HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2037 of 2014

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ORDER :

The present Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.), against the judgment dated 24.03.2014 passed in Crl.A.No.128 of 2012 on the file of the District and Sessions Judge, Srikakulam, confirming the order dated 29.09.2012 passed in S.R.No.79 of 2011S5 on the file of the District Collector, Srikakulam.

The facts of the case are as under:

The petitioner is the owner of fertilizer shop run under the name and style as Sri Saranam Ayyappa Traders situated at Singidi Village, Bhamini Mandal, Srikakulam District. When the Vigilance authorities inspected the premises, they found certain variations in the entries made in registers as well as in the ground stock. Hence, seized the stock, initiated proceedings under Section 6-A of the Essential Commodities Act and called for an explanation from the petitioners. The District Collector, Srikakulam after holding an enquiry, rejected the contentions put forth by the petitioner in his explanation, and ordered confiscation of 50% of the seized stock. The said order was questioned by way of filing an appeal viz., Crl.A.No.128 of 2012 before the District and Sessions Court, Srikakulam. The learned District and Sessions Judge, by judgment, dated 24.03.2014, dismissed the appeal confirming the order passed by the District Collector. Aggrieved by the same, the present Revision is filed by the petitioner.

Heard both sides and perused the material available on record.

Learned counsel for the petitioner mainly submits that without taking into consideration the credit sales of fertilizers under 11 credit bills on the date of seizure, the vigilance authorities shown the variation.

The learned Public Prosecutor opposed the same.

A perusal of the record would show that the Authorities found variation of fertilizers from the entries made in the Registers to the ground stock. The owner of the fertilizer shop was present in the premises and when confronted about the same he gave an explanation stating that under 11 credit bills the fertilizers were sold, but failed to obtain the signatures of the ryoths in the Registers. Further he submits that at the time of inspection itself, the urea load from Nagarjuna group, Visakhapatnam vide invoice No.DR 00170123 dated 03.08.2011 through lorry No.A.P.05/8728 came to his shop and ready to be placed in the godown. Due to the requirement, he directly sold the bags to the ryoths by issuing the credit bills. When the said bags are placing into two tractors, the Vigilance people came and verified the Registers. From the above, it is clear that while the entries are being made into the Registers, the said books were taken away by the Vigilance officials and further the credit bills are not taken into consideration.

As stated earlier, the credit bills were also produced before the Authorities at the time of said search. It is not the case of the prosecution that these credit bills were prepared and produced at a later point of time. Therefore, the explanation offered by the petitioner herein, cannot be brushed aside as an afterthought. The question is whether in a case of this nature it is proper for the Authorities to confiscate the entire stock?

The material on record does not anywhere show that the petitioner herein was indulging in black marketing or that he was in the habit of hoarding the stock. Even learned Public Prosecutor on instructions did not dispute the above fact.

In **B.Seetharamayya Guptha v. The District Revenue Officer, Chittoor** a Bench of this Court after considering the circumstances of the case held that the entire stock need not be confiscated. The Court further observed that having regard to the features of the case, opined that the confiscation of 25% of the seized foodgrains would be adequate punishment for the petitioner.

Keeping in view the judgment of the Court referred to above, I shall deal with the case on hand.

Admittedly, the said premises was raided on a premise that some irregularities were being carried out by Sri Saranam Ayyappa Traders situated at Singidi Village, Bhamini Mandal, Srikakluam District. When the said premises was raided on 03.08.2011, the authorities found variation of stock from the entries made in the Registers to the ground stock. For which, the petitioner gave explanation that he sold the fertilizers under 11 credit bills. The said explanation was given at the time of inspection itself. The Registers were handedover to the Vigilance Authorities at the time of the inspection itself. Therefore, the argument advanced by the learned Public Prosecutor that this explanation is an after thought, cannot be accepted.

As seen from the above, in the instant case, the Vigilance Inspector noticed variation in the book balance and the ground stock for which the petitioner gave an explanation along with documentary evidence. As observed earlier, it is not the case of the prosecution or the Vigilance Authorities that the petitioner was doing clandestine business or that he was an habitual offender or was indulging in hoarding the stock.

Having regard to the above circumstances, I deem it appropriate to reduce the order of confiscation from 50% to 30% of the seized stock.

Accordingly, the criminal revision case is disposed of.

Miscellaneous petitions, pending if any, in this Criminal Revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 15.04.2015

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