IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5510 OF 2011

1. Kishor s/o Bansilal Bidada,
Age 39 years, Occ. Business,
R/o. Lamjana, Taluka Ausa,
District Latur

2. Ratan Nandlal Bidada
Age 27 years, Occ. Business,
R/o. Lamjana, Taluka Ausa,
District Latur ...Applicants

versus

1. The State of Maharashtra
through P.S.O. P.S. Killari
Tq. Ausa, District Latur

2. Sachin Govind Pawar
Age 23 years, Occ. Labour
R/o. Budhoda, Tq. Ausa
District Latur

3. Sudhakar Bhagwan Jadhav
Age 26 years, Occ. Hamali,
R/o. Borfal, Tq. Ausa
District Latur

4. Kishor Eknath Kawale
(Deleted)

5. Gvoind Vishwanath Kale
(deleted)

6. Tukaram Dnyanoba Yadav
Age 28 years, Occ. Hamali,
R/o. Borfal, Tq. Ausa
District Latur

7. Ravi Sugriv Jadhav
Age 19 years, Occ. Labour
R/o. Ausa, Tq. Ausa
District Latur

8. Satish Dnyanoba Jadhav

Age 30 years, Occ. Labour
R/o. Borfal, Tq. Ausa
District Latur ...Respondents

...
Advocate for Applicants : Mr. Sagar Killarikar Balaji L.
APP for Respondent No.1: Mr. A.R. Kale
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CORAM : V. K. JADHAV, J.
DATED : 30th AUGUST, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order of acquittal dated 28.3.2011, passed by the J.M.F.C. Ausa in S.T.C.C. No. 1113 of 2004 to the extent that the learned Judge has refused to pay sale proceeds of confiscated goods to the petitioner though they are acquitted, the applicants filed present criminal application.

2. Brief facts giving rise to the present criminal application are as follows:-

a) On 19.5.2004, at about 2.15 p.m. a raid was conducted at the godown of applicant No.1 at village Lamjana, in which 269 quintals of wheat amounting to Rs.2,16,800/- was seized by the police. Accordingly, panchnama was drawn and on the basis of report of P.S.I. Kolhe, crime No. 3012 of 2004 came to be registered under the provisions of Sections 3 and 7 of Essential Commodities Act, 1955. On 30.11.2005, the applicant had filed an application before the Additional Collector, Latur contending therein that he is dealer and police falsely implicated him in the said crime by attaching the said wheat bags from his godown. However, the Additional Collector, Latur by order dated 31.1.2006 was pleased to reject the said application and further directed the Tahsildar, Ausa to distribute the said seized 269 quintals of wheat, stored in Government godown to the card holders under Public Distribution System and the sale proceeds be deposited with the Government by Challan.

(b) Being aggrieved by the same, the applicant had preferred a Revision before the Divisional Commissioner, Aurangabad under Section 6(C) of the Essential Commodities Act. However, the Divisional Commissioner by its order dated 3.4.2006 also rejected the said Revision. Being aggrieved by the same, applicant No.1 has preferred an appeal before the Minister, Food and Civil Supply and Consumer Protection, Government of Maharashtra.

(c) Meanwhile, after due investigation, charge sheet came to be filed before the court and the learned J.M.F.C. conducted trial of summary criminal case No. 1113 of 2004. The prosecution has examined in all six witnesses to substantiate the charges levelled against the accused. Learned J.M.F.C. vide judgment and order dated 28.3.2011, in the said case, acquitted all accused, including the present applicants. However, while doing so, learned J.M.F.C. directed that the sale proceeds of confiscated wheat shall be forfeited to the Government. Hence this criminal application.

