

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

(Orders Reserved on : 22.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CrI.R.C.No.969 of 2010

S.Jayakumari Petitioner/Appellant

Vs.

State by

1 The District Revenue Officer,
Erode, Erode District.

2 The Inspector Of Police,
CSCID, Erode.
(Crime No.901 of 2008)

...Respondents/Respondents

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records in so far relates to order passed in C.A.No.190 of 2009, dated 23.06.2010 on the file of the First Additional Sessions Judge, Erode whereby confirming the order passed by the District Revenue Officer, Erode in the proceedings No.Na.Ka.No.60400/2008/Ka-3, dated 20.07.2009 whereby imposed fine amount of Rs.78,020/- and set aside the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Ms.M.F.Shabana
Government Advocate (CrI.Side)

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ORDER

This Criminal Revision Case is directed against the order dated 23.06.2010 passed by the learned First Additional Sessions Judge, Erode, in C.A.No.190 of 2009 confirming the order passed by District Revenue Officer, directing the petitioner/appellant to pay a fine of Rs.78,020/- in lieu of confiscation of the Vehicle, under Section 6[4] of the Tamil Nadu Essential Commodities order [Regulation by Family Cards], 1982 in the proceedings No.Na.Ka.No.60400/2008/Ka-3, dated 20.07.2009.

2. Aggrieved against the order of the District Revenue Officer the present petitioner/appellant preferred the appeal before the learned First Additional Sessions Judge, Erode, and the learned First Additional Sessions Judge, Erode, confirmed the order of the District Revenue Officer, dated 23.06.2010, aggrieved against the order Courts below the present petitioner/appellant preferred this Revision before this Court