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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 13th July, 2015

+ CRL.M.C. 1248/2015

SUNNI KADIAN

..... Petitioner

Represented by: Mr. Yogesh Kumar,
Advocate

Versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Mr. Ravi Nayak, APP
for the State with SI Ravi, P.S. Najafgarh

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner seeks directions thereby FIR No. 353/2012 registered at P.S. Najafgarh on 10th December, 2012 under Sections 7/10/55 of Essential Commodities Act against the petitioner may be quashed.

2. The aforesaid case was registered on the allegations that Mr. N.K. Gaur, Inspector visited the premises of the petitioner on 6th November, 2012 at 11.30 A.M. and the FPS (Fair Price Shop) was not found opened. Thereafter, he recovered the relevant record

from the possession of FPS holder who was sitting inside the premises. The Inspector also carried out physical verification of the shop in the presence of the FPS owner. On scrutiny, he noticed certain discrepancies in the record. It is found that the FPS received 204 quintal 86 kg of wheat from FCI which had not been entered into the Stock Register. During physical verification, 200 bags of wheat were found available in the FPS which comes to 100 quintals. The FPS was found short by 104.86 quintals of wheat. Accordingly, the case was registered against the petitioner.

3. The petitioner on receipt of notice from the department, filed a reply and thereafter, the Joint Commissioner (FSCA) passed the following order:-

“Present Sh. Shailendra Auth. Representative for the appellant while the departmental representative i.e. AC (SW) is not present due to urgent work. The FPS of the appellant was cancelled by the Assistant Commissioner (SW) on the ground that the FPS holder diverted the 104 quintals and 86 kg of wheat without opening sale and stock of 03 quintals (06 Bags) of sugar was found lying unauthorized in the business premises.

Examination of the record revealed that on 06.11.2012, the inspectorate team visited the business premises and recorded the visiting report in the inspection book. However, in the inspection book the inspectorate team have not indicated the physical verification/diversion which was the basis for passing the cancellation order. Again on

08.11.2012, the circle inspector visited the business premises and allowed the sale for the food grains items after verifying the stock position and entered the same in the inspection book.

In the above circumstances I am of the view that if the sale has been allowed on 08.11.2012 by the inspector after following procedure established by the law then the issue of diversion of 104.86 quintals of wheat as raised in the cancellation order become untenable. At the same time, the Licensing Authority has not been able to substantiate the charges that the licensee has arranged the shortage of 104.86 quintals of wheat in a matter of day.

In the facts and circumstances of the case, I am remanding instant appeal to the Assistant Commissioner (SW) for completing further investigation and proceedings in the case. In view of the above, suspension and cancellation of authorization in this case is being set aside till finalization of the case by the licensing authority. The Assistant Commissioner will dispose of the case on merit. This order is without prejudice to the action taken by competent Court in trial case.”

4. Learned counsel submits that in view of the order passed by the Joint Commissioner, no case is made out against the petitioner and hence, the FIR is liable to be quashed. He further submits that on the similar facts, the co-ordinate Bench of this Court has quashed the FIR vide order dated 30th April, 2015 passed in Crl. MC No. 3251/2014.

5. It is not in dispute that order dated 1st February, 2013 passed by the Joint Commissioner has not been challenged by the respondent. The said order has attained finality. The stand of the respondent is that it has not any intention to challenge the same in future.

6. The present petition is filed for quashing of the aforesaid FIR. If the finding of the appellate authority is examined in the meaningful manner, it appears that the FIR is wrongfully registered against the petitioner.

7. In view of the above, the proceedings arising from FIR No. 353/2012 under Section 7/10/55 of the Essential Commodities Act, 1955 registered at P.S. Najafgarh and the proceedings emanating therefrom are hereby quashed.

8. The petition is allowed in the above terms.

9. Copy of this order be given *dasti* to counsel for the parties.

SURESH KAIT, J.

JULY 13, 2015

Sd/jg