

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 503 OF 2015

M/s. Annapurna Consumer
Co-operative Society Ltd. ... Applicant

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Uday P. Warunjikar a/w. Mr. Mukesh V. Aiya for the
Applicant.

Mr. S.H. Yadav, A.P.P. for the State.

Mr. B.H. Udugade, Rationing Inspector, present in person.

CORAM : A. V. NIRGUDE, J.

DATE : 21st NOVEMBER, 2015.

P.C. :

1. This Criminal Revision Application challenges judgment and order dated 07.08.2015 passed by the learned Special Judge for CBI, Gr. Mumbai. In Criminal Appeal No.178 of 2015, the applicant was the appellant in the lower Appellate Court. The fact leading to filing this Appeal can be narrated as under :

2 The applicant is a Co-operative Society. It received stock of food grains from godown Food Corporation of India on 19.12.2009. They stored this stock in their private godown

temporary at a place near Bhiwandi. Workers of certain political parties suspected that the goods were stored there for the purpose of hoarding and belonged to public distribution system. They suspected that the persons handling the goods at that time would sell away goods in black market. They lodged a complaint at the police station and police then seized the goods. At the time of seizure, the police recorded clearly that the goods belonged to the applicant-Society. Office bearers of the Society as well as truck drivers who had transported the goods in their trucks were made accused and were prosecuted for committed offence punishable under section 7 of Essential Commodities Act. As per Section 6A of Essential Commodities Act, the Controller of Rationing, disposed of the goods so seized and received a sum over of Rs.24 lac. The Controller of Rationing mentioned in his order that the amount so collected would be subject to the order of the Criminal Court which would be passed in the criminal case. The criminal case was tried and the accused stood acquitted vide judgment dated 29.03.2011. However, the learned Special Judge did not mention anything about disposal of the seized property of sale proceeds collected by Controller of Rationing. Feeling aggrieved by this order, the applicant filed Criminal Appeal before the Sessions Court, Mumbai. The learned Judge dismissed the Appeal mainly because the applicant-appellant according to him, did not prove ownership of the goods. For the purpose of deciding the question as to who would get the

sale proceeds, one must refer to Section 6 A of Essential Commodities Act, which reads as under :-

"6A Confiscation of essential commodity - (1)
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 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:]

[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.]

[\[\(2\)](#) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may —

(i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

[Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.] [\(3\)](#) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

[\(a\)](#) where no order or confiscation is ultimately passed by the Collector,

[\(b\)](#) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.]

3. It is clear from this Section that in case the accused are acquitted, the seized goods, if not confiscated should be returned to the owner. The question, therefore, before the trial Court as well as before the Appellate Court was, who was the owner of the goods? The fact that the goods belong to Co-operative Society i.e. applicant was never in dispute. Neither any other party came before the Court for claiming ownership of the goods. The Trial Court was under obligation to decide before disposal of this case as to who was the owner of goods? Apparently, as per prosecution case, the goods belonged to the Co-operative Society. It was not an accused in the case. Its office bearers and others were accused. When the accused were acquitted, it was necessary for the learned trial Court to give notice to the Society as to whether they have any say on the question about disposal of the property i.e. the sale proceeds. Such a notice ought to have been given to the Society, in the facts of this case. Assuming, such necessary step was not taken and thus was an error on the part of the learned Judge of the trial Court, when Criminal Appeal was filed by the applicant (Society), it was duty of the learned Sessions Judge to find out whether he could record finding about ownership of the goods and sale proceeds. Apparently, no attempt was made to decide this question. The learned Judge observed as under :

“Applicant was neither the accused before the Criminal Court therefore acquittal of other accused will not make applicant's Society entitled to claim return of the goods confiscated.”

4. I am afraid this approach of the learned Sessions Judge is grossly erroneous. He ought to have perused the record and found out as to who could be the owner of the goods. Had he perused the record, he would have come to a conclusion that the applicant-Society then else was the owner of the goods.

5. The record of the case further shows that a notice was issued by the Controller of Rationing, before passing of the order under Section 6A of Essential Commodities Act. This notice was addressed to the applicant-society. This notice conclusively proved with the applicant-society was the owner of the goods and is entitled to sale proceeds.

6. The Revision Application should be allowed. The order is set aside. The amount of sale proceeds of goods shall be immediately handed over to the Co-operative Society.

(A.V.NIRGUDE, J.)