

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5 OF 2015

Jayesh Jeevraj Haria .. Petitioner
-Versus-
The Controller of Rationing
Mumbai and Anr. .. Respondents

Mr.Bhavesh Thakur i/b. Rahul Arote for petitioner
Mrs.V.S.Mhaispurkar, APP for State.

CORAM : M.L.TAHALIYANI, J.

DATE : 20th April 2015.

P.C.

1] This petition impungns an order passed by the learned Additional Sessions Judge, for Gr. Mumbai in Misc. Application No.3096 of 2014 in Criminal Appeal No.934 of 2014.

2] Petitioner's stock of oil was seized by the Food and Civil Supplies Department. The premises searched by the Food and Civil Supplies Department resulted into recovery of stock of various oils, including Palm oil and Palmolive oil. The enquiry revealed that the stock was more than what was permitted under the Order issued

under section 3 of the Essential Commodities Act. The enquiry also revealed that some of the oil was found adulterated or of inferior quality. On the basis of these allegations, the competent authority has directed confiscation of whole of the stock. It was further directed that the stock which was not found adulterated, should be sold and the sale proceeds shall be credited to the State Government. The adulterated oil was directed to be sold for being used for the purpose other than edible oil. The petitioner filed an appeal against the said order before the learned Sessions Court at Mumbai. The matter was heard by the learned Additional Sessions Judge, Court No.21 and following interim order was passed:-

“1. Application partly allowed on following condition.

(a) Applicant to furnish bank guarantee of nationalise bank of Rs.18,73,026/- only equivalent to the price of goods (i) coconut oil 270 kg. Worth of Rs.34,020 (ii) Sesam seeds oil – 2 to 5 kg worth of Rs.32,850 (iii) Sunflower oil 4064 kg. Worth of Rs.3,00,736; (iv) Rice brand 3156 kg. Worth of Rs.2,21,550 (v) Soyabin oil 17,276 kg. Worth of Rs.12,09, 320, (vi) Vanaspati oil 1050 kg. Worth of Rs.74,550/- total goods worth of Rs.18,73,026/- only in favour of Registrar(s) of this court;

(B) On getting the compliance of above condition respondent shall hand over goods/ edible oil mentioned above to the applicant for disposal as above;

(C) Prayer of applicant in respect of palm oil 7623 kg. Worth of Rs.4,80,438, Mustered oil 855 kg. Worth of Rs.82,935/- and groundnut oil 306 kg. Worth of Rs.27,540/- which is not upto standard as per Food Products standards and Food Additives, 2011 stands rejected;

(D) Application stands disposed of accordingly. Inform to the respondent.”

3] The said interim order is challenged before this Court. It is contended by Mr.Bhvesh Thakur, learned Counsel appearing on behalf of the petitioner that the order directing confiscation of the whole of the stock was without any authority of law and was illegal. It is, therefore, contended that the learned appellate authority should have released whole of the stock on execution of bond or furnishing of bank guarantee. As can be seen from the order, only part of the stock has been directed to be returned to the petitioner.

4] After hearing the learned Counsel for the petitioner and the learned APP for some time, it was suggested by this Court that it would be just and appropriate and in the interest of both parties, if the appeal is finally heard. It was also brought to the notice of the

learned Counsel for the petitioner that observations, if any, made by this Court while deciding the present petition against the interim order, may be detrimental to the interest of petitioner himself, or otherwise. In other words, the observations may be detrimental to the interest of State also.

5] For all these reasons, in my opinion, the best course open for the trial Judge would be to hear the appeal finally. Since this court feels that the appeal should be heard finally, it follows that the same is to be heard on expeditious basis, considering the fact that the goods ordered to be confiscated are of perishable nature. It may be noted in this regard that the stay is granted and the same is continued till today. Therefore, it is not possible for the competent authority to dispose of the part of the stock in the manner directed by the appellate court.

6] For all these reasons, I direct that this petition shall be treated to have been disposed of. Liberty is given to the petitioner to file a fresh petition, if the order of the Sessions Judge is adverse to the petitioner.

7] The learned Sessions Judge is directed to decide the appeal within a period of one week from today on receipt of the authenticated copy of this order. The authenticated copy be supplied today itself. It is made clear to the learned Additional Sessions Judge that he is not supposed to pray for extension of time to dispose of the appeal as the goods are of perishable nature. Writ petition is disposed of accordingly.

(M.L.TAHALIYANI, J.)