

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Revision No. 109 of 2011

[M/s. Mandhana Traders Vs. State of Mah.]

With

Criminal Revision No. 1 of 2012

[Pawan Dwarkadas Zanwar Vs. State of Mah.]

With

Criminal Revision No.22 of 2012

[Jugalkishor Madanlal Khandelwar Vs. State of Mah. & another]

With

Criminal Revision No.132 of 2011

[M/s. Annu Trading Co. Vs. State of Mah.]

With

Criminal Revision No. 133 of 2011

[M/s. Rameshwar Hiralal Heda Vs. State of Mah.]

With

Criminal Revision No. 154 of 2011

[M/s. Tirumala Cotton Processors Vs. State of Mah. & another]

With

Criminal Revision No.160 of 2011

[M/s. Vino Traders Vs. State of Mah.]

With

Criminal Revision No. 195 of 2013

[Shivcharan Radhakisan Bakad Vs. State of Mah.]

With

Criminal Writ Petition No. 727 of 2011

[Bihani Binayake Cotex Pvt. Ltd. Vs. State of Mah.]

With

Criminal Writ Petition No. 728 of 2011
[Bihani Industries Vs. State of Mah.]
With
Criminal Writ Petition No. 729 of 2011
[M/s. Gajanan Trading Co. Vs. State of Mah.]
With
Criminal Writ Petition No. 730 of 2011
[M/s. Tirupati Traders Vs. State of Mah.]
With
Criminal Writ Petition No. 731 of 2011
[M/s. Tirupati Traders Vs. State of Mah.]
With
Criminal Writ Petition No. 732 of 2011
[M/s. Govind Trading Co. Vs. State of Mah.]
With
Criminal Writ Petition No. 733 of 2011
[M/s. Tirupati Traders Vs. State of Mah.]

Cri. Revn. No. 109/2011 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 1/2012 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 22/2012 :

Mr. J.B. Gandhi, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 132/2011 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 133/2011 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 154/2011 :

Mr. S.O. Ahmed, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 160/2011 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Revn. No. 195/2013 :

Mr. M.G. Sarda, Adv., for Applicant.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 727/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 728/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 729/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 730/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 731/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 732/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

Cri. Writ Petition No. 733/2011 :

Mr. V.R. Mundra, Adv., for petitioner.

Mr. P. V. Bhoyar, APP for respondent-State.

CORAM : A.B. CHAUDHARI, J.

Reserved on : 13th July, 2015.

Pronounced on : 17th July, 2015.

O R D E R:

01. All these Criminal Revisions/Criminal Writ Petitions are directed against the common appellate Judgment and Order dated 14th July, 2011 passed by learned Additional Sessions Judge, Akola, in Criminal Appeal Nos. 87, 90, 91, 92, 93, 94, 99, 106, 107, 108, 109, 110, 115 and 124 all of 2009, and 34, 73 and 74 all of 2010, by which the Appellate Court dismissed the appeals filed by the appellants therein and Revision Applicants in these matters.

02. The facts, which arise in all these cases, are almost common and it is not necessary for me to make a mention of all the facts in this Judgment, since the Appellate Court stated about the facts in its Judgments and Order. However, to be precise, revision applicants-appellants were given Show-cause-Notices by the Additional Collector,

Akola, as to why the order of confiscation under Section 6-A of the Essential Commodities Act, 1955, should not be passed in respect of stock of food articles, such as Dal, Chana etc. the Additional Collector, after issuance of Show-cause-Notices and getting the replies from the appellants, passed the order of confiscation. The order was challenged before the Appellate Court, i.e., the Sessions Judge, Akola, who dismissed all these appeals and, therefore, these Revisions/Writ Petitions have been filed.

03. In support of the Revisions, learned counsel for the Revision Applicants submitted that the essential ingredient even in respect of the action for confiscation contemplated by Section 6-A of the Essential Commodities Act is the *mens rea* as has been held by the Division Bench of this Court in the case of **Madhav Keshav Mirashi Vs. State of Mah.** [1977 U.C.R. (Bom.) 619], and some other judgments. Courts below have committed an error in finding non-existence of *mens rea*, which has caused miscarriage of justice to the revision applicants. The counsel for the revision applicants in all these revisions then argued that the only mistake or error committed by the appellants was that they did not intimate the authorities within forty-eight hours of storage of food articles in the concerned godowns at Akola. But then, that would be a mere technicality because in the fortnightly returns, the

fact about stocking of the food articles was being regularly intimated and that is not in dispute. Therefore, on a merely technical aspect, the revision applicants should not have been penalized. Learned counsel for the revision applicants continued their submissions and argued that only it is not necessary to confiscate the entire goods and there is total non-application of mind on the part of the Additional Collector to consider the need to confiscate some part of the goods rather than entire goods. The counsel for the revision applicants then submitted that the reasons furnished in the reply before the Collector by the revision applicants were truthful, namely that the goods were stored temporarily due to market conditions and for want of sale etc., and, therefore, there was total absence of any intention on the part of the appellants for the alleged hoarding. The counsel for the Revision Applicants relied on the following decisions:-

