HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 525 OF 2008

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O R D E R:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners/respondents 1
and 2 challenging the judgment dated 31.12.2007, passed by the learned Sessions Judge, Anantapur, in Criminal Appeal No.71 of 2003, whereunder and whereby the order, dated 16.06.2003, passed by the Collector & District Magistrate, Anantapur in Rc.No.K3/3058-A/95, to confiscate 100% value of the seized stock to the Government account, is modified and reduced to 75% and the remaining 25% of the seized stock or its value shall be returned to the first petitioner/first respondent.

2. The revision petitioners herein are the respondents
1 and 2 and the respondent herein is the complainant before the Collector, Anantapur vide Case No.K3/3058-A/95, dated 16.06.2003. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed before the Collector.

3. The case of the prosecution in brief is that on receipt of credible information that some of the unlicensed traders are transporting groundnut seed from Anantapur District of Andhra Pradesh to other States of Karnataka and Maharashtra, the Inspector of Police, VCCSD, Anantapur along with Deputy Superintendent of Police and staff kept a watch on 09.04.1995 at Anatapur – Uravakonda road and at about 7.30 p.m. they found a loaded lorry covered with tarpaulin coming from Anantapur side and proceeding towards Uravakonda. Then, they stopped the lorry bearing No.AAD 6875 and on verification it was found that the lorry contained groundnut seed bags. On enquiry, the respondent No.4 - lorry driver by name Kolimi Shoukath Ali informed that the lorry contained 126 bags of groundnut seed and they were transporting the same to Kurkhumb of Poona District of Maharashtra State. As the transportation was illegal, they seized the above lorry along with groundnut seed under the cover

of panchanama. As a follow up action, they surprised Manjunatha General Traders, Nallacheruvu and as the respondents 1 and 2 were doing business in groundnut pod and groundnut seeds without obtaining valid licence in the name of Manjunatha General Traders (Decorticator) in Door No.7/119 of Nallacheruvu by not maintaining stock and other registers after 24.03.1995 and kept huge variations in the stocks, they seized the available ground balance of stocks i.e. 84720 Kgs. of groundnut pod worth Rs.9,74,280/-, 13600 Kgs. of groundnut seed worth Rs.2,38,000/- and
1150 Kgs. of sunflower seed worth Rs.12,650/- under the cover of panchanama and reported to initiate action against the respondents 1 to 5 under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act').

4. Aggrieved by the seizure of the lorry and 126 bags of groundnut seed, the respondent No.3 by name C.Sankara Narayana of Sankar Enterprises and respondent No.5 by name Dildar Ali, who is owner of lorry bearing No.AAD 6875, filed a petition before the Joint Collector, Anantapur through their counsel for release of seized stock and lorry respectively. Upon hearing the counsel, interim orders were passed for release of the seized stock of 126 bags of groundnut seed and lorry No.AAD 6875 to the respondents 3 and 5 respectively with certain conditions.

Likewise, the first respondent approached this Court wherein this Court ordered to release the seized goods to him on furnishing of bank guarantee worth Rs.1 lakh.

5. Basing on the report given under Section 6-A of the Act, a show cause notice was issued to the respondents 1 to 5 calling for their explanation on the following charges:

"Charge No.1: That the respondent-1 and 2 are doing clandestine business in Groundnut pod, Groundnut seeds and S.F.Seeds by running Manjunatha General Traders (Decorticator) at Nallacheruvu village without obtaining licence under E.Oil and E.Oil seeds and APGST & CST to do business in large scale. On 9-4-95 R1 and R2 have transported 126 bags of G.N.Seed in lorry No.AAD-6875 belonging to R5 driven by R4 from the Decorticator, Nallacheruvu to Kurkkumbh with the strength of E.Oil licence and way bill of R3, illegally for pecuniary gains hereby contravened clause 3 of A.P.Scheduled Commodities Dealers (licensing & Distribution) Order, 1982.

> <u>Charge No.2</u>: That the respondent lorry owner, without any permit, used his lorry for transportation of stocks belonging to R1. Thereby he abetted the contravention committed by R1 read with section 8 of E.C.Act, 1955."

