IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 242 of 2015 ()

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AGAINST THE JUDGMENT IN CRA. 26/2014 of ADDL. DISTRICT & SESSIONS COURT - IV, PATHANAMTHITTA

REVISION PETITIONER(S)/APPELLANT:

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M.NIZAR
S/O. MEERAMODI RAWTHER, M.M. TRADERS, NASEEB MANZIL
MUDIYURKONAM, PANDALAM, PATHANAMTHITTA

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/RESPONDENTS:

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1. THE DISTRICT COLLECTOR
COLLECTORATE, PATHANAMTHITTA- 689 645

2. THE DISTRICT SUPPLY OFFICER, PATHANAMTHITTA THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.REJI THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**C.T. RAVIKUMAR, J.**

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**Crl.R.P. No.242 OF 2015**

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Dated this the 30th day of October, 2015

**ORDER**

This criminal revision petition is filed against the judgment of the Court of the Additional District and Sessions Judge-IV, Pathanamathitta in Crl.Appeal No.26 of 2014. The said appeal was filed by the revision petitioner herein on being aggrieved by the order passed by the District Collector, Pathanamthitta on 11.06.2010. The revision petitioner was conducting a provisional shop in the name and style 'M.M.Traders' at Pandalam. The District Supply Officer, Pathanamthitta conducted a search in the said shop on 3.12.2009 and seized 95 quintals of sugar in 95 sacks kept in violation of section 6 of the Essential Commodities Act and section 3 of the Kerala Sugar Dealers Licensing Order, 1967. Subsequently, the revision petitioner approached this Court by filing W.P.(C)No.1423 of 2010. The said writ petition was disposed of as per judgment dated 19.1.2010 with a direction to the first respondent to hear the revision petitioner and pass appropriate orders, in accordance with law. Order dated 11.06.2010 passed by the first respondent would reveal that in compliance with the directions in the said judgment, the revision petitioner herein was heard and thereafter an order was passed whereby the action on the part of the second respondent in seizing sugar was confirmed and the claim petition filed by the revision petitioner dated 5.2.2010 was rejected. It is on being aggrieved by the dismissal of the appeal preferred against the same and confirmation of the order passed by the second respondent that this revision petition has been filed.

2.The learned counsel for the revision petitioner submitted that a perusal of the impugned judgment in Crl.A.No.26/2014 would reveal that the said judgment was passed without hearing the revision petitioner herein/the appellant therein. The judgment would also reveal that the revision petitioner did not turn up and there was also no representation on his behalf. Normally, in such circumstances, this Court would be inclined to remit the the matter for a fresh hearing. But at the same time, such an exercise would be nothing but a futile exercise taking into account the indisputable factual position obtained in this case.

3.A scanning of the order passed by the District Collector/ District Magistrate would reveal that before passing the order dated 11.6.2010 in C.S.A.No.8/26804/10 the learned District Collector and District Magistrate has not only heard the revision petitioner but also examined his application, appended documents, the Mahazar relating the case and also report of the District Supply Officer. The said order would reveal that in fact, the following reasons have been assigned for the rejection of the claim petition as hereunder:-

> 1.03-12-09-ൽ ശ്രീ.എം.നിസ്സാറിൻെറ ഉടമസ്ഥതയിലുള്ള എം.എം.ട്രേഡേഴ്സിൽ നടത്തിയ പരിശോധനാ സമയം സ്ഥാപന ഉടമയായ ശ്രീ.എം.

നിസ്സാർ 95 ക്വിൻറൽ പഞ്ചസാരയുടെ പർച്ചേസ് ബില്ലുകൾ പരിശോധനയ്ക്കായി ഹാജരാക്കിയില്ല.

2.പഞ്ചസാര വിൽപനയ്ക്കായി എടുക്കേണ്ട 1967-ലെ കേരള ഷുഗർ ഡീലേഴ്സ് ലൈസൻസിംഗ് നിയമപ്രകാരം അനുവദിച്ചിട്ടുള്ള ലൈസൻസ് പരിശോധനയ്ക്ക് ഹാജരാക്കിയില്ല.

3.കമ്പ്യൂട്ടറിൽ നിന്നും സ്റ്റോക്ക് രജിസ്റ്ററിൻെറ പ്രിൻറൗട്ട് പരിശോധനാ സംഘം പല തവണ ആവശ്യപ്പെട്ടിട്ടും നൽകിയില്ല.

4.കൈകൊണ്ട് എഴുതുന്ന സ്റ്റോക്ക് രജിസ്റ്റർ പരിശോധനയ്ക്ക് ഹാജരാക്കിയില്ല.

5.ശ്രീ.എം.നിസ്സാർ പഞ്ചസാര വിൽപനയ്ക്കായി എടുക്കേണ്ട ലൈസൻസിനുള്ള ഫീസ് 03-12-09-ൽ അടൂർ സബ് ട്രഷറിയിൽ ഒടുക്കിയെങ്കിലും ഈ ലൈസൻസിനുള്ള അപേക്ഷ 16.12.2009-ന് മാത്രമാണ് അടൂർ താലൂക്ക് സപ്ലൈ ഓഫീസിൽ സമർപ്പിച്ചിട്ടുള്ളതെന്ന് കാണുന്നു. ആയതിനാൽ ശ്രീ.എം.നിസ്സാർ 03-12-09-ൽ പഞ്ചസാര വിൽപനയ്ക്കായി എടുക്കേണ്ട ലൈസൻസിനുള്ള അപേക്ഷ സമർപ്പിച്ചു എന്നുപറയുന്ന വാദം ശരിയല്ല.