- [a] **Madhav Keshav Mirashi Vs. State of Maharashtra**
[1977 U.C.R. (Bom.) 619],
- [b] **Syed Zakir Ali Syed Ibrahim Ali Vs. State of Mah. & another** [2006 (1) Bom. C.R. (Cri.) 485],
- [c] **Nathulal Vs. State of Madhya Pradesh** [AIR 1966 SC 48 (V 53 12)],
- [d] **Kishori Lal Bihani Vs. The Addl. Collector & Distt. Magistrate, Kanpur & others** [AIR 1969 Allahabad

159 (V 56 C 29)],

- [e] **M/s. Babu Ram Jagannath Vs. The Distt. Magistrate, Meerut & others** [AIR 1970 Allahabad 396 (V 57 C 62),
- [f] **Delhi Administration Vs. M/s. Munshi Ram Ram Niwas, Delhi & others** [1985 Cri. L.J. 1230],
- [g] **M/s. Shri Laxmi Trading Co., & another Vs. The Addl. Distt. Magistrate (Civil Supplies Section), Rourkela & another** [1989 Cri. L.J. 659],
- [h] **N. Nagendra Rao & Co. Vs. Andhra Pradesh** [AIR 1994 SC 2663],
- [i] **M/s. Sri Srinivasa Oil & Rice Mill v. State of Karnataka & others** [2006 A I H C 1748],
- [j] **The State of Karnataka Vs. Krishna Bhima Walvakar & others** [AIR 1981 SC 1468], and
- [k] **Mohomad Abbas Fazalkhan Turke Vs. State of Mah.** [1977 U.C.R. (Bom.) 32].

04. Per contra, learned APP in all these cases vehemently opposed the Revision Applications and submitted that the present revisional jurisdiction is limited to find out as to whether there is any

error of jurisdiction on the part of the courts below. Both the courts have recorded the findings of facts which need not be disturbed. Storage of food grains without any rhyme or reason, but with a view to earn more money by black marketing thereof is writ large in these cases and, therefore, no interference is called for. To support his arguments, learned APP relied on the following decisions:-

- 1. M/s Narendra Traders Vs. State of Mah.** [Criminal Revision Application No. 149 of 2010; decided in November, 2010 (Coram : R.G. Ketkar, J.)] 1977 U.C.R. (Bom.) 32],
- 2. State of Maharashtra Vs. Jayantilal Laxmichand & sons** [2010 (4) Mh.L.J. (Cri.) 419], and
- 3. The State of Karnataka Vs. Krishna Bhima Walvakar & others** [1981 Cri. L.J. 867].

CONSIDERATION :

05. I have heard learned counsel for the rival parties at length. I have perused the facts as well as the reasons recorded by both the courts below.

06. It must be noted that the counsel for the Revision Applicants in all these cases did dispute the fact that the Additional Collector adopted the procedure fairly and properly and in strict compliance with the principles of natural justice while deciding the proceedings for confiscation. To repeat, none of the revision applicants have made any grievance about any violation of principles of natural justice in the conduct of the proceedings for confiscation.

07. With the above preface then I find that it is an admitted position that the intimation that is required to be given within forty-eight hours in relation to storing of food articles was admittedly not given in all these cases. The submission that fortnightly returns were filed indicating stock in the godowns cannot be a substitution for the requirement of law about intimation within forty-eight hours, since there is an object behind making such provision. The inference of having *mens rea* can be drawn in the wake of these facts and and it is not that in the cases of confiscation, the element of *mens rea* should be proved to the hilt. It is not possible to cull out *mens rea* in the act of revision applicants in keeping quiet for more than forty-eight hours with huge stocks of food articles in the godowns kept unauthorizedly, i.e., without intimation as required by law. At any rate, there is a finding of fact recorded by both the courts below about existence of

mens rea. The submission made by learned counsel for the revision applicants that the reasons for storing the food grains were not considered by the courts below does not appeal to me, since the courts below have recorded a finding of fact in that behalf, and, at any rate, the revision applicants did not bring any independent evidence to buttress the said point. I also, thus, record the finding that the intention in storing the goods without intimation unauthorizedly leads only to the inference about *mens rea*.

08. This Court in this connection made the following observations in para 18 of its Judgment and Order delivered in November, 2010 in Criminal Revision Application No. 149 of 2010 [Coram R.G. Ketkar, J.]:-

“18. Now it is not in dispute that the applicant had stored 100 bags of Chana at Madhav Warehouse, Akola namely i.e., the premises other than the licensed premises. The applicant had stored 100 bags chana at Madhav Warehouse, Akola on 20.9.2009. It is the case of the applicant that it gave intimation dated 21.9.2009 to Tahsil Office, Yavatmal, which was duly received on 22.9.2009. However, it is not in dispute that it did not produce the license for making the change therein to the licensing authority. Even on the second occasion the applicant had stored 100 bags of Chana at Madhav Warehouse, Akola. It had given intimation dated 13.11.2009 to Tahsil Office, Yavatmal, which was received on 16.11.2009. Finally it is applicant's further case that on 14.11.2009 again 100 bags of chana were stored at Madhav Warehouse and the intimation to that effect was given on 14.11.2009 which was received by the Tahsil Office, Yavatmal. However, perusal of the

reply dated 15.12.2009 to the notice dated 4.12.2009 issued by the Food Distribution Officer would indicate that no such case of giving intimations on 21.9.2009, 13.11.2009 and 14.11.2009 was made out.”

