

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 878 of 2016**

Ashok Kothari S/o Mahangi Lal Jain, Aged About 30 Years R/o Bus Stand Road Manendragarh, P. S. and Tahsil Manendragarh, District Korla Chhattisgarh.

---- **Petitioner**

Versus

State of Chhattisgarh Through The Station House Officer, Police Station Manendragarh, District Korla, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Malay Bhaduri on behalf of Smt. Usha Chandrakar, Advocate.
For Respondent	:	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/10/2016

1. The present petition under Section 482 CrPC has been filed seeking for quashemnt of order dated 24.06.2016 passed by the 1st Additional Sessions Judge, Manendragarh, in Criminal Appeal No.05 of 2011. Vide the said order, the Sessions Judge while hearing the appeal under Section 454 of CrPC filed by the petitioner against the order of JMFC, Manendragarh, has rejected the appeal.
2. Facts of the case in nutshell are that, the petitioner was prosecuted for the offence punishable under Sections 3 & 7 of the Essential Commodities Act before the JMFC, Manendragarh, in Criminal Case No.1043 of 2005. The allegation against the petitioner was that on a raid being conducted by the state authorities in the godown of the petitioner, he was found in illegal possession of 44 bags of rice of Food Corporation

of India. It was also found that the petitioner was getting the rice shifted in to separate bags. After the seizure of said rice found in the godown of petitioner, notice was issued to the petitioner to provide the details of the rice which were found in his possession, to which the petitioner did not produce any document in this regard.

3. Accordingly, proceedings under the provisions of Essential Commodities Act were drawn against him and finally vide judgment dated 24.12.2010 the court below granting benefit of doubt to the petitioner, acquitted him from the charges under Sections 3 & 7 of the Essential Commodities Act. However, while passing the judgment, the court below ordered for confiscation of the seized property. This order of confiscation was put to challenge in a criminal Appeal before the 1st Additional Sessions Judge, Manendragarh under Section 454 of CrPC and the Sessions Judge also after considering the submissions put forth by the petitioner, reached to the conclusion that since the petitioner has not been able to produce any evidence in respect of how he came in possession of the said 44 bags of rice, no proof, no receipt, no purchase orders, no purchase bills whatsoever were produced and in the absence of any such evidence/proof, the appellate court also rejected the appeal vide order dated 24.06.2016 leading to filing of this petition.
4. The contentions of the counsel for the petitioner is that, once there is an order of acquittal in favour of the petitioner, then the order of confiscation is per se illegal and bad in law for the reason that the prosecution has not been able to prove the case of the petitioner having violated the provisions of the Essential Commodities Act and in the absence of any

such finding and also in the light of the acquittal of the petitioner, the confiscation proceedings could not have been ordered for and the petitioner was entitled for the return of the seized goods. In support of his contentions, reliance has been placed in case of N. Madhavan Vs. State of Kerala, reported in 1979 (4)SCC 1 and prayed for setting aside of the order so far as confiscation is concerned and further sought for return of the said goods.

5. State counsel, however, opposing the petition submits that the two orders do not warrant any interference of this court and this petition deserves to be rejected. According to him, both the courts below have reached to a specific finding and conclusion that the order of confiscation was necessitate on account of the petitioner not been able to show and provide any sort of evidence or proof in respect of how he came in possession of the said 44 bags of rice of FCI which was otherwise to be sold only through the societies and in the absence of any such documentary proof or cogent explanation provided, the two courts below cannot be said to be faulted at for having ordered for and affirming the order of confiscation. Thus, prayed for rejection of the petition.
6. Having considered the rival contentions put forth on either side and on perusal of records, if we look into the contents of two orders passed by the courts below and on perusal of pleadings made in the present petition, what we find is that the petitioner infact has not been able to discloses or provide any sort of materials by which it can be ascertained or reached to a conclusion that the property infact was exclusive that of the petitioner alone and that he had purchased it or had received it by

some other legally fair method. The entire 482 petition is silent on that aspect and the only contention which has been put forth by the counsel for the petitioner is the judgment of acquittal in his favour. The requirement of the said proof/evidence in respect of the ownership of the said seized articles was all the more required to have been produced by the petitioner in the present petition at least as both the courts below affirmed the order of confiscation only on the ground of the lack of sufficient materials provided by the petitioner to show his right and title over the said property.

7. So far as paragraph 11 of the judgment of the Supreme Court relied upon by the petitioner is concerned, it clearly reflects the reason to entertain the said appeal by the Supreme Court and ordered for possession of the seized articles to be given to the individual concerned. But, when we compare the facts of said case with the present case, it would clearly indicate that the findings of the trial court in a proceeding of Essential Commodities Act itself was very clear that the prosecution had issued notice under Section 91 of CrPC to provide the details of seized property so as to presume that it was his own property, to which the petitioner stated that he does not have any document in this regard.
8. Further, the evidence which has come before the court below also reflect that independent witnesses who were examined during the course of evidence have turned hostile and have not supported the case of the prosecution so far as the premises and the property to be that of the petitioner is concerned. Likewise, it is also a finding of the lower appellate court that the petitioner has not been able to provide any proof or

evidence in respect of the ownership and right of the said seized articles nor has been able to give any justifiable explanation as to how he obtained the same and in the absence of which, the lower appellate court rejected the appeal. Thus, it would be clear that the two courts below have given reasons firstly while ordering of confiscation and secondly while rejection of the appeal and as such the findings and observations made by the Supreme Court in case of N. Madhavan (Supra) is distinguishable on the facts itself and would not come to the rescue of the petitioner's in any manner.

9. Thus, this court has no hesitation in reaching to the conclusion that the two courts below have not committed any error of law or on facts while firstly ordering for the confiscation of the seized article and secondly in rejecting the appeal.
10. Accordingly, the present CrMP fails and is dismissed. No order as to costs.

Sd/-

(P.Sam Koshy)
Judge