4.In the appeal filed against the said order dated 11.6.2010, the learned Sessions Judge passed the impugned judgment. It is discernible from the said judgment itself that even after five postings there was no representation for the appellant and in fact, the learned counsel appearing for the appellant also did not turn up for hearing. The learned Sessions Judge took note of the reasons assigned by the District Collector to pass the order dated 11.6.2010 and perused the records and considered it in the light of the grounds raised in the appeal. Paragraph 4 of the impugned judgment passed pursuant to such consideration reads thus:-

> "Learned Counsel appearing for the appellant did not turn up. Even after 5 posting, there is no representation for the appellant. Hence the matter is taken as heard. In the appeal memorandum, as a third ground, the appellant claims that he had kept sugar as per valid bills and the bills were produced at the time of inspection. But the Order does not contain such facts. It is claimed that the seized sugar was purchased by the appellant as per the invoice dated 05-11-2009, Bill No.175 from Mr.Shaheed, General Merchant and Commission Agent, Tottamala, Kollam and the bill No.10013, dated 06-11-2009 from D.S.Traders, General Merchant and Commission Agent, Bank Road, Kayamkulam. The copy of the bills are produced before respondents. It is further alleged that above said Shaheed purchased the sugar on 04-11-2009 from Dharani Sugar Limited, Dharani Nagar, Thirunelveli, Tamil Nadu, as per Invoice

No.5005971. The said sugar was transported in lorry number TN-28A-4218 as per form 27-B, declaration from the Check Post. Another claim is that the appellant had applied for license on 03-12-2009 and remitted the fees also. The license order was implemented on 28-07-2009. But the Taluk Supply Officer received the same and noted as 07-12-2009. In the Order passed by the District Collector, the attempt made by the appellant to obtain license for sale of sugar is mentioned. It is revealed that he had remitted the license fee, on 03-12-2009 at the Sub Treasury, Adoor. However, application for license was produced before Taluk Supply Office, Adoor only on 16.12.2009. So it cannot be infered that he had presented the application for obtaining license on 03-12-2009. In spite of the claim made by the appellant, in the memorandum of appeal, no document is seen produced before this Court. Keeping of 95 quintals of sugar as on the date of inspection, by the District Supply Officer, Pathanamthitta, without a valid license is an offence and violence of Sec.3 and 12 of the Kerala Sugar Dealers Licensing Act, 1967. Act of the appellant is against Sec.3 and 7 of Essential Commodities Act, 1955. I don't find anything irregular or illegal in the Order passed by District Collector/District Magistrate, Pathanamthitta in dismissing the application presented by the appellant.

The fact that on the date of seizure, the revision petitioner was not holding a valid license for keeping sugar is indisputable as admittedly, the incident occurred on 3.12.2009 and even going by the very case of the revision petitioner, he applied for license under the Kerala Sugar Dealers Licensing Act, 1967 only on 3.12.2009. He remitted the fees therefor also on 3.12.2009. In the order passed by the District Collector itself it is stated that the revision petitioner submitted application in that regard only on 16.12.2009. This fact is not disputed by the revision petitioner before me. The petitioner has not produced any document showing that he was holding a valid license to keep in possession of sugar. Even according to the petitioner, he had applied for license to deal with sugar only on 3.12.2009, the date on which the search was conducted and huge quantity of sugar was seized from his possession. There cannot be any doubt with respect to the fact that making an application and remitting the fees therefor, would not make the applicant a holder of valid license. Necessarily, the petitioner could claim that he is a license holder only if based on the proper application, license was issued by the competent authority in his favour after following the procedures. Add to it, in this case, the revision petitioner has actually submitted the application in Taluk Supply Office, Adoor only on 16.12.2009. The petitioner has not produced any details or documents to show that on 3.12.2009, the petitioner was holding a valid license for keeping such a huge quantity of sugar. There is no case for the revision petitioner that such huge quantity could be stored in a shop without obtaining the license therefor. Even going by the very case of the revision petitioner that he applied for license on 3.12.2009 itself would make it abundantly clear that at the time of search and seizure he was not holding valid license for keeping sugar in such huge quantity. When that be the position obtained in this case, the action taken by the first respondent cannot be said to be illegal or improper warranting any interference in exercise of revisional jurisdiction. Evidently, such aspects were properly considered by the learned Sessions Judge in passing the impugned judgment. When such indisputable facts are obtained, I am of the considered view that remitting this matter for fresh consideration would be nothing but a futile exercise and no failure of justice could be attributed in the circumstances. The invaluable judicial time cannot be wasted for doing a futile exercise. In such circumstances, I am of the view that there is absolutely no merit in the revision petition and it is liable to be dismissed. Accordingly, it is dismissed.

**Sd/-**
**C.T. RAVIKUMAR**
**(JUDGE)**

**spc/**

**C.T. RAVIKUMAR, J.**

**JUDGMENT**

**September, 2010**