3. Learned counsel for the applicants submits that the prosecution has examined in all six witnesses to substantiate the charges levelled against them. All accused, including the present applicants, came to be acquitted on the ground that the prosecution could not prove that the said wheat bags belong to the Government and secondly, there is contravention of any order in respect of food grains i.e. wheat, passed by the Government under the provisions of Section 3 of Essential Commodities Act. Even though the seizure panchnama is not proved as the panch witnesses turned hostile, however, the prosecution has examined the complainant P.S.I. Dhondiba Kolhe and police constables, who were members of raiding party. The prosecution has duly proved the contents of complaint and compliant is accordingly marked Exh.75 before the trial court. The complainant P.S.I. Kolhe, even in his evidence before the court, on oath, has deposed that the said wheat bags came to be seized from the godown of present applicant No.1 His evidence on oath is duly corroborated by the contents of complaint Exh.75. The approach of the trial court is erroneous and learned Judge of the trial court has forfeited the said amount of sale proceeds to the Government only for the reason that the prosecution has failed to prove

the seizure panchnama before the trial court. In view of provisions of clause (c) of sub-section (3) of Section 6-A of Essential Commodities Act, particularly in the State amendment, in the trial, if person concerned is acquitted in the prosecution instituted for contravention of the order in respect of which an order of confiscation has been made, the sale proceeds of such food grains shall be paid to the owner or the person from whom it is seized. Even though in confiscation proceeding the applicant could not prove his case to the satisfaction of the authorities, however, as per the prosecution evidence itself, in this case, the fact remains that the said quantity of food grains is seized from the possession of the present applicant No.1.

4. Learned A.P.P. submits that seizure panchnama is not proved before the trial court and therefore, it is not clear from whose possession the said wheat bags came to be seized. Learned A.P.P. submits that the applicants and other accused persons even suggested the complainant P.S.I. Kolhe and other members of his raiding party that no such godown is in existence and that nothing was seized from the possession of the applicants and other accused persons. Learned A.P.P. submits that the trial court has therefore, rightly forfeited the sale proceeds. No interference is required. There is no substance in the writ petition and same is liable to be dismissed.

5. On careful perusal of record and proceedings, it appears that

seizure panchnama is not duly proved, as submitted by learned A.P.P. The prosecution has examined P.S.I. Kolhe as P.W.4 and he has deposed that on the date of incident, he had received information that present applicant No.1 was in possession of certain quantity of wheat and he intends to sale the said food grains in black market. He has further deposed that alongwith the raiding staff, he went to the godown of applicant No.1, where applicant No.1 was present alongwith other accused persons, who were labourers. He has further deposed that accordingly said quantity of wheat, kept in jute bags, was seized from the possession of applicant No.1 under seizure panchnama and he lodged the report against applicants and those 6 labourers. The complaint thus is duly proved and marked at Exh.75. The complaint corroborates his version before the court. Even the members of raiding party i.e. constables have also deposed in the similar manner. Though the applicant No.1 could not prove his title to the said food grains when the confiscation proceedings were going on, however, the fact remains that, he had opposed the said confiscation proceedings by producing certain receipts before the authorities. Furthermore, it is clear from the prosecution evidence that the said wheat bags came to be seized from the possession of applicant No.1 from his godown.

6. In Section 6-A of Essential Commodities Act 1955, most particularly sub-section (3), which reads as under:-

*“**6-A. Confiscation of essential commodity.**- (1) …....*

(2) …..

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale, or auction or other incidental expenses relating thereto, shall -

(a) where no order of confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6-C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.”

7. In view of provisions of Section (3) clause (c), quoted above, it is clear that if the essential commodity is sold as per the directions given by the authority, who has passed the confiscation order, the sale proceeds thereof, after deduction of the expenses of such sale, or auction or other incidental expenses relating therein, shall in terms of clause (c) when a prosecution instituted for the contravention of the order in respect of which the said order of confiscation has been made

under this section and the persons concerned is acquitted, the said sale proceeds be paid to the owner or person from whom it is seized. The applicant No.1 is acquitted for the charges levelled against him on the ground that the prosecution failed to prove that the said wheat bags belong to the Government and secondly on the ground that there is no contravention of any order passed under Section 3 of Essential Commodities Act. The learned Judge ought to have paid the said amount of sale proceeds of confiscated goods as per the provisions of Section 6-A (3) (c) (Maharashtra State Amendment) of Essential Commodities Act, 1955 to applicant No.1.

8. In the light of above, criminal application is allowed in terms of prayer clause “A” and disposed of.

(V. K. JADHAV, J.)

rlj/