

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2609 OF 2014

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 09.12.2014 passed in Crl.Appeal No.112 of 2014 on the file of the Sessions Judge at Nizamabad, wherein the order passed by the Joint Collector in ordering confiscation of 100% value of the seized stock and also imposing penalty of three times in difference between the market rate and public distribution system, was confirmed.

The facts in issue are as under :

On 23.06.2014 the Deputy Tahasildar (Enft.) Nandipet received a credible information that the petitioner herein has diverted wheat pertaining to PDS for black marketing. On the same day at 10.30 a.m., he inspected the shop of FPSD No.02 at Abhangapatnam village in the presence of mediators. On verification of the stock register and distribution register he found variation in wheat to an extent of 6.20 quintals. When questioned about the same, the petitioner failed to give any satisfactory reply except seeking pardon. The verification of truck sheet of MLS point, Navipet disclose that the dealer has lifted 6.20 quintals of wheat on 21.06.2014 and within two days i.e., on 23.04.2014 when the search took place there was no stock. The door to door enquiry of the card holders revealed that they have not received wheat since long time. Therefore, the primary authority felt that the appellant was indulged in diversion of PDS commodities to the black market which was meant for poor people and thereby contravened the provisions of the APSPDS (Control) Order, 2008.

The inspecting officials seized 83.37 quintals of PDS rice in the

presence of mediators and the seized stock was handed over to D.Geetha, FPS Dealer No.24 of Abbapur village of Navipet Mandal for safe custody. The said case was taken on file under Section 6-A of E.C. Act and a notice was issued to the petitioner on 22.07.2014 for filing written statement. The material on record discloses that on 06.09.2014 the petitioner appeared in person but failed to file any written statement to the show cause notice. His oral explanation was to the effect that he has supplied Rice, Wheat and Sugar to the card holders but failed to take their signatures. When questioned about the variation in the stock within two days he is alleged to have admitted his guilt viz., diversion of wheat into black market for his personal gains. After thorough enquiry, the Joint Collector found that the appellant indulged in diversion of PDS commodity to black market and order confiscation of the entire stock. On appeal to the Sessions Judge, Nizamabad, the learned Sessions Judge found fraudulent diversion of 6.20 quintals of wheat meant for public distribution system, which warrants penal action. Challenging the same, the present appeal is filed.

The learned counsel for the petitioner mainly submits that the petitioner is running a fair price shop since last 25 years and there was never any report against him. He submits that he has distributed the entire stock to card holders but failed to mention the same in the register and also failed to take the signatures of the card holders. He further submits that the courts below erred in ordering confiscation of 100% seized stock in favour of the Government and further imposing penalty for three times on the difference between the market value and public distribution system rate of commodity which was diverted (6.20 quintals of wheat) are worked out to Rs.20,460/-. He further submits that the seizure of 83 quintals of Rice, in respect of which there is no variation from the ground stock and the records, is highly illegal. He

further submits that since none of the card holders complained about non supply of Rice, both the courts erred in confiscation of the entire stock of Rice.

The learned Public Prosecutor opposed the application contending that even if there is a violation in respect of one commodity, the Authorities have every right to seize the entire stock. He took me through the provisions of the Act to show that the act done by the Inspector is in accordance with law.

A perusal of the material on record more particularly the orders passed by the both the Forums below would show that on the date of inspection the officials noticed variation in 6.20 quintals of wheat meant for Public Distribution System. There was no variation in respect of Rice found in the shop. The order passed under Section 6-A enquiry and also the judgment of the Appellate court clearly disclose that as on the date of inspection, the book balance in respect of PDS Rice was 83.37 quintals and the ground balance was also 83.37 quintals. Therefore, there was no variation in Rice meant for public distribution. Both the Forums found that there was variation in PDS Wheat to an extent of 6.20 quintals. The explanation offered was that the same was distributed to the card holders but could not enter the same in the register and also take the signatures of the card holders. The record discloses that the petitioner is alleged to have distributed 6.20 quintals of Rice within two days. The stock was received on 21.06.2014 and the date of inspection was on 23.06.2014 by which time there was no stock at all. The card holders, who were examined by the authorities, stated that no Wheat was supplied to them since quite a few months. Therefore, the argument of the learned counsel for the petitioner that he failed to take the signatures of the cardholders though supplied to them, cannot be accepted. Hence, the finding of both the courts below that the petitioner indulged in black marketing of

Wheat cannot be found fault with.

As stated earlier, the findings of the Court below show that the complaint from the card holders was only with regard to Wheat. The inspection of records on the ground stock showed no variation in PDS Rice. Such being the position the learned counsel for the petitioner submits that seizure of entire Rice is illegal and hence seeks release of PDS Rice. I am afraid the same cannot be accepted in view of the Bench Judgment of this Court in **Nabikanti Panduranga Rao, Managing Partner of Vijayawada Commercial Corporation v. State of Andhra Pradesh**^[1]

As seen from the material placed on record, the petitioner indulged in black marketing of wheat and there is record to show that the petitioner was not supplying wheat to the Cardholders. On an appreciation of facts and circumstances of the case, the lower appellate Court having observed that the confiscation ordered by the Joint Collector is based on record, confirmed the order of the Joint Collector. In view of the observations made, this Court finds no illegality or irregularity in the judgment of the lower appellate Court. But however, the quantum of confiscation and imposition of penalty to the extent of three times the difference between the market rate and public distribution system rate of the commodity which was diverted appear to be on higher side. It is also to be noted that there was no variation in PDS rice. Having regard to the said circumstances, the order of confiscation of 100% value of the seized stock in favour of Government is reduced to 40%. However, imposing penalty of three times the difference between the market rate and public distribution system rate of the commodity which was diverted, (6.20 quintals of wheat) being on a higher side, is reduced to 1 ½ times.

Accordingly, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in the revision shall stand closed.

C. PRAVEEN KUMAR, J

Date: 10.03.2015

Note : C.C. by one week.
B/o.
GM/CBS

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[\[1\]](#) 1975(2) APLJ, 277