Mid Day Meal has been diverted to the revisionist's flour mill, there has to be some complaint or evidence from relevant quarter that the goods which are supplied under Mid Day Meal were short form or have been stolen. This is specific case of the petitioners that neither any ration dealer or other persons has reported shortage

of food grains reserved under the Mid Day Meal Scheme. The respondent No.3 was also directed to re-visit the matter, if he finds the said aspects were not considered earlier. In compliance of above order of this Court, the District Magistrate, Bulandshahr revisited the matter and gave a finding that on perusal of record, no control order issued by the Government consisting the present matter was found. The matter does not come within the purview of Uttar Pradesh Essential Commodities (Sale and Distribution Control Regulation) Order, 2016 because this regulation covers only those food grains and essential commodities, which comes within the purview of PDS System and this is issued to maintain proper distribution of food grains amongst eligible ration card holders. The Supply Inspector has also accepted that the food grains under Mid Day Meal are not covered within the public distribution system under E.C. Act. No evidence was found on record which could suggest that the food grains found in flour mill were same food grains which are allotted to fair price shops or under Mid Day Meal Scheme. This fact has also not emerged during investigation that the food grains seized from the flour mill of the petitioners were found to be stolen from any person or institution or some shortfall was found in food grains supplied to any such person or institution. The learned District Magistrate observed that as no violation of any control order was found on the part of the petitioners, therefore, there is no action to continue sealing of his flour mill and thus, action of Supply Inspector Ashish Srivastava whereby, the flour mill of the petitioner is seized is set aside and said flour mill is released under occupation of the petitioners.

10. In the light of above findings and order of District Magistrate dated 2.7.2022 as well as other material available on record, this is

obvious that no violation of any food control order has been found in the matter. The said food grains, although, in large quantity are found in the premises of the revisionist out of which 6 sacks, each weighing 50 kgs, having 3 quintals wheat were found to be brought by a primary school teacher Mrs. Neeraj Goswami, which was stitched by government seal. Many aspects of the case are already clarified in aforesaid order of District Magistrate dated 2.7.2022 whereby the sealing order of the premises of flour mill, owned and operated by the revisionist was set aside and the premises are released in favour of the revisionist. The documents filed by the revisionist before the courts below in respect of his claim over seized good grains have not been duly considered.

11. I have gone through the Uttar Pradesh Scheduled Commodities Distribution Order, 2004 as well as Uttar Pradesh Essential Commodities (Regulation of Sale and Distribution Control), Order 2016, paragraph No.22 of Uttar Pradesh Scheduled Commodities Distribution Order, 2004 give power of entry, search and seizure etc to the Food Officer, competent authority, Senior Supply Inspector or Supply Inspector to enter, inspect or break open and search any place or premises, vehicle or vessel, in which he has reason to believe that any contravention of the provisions of this order has been or is being or is about to be made. He can seize any scheduled commodities, if he is satisfied that there has been contravention of this order. Learned AGA could not point out any contravention of this distribution order, 2004 and learned District Magistrate in order dated 2.7.2022 has categorically stated that the matter does not come within the purview of this control order, 2016. Therefore, the confiscation and auction of seized food grains has lost its significance in view of subsequent developments as the Investigating Agency has submitted

closure report in criminal case lodged against the revisionist in respect of seized food grains under Section 3/7 of E.C. Act. Therefore, the impugned orders passed by the learned courts below are not sustainable in view of foregoing discussion and the same is liable to be set aside.

12. Accordingly, present criminal revision stands allowed.

13. The competent authority/ADM (Administration), Bulandshahr is directed to release the seized food grains in present matter from flour mill of the revisionist **(barring 6 stitched sacks containing 3 quintal wheat allegedly allotted to the Government Primary School and brought by teacher Mrs. Neeraj Goswami at the mill at the time of search and seizure)** after taking a personal bond and one surety from the revisionist of the market value of said seized food grains with undertaking to produce the same or its equivalent price before the court as and when required and in case the auction has been already carried out, the sale proceeds will be released in favour of the revisionist, subject to final judgement/order of the court concerned in the matter.

14. Let copy of this order be forwarded to District Magistrate, Bulandshahr for compliance and necessary action.

Order Date :- 8.11.2023

Kamarjahan