6. After considering the explanation offered by respondent No.1 and on hearing the arguments, the Collector held that the respondents 1 and 2 were doing clandestine business without possessing valid licence to do business in Door No.7/119, Nallacheruvu in the name and style of 'Manjunatha General Traders' and thereby they contravened Clause 3 of the Andhra Pradesh Scheduled Commodities Dealers' (Licensing and Distribution) Order, 1982 (for short 'the Order, 1982'). The Collector also held that it is true that no licence is required to do business in edible oil and edible oilseeds after deletion of the control orders on edible oilseeds and edible oils by the Government of India in S.O.No.772(E), dated 10.11.1997 through amendment to the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Amendment Order, 1977, but in the instant case the seizure was made on 10.04.1995 i.e. prior to the deletion of edible oils and edible oilseeds from the purview of control orders. Therefore, the Collector held that the charges 1 and 2 are proved and passed the following order:

> "In view of the above, I hereby order to confiscate the 100% value of seized stock to the Government account under Section 6-A of the E.C.Act, 1955. I also impose a fine of Rs.10000/- on the vehicle owner No.AAD 6875. The District Supply Officer, Anatapur is requested to invoke the Bank guarantees for Rs.1.00 lakh, 30,000/- and 5,000/- and remit the confiscated value to 1456-Civil Supplies head of account.
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> The Mandal Revenue Officer, Nallacheruvu is requested to collect Rs.12,71,330/- from the persons who furnished third party security at the time of release of seized stock and remit the amount to 1456 – Civil supplies account and submit challan to District Supply Officer's office. Further, the Mandal Revenue Officer, kadiri is directed to collect Rs.5,000/- from Sri Dildar Lorry owner AAD 6875 of Kadiri and remit the same to 1456 – Civil supplies head of account and the District Supply Officer, Anantapur is requested to send copies of third party securities furnished by stocks owners and vehicle owners to Mandal Revenue Officer, Nallacheruvu/Kadiri for taking necessary action."

7. Aggrieved by the order of the Collector, the respondents 1 to 4 preferred Criminal Appeal No.71 of 2003 before the Sessions Judge, Anantapur, wherein it is held thus:

> "In the result, the appeal is partly allowed and the order passed by the learned Joint Collector, Anantapur in Rc.K3/No.3058/1995 Dated.16-06-2003, in question, to confiscate 100% value of the seized stock to the Government account is hereby modified and reduced to 75% and the remaining 25% of the seized stock or its value only shall be returned to the first respondent/first appellant herein. In so far as imposition of fine amount imposed on the owner of the offended vehicle who is the 4th appellant herein, the same shall be refunded to the 5th respondent/4th appellant herein, after expiry of appeal time in the matter."

8. Aggrieved by the judgment of the appellate Court in Criminal Appeal No.71 of 2003, dated 31.12.2007, the respondents 1 and 2 filed the present revision.

9. The learned counsel for the revision petitioners/ respondents 1 and 2 argued that the Collector as well as the appellate Court failed to see that the respondents are in possession of the valid licence and it was renewed from time to time, as such there is no contravention of Clause 3 of the Order, 1982 at all; that the appellate Court as well the Collector have failed to assign any reason as to why they ordered for confiscation of seized stock to the Government account; that the appellate Court simply reduced the confiscation to 75% instead of 100% without any reasons, therefore the order of the appellate Court vitiates; that the Collector ought to have seen that the panchanama conducted at the time of seizure was not proved by examining the panch witnesses, therefore on that ground also the revision is liable to be allowed; that the Collector as well as the appellate Court failed to see the evidence by way of affidavits of the farmers who have supplied the stocks as the sale price was not settled with the mill owners, hence the said stock was not reflected in the accounts, and finally, prayed the Court to allow the revision case by setting aside the impugned judgment passed in Criminal Appeal No.71 of 2003.

10. On the other hand, the learned Public Prosecutor argued that the revision petitioners/respondents 1 and 2 failed to produce the licence under APGST & CST to do business for the edible oils and edible oilseeds, as such the Collector rightly passed the confiscation order; that the petitioners failed to prove that they were having licence to do business of edible oils and edible oilseeds in the name of Manjunatha General Traders, therefore both the Collector and the appellate Court rightly passed the orders confiscating the

stock; that the appellate Court on considering the submissions, reduced the confiscation value of the seized stock from 100% to 75% and the said finding of the appellate Court needs no interference; that as per the record, the petitioners were indulged in clandestine business of edible oil and edible oilseeds without obtaining valid licence to do the business in Door No.7/119 at Nallacheruvu in the name of Manjunatha General Traders, hence the finding of the Collector as well as the appellate Court regarding the confiscation of stock needs no interference; that the appellate Court already took a lenient view and further taking of lenient view is unwarranted, and finally, prayed the Court to dismiss the revision case.

11. Now, the point for determination is –

Whether the revision petitioners/respondents 1 and 2 are entitled to set aside the judgment passed by the appellate Court in confiscating 75% value of the seized stock?

12. **<u>Point</u>**:

A perusal of the record shows that as per the report of the Inspector of Police, VCCSD, Anantapur, the present complaint is filed. There is no dispute that on 09.04.1995, the Inspector of Police, VCCSD, Anantapur along with Deputy Superintendent of Police and other staff stopped the lorry bearing No.AAD 6875 on the Anantapur – Uravakonda road and found that the lorry was contained 126 bags of groundnut seed, and on enquiry the lorry driver stated that they were transporting the groundnut seed bags to Kurkhumb of Poona District, Maharashtra. As a follow up action, the Inspector of Police and other staff checked Manjunatha General Traders, Nallacheruvu where the petitioners were doing business in groundnut pod and groundnut seeds without obtaining licence in the premises bearing Door No.7/119 of Nallacheruvu. They also noticed that the petitioners were not maintaining the stock and other registers, but kept huge variations in the stock. Then, they conducted panchanama and initiated the proceedings under Section 6-A of the Act.

13. The District Collector framed two charges and held that the petitioners

failed to produce the licence for doing the business under APGST & CST in the premises bearing No.7/119 of Nallacheruvu. The District Collector also gave a finding that the petitioners failed to prove that they were having licence valid upto 31.03.1998 and they wanted to change the name of the firm as 'Manjunatha General Traders' in lieu of 'Sri Raghavendra General Traders', and the petitioners also failed to prove that an application was pending before the District Supply Officer, Anantapur. In this regard, the Collector clearly gave a finding that the petitioners 1 and 2 are doing clandestine business without possessing valid licence in the premises bearing Door No.7/119 of Nallacheruvu in the name and style of 'Manjunatha General Traders'.

14. The learned counsel for the petitioners argued that the Government of India in S.O.No.772(E), dated 10.11.1997 through amendment to the Pulses, Edible Oilseeds and Edible Oils (Storage Control) Amendment Order, 1977 held that no licence is required to do business in edible oil and edible oilseeds, therefore the petitioners are exempted from obtaining the licence under APGST & CST, and as such, the petitioners are innocents and they have not committed any offence. On the other hand, the learned Public Prosecutor categorically stated that the petitioners did not follow the procedure to obtain the licence for doing the business and S.O.No.772(E), dated 10.11.1997 has no application in this case because the alleged seizure was made on 10.04.1995 i.e. even prior to the deletion of edible oils and edible oilseeds from the purview of control orders.

15. Admittedly, the seizure of 126 bags of groundnut seed in the lorry bearing No.AAD 6875 and seizure of groundnut pod, groundnut seed and sunflower seed from Manjunatha General Traders in the premises bearing Door No.7/199 of Nallcheruvu were made on 09.04.1995 under the cover of panchanama. However, the petitioners failed to produce the licence obtained under APGST & CST to do business in large scale. Further, the amendment to the Pulses, Pulses, Edible Oilseeds and Edible Oils (Storage Control) Amendment Order, 1977 came into force on 10.11.1998 and the alleged offence took place on 09.04.1995. Therefore, the amended order is not applicable to the facts of the present case.

16. The another contention of the petitioners is that they already applied to change the name of the firm as 'Manjunatha General Traders' in lieu of 'Sri

Raghavendra General Traders' and the same is pending before the District Supply Officer. To prove the said fact, the petitioners have not produced any documentary evidence, such as acknowledgement received from the concerned authorities to show that their application is pending. Further, there is no dispute that the petitioners are doing business and having licence valid up to 31.03.1998 in the name and style of 'Sri Raghavendra General Traders', but the seizure has been taken place in the premises bearing Door No.7/119 of Nallacheruvu in the shop of Manjunatha General Traders. Therefore, the petitioners failed to prove that they were having a valid licence to do business under APGST & CST, as such the District Collector, Anathapur as well as the appellate Court rightly held that the petitioners failed to prove their innocence.

17. Evidently, the prosecution proved that the petitioners were indulged in clandestine business of groundnut pods and groundnut seeds without possessing valid licence in the premises bearing Door No.7/119 of Nallacheruvu in the name and style of 'Manjunatha General Traders' and transporting the same to other States. Therefore, both the Collector and the appellate Court rightly gave a finding about the contravention committed by the petitioners and the findings of the Collector as well the appellate Court need no interference. As the appellate Court already took a lenient view by reducing the confiscated value of the seized stock from 100% to 75%, taking of further lenient view cannot be considered keeping in view of the clear contravention of the Order, 1982 by the petitioners. Further, the petitioners have not made out any case to set aside the impugned judgment.

18. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment dated 31.12.2007, passed in Criminal Appeal No.71 of 2003 on the file of the Sessions Judge, Anantapur.

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

ANIS, J

Date: 28.04.2015

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