“21. Mr. Manohar further submitted that at any rate the entire quantity of the said commodity should not have been confiscated. This aspect was considered by the learned Additional Sessions Judge in paragraphs 26 and 27 of the impugned order. After considering the material on record, I do not find that any case is made out for not confiscating the entire commodity. Shri Manohar submitted that the officers who are entrusted with responsibility to implement the Act with reasonableness, fairness and to promote the purpose and objective of the Act, did not act with reasonableness and fairness. Since the power is very wide as a person violating the Licensing Order is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is also liable to be prosecuted and penalized under Section 7 of the Act. It is, therefore, inherent in that those who are entrusted with the responsibility to implement the Act reasonably and fairly.”

and paras 32 and 33 in the case of State of Maharashtra Vs. J.L. & sons

[cited supra], which read thus:-

“32. In the present cases, it is clearly established that the respondents had violated the conditions of the licence, which amounts to contravention of Licensing Order issued under section 3 of the Essential Commodities Act and therefore, the seizure of the goods under clause 15 of the Licensing Order was justified. As that seizure was reported for contravention of the order issued under section 3 of the Essential Commodities Act, the Collector was within his powers to pass the order of confiscation under section 6A of the Essential Commodities Act, after following the procedure under sections 6A and 6B of the Essential Commodities Act,

which has been duly followed.

33. It may be noted that even the Sessions Court while allowing the Appeals of the respondents had noted that the procedure in respect of the seizure was properly followed and from the facts it is clear that procedure under section 6A and 6B of the Essential Commodities Act was also followed before passing order of confiscation. Taking into consideration facts and circumstances, I am unable to agree with the Appellate Court that contravention was technical and there should not have been confiscation. In fact, taking into consideration facts and circumstances, confiscation of these goods was just and reasonable.”

09. The next contention is about confiscation of the entire quantity of commodity. In the case of State of Karnataka Vs. Krishna Bhima Walvakar & others [cited supra], the Apex Court stated thus in para 9 of this Judgment:-

“9. It is axiomatic that the power of confiscation of an essential commodity seized for contravention of an order issued under S. 3, is a discretionary power. The use of the word 'may' under S. 6-A however, does not necessarily mean that the Deputy Commissioner cannot, in the given circumstances of a particular case, direct the confiscation of the entire consignment of an essential commodity in relation to which there is a contravention of any of the orders issued under S. 3 of the Act. It all depends on the facts and circumstances of each case whether the confiscation should be of an entire consignment or part of it, depending upon the nature of the contravention. The power conferred on the Deputy Commissioner under S. 6-A of the Act, by the use of the word 'may' makes the power coupled with a public duty. Sometimes it may be in the public interest to direct confiscation of the entire consignment of an essential commodity when there is deliberate contravention of the provisions of an order issued under

S. 3 of the Act.”

The Apex Court held that it would depend upon the facts of each case as to whether order should be made for the entire quantity of commodity or not. Similar are the observations in para 21 of this Court's Judgment delivered in Criminal Revision Application No. 149 of 2010 [Coram R.G. Ketkar, J.] [cited supra], which I quote hereunder:-

“21. Mr. Manohar further submitted that at any rate the entire quantity of the said commodity should not have been confiscated. This aspect was considered by the learned Additional Sessions Judge in paragraphs 26 and 27 of the impugned order. After considering the material on record, I do not find that any case is made out for not confiscating the entire commodity. Shri Manohar submitted that the officers who are entrusted with responsibility to implement the Act with reasonableness, fairness and to promote the purpose and objective of the Act, did not act with reasonableness and fairness. Since the power is very wide as a person violating the Licensing Order is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is also liable to be prosecuted and penalized under Section 7 of the Act. It is, therefore, inherent in that those who are entrusted with the responsibility to implement the Act reasonably and fairly.”

10. The courts below have recorded a finding of fact in this behalf and the Collector has applied his mind and conscious for confiscation of the entire commodity rather than in part. It is not possible for me in the revisional jurisdiction to substitute my opinion on

facts on this aspect when the two courts have held accordingly.

11. In the result, I find no merit in the Revision Applications.
Hence the following order:-

ORDER

Criminal Revision Nos. 109/2011, 1/2012, 22/2012, 132, 133, 154, 160 all of 2011, and 195 of 2013, and Criminal Writ Petition Nos. 727, 728, 729, 730, 731, 732 and 733 all of 2011 are dismissed.

Judge

-0-0-0-0-

|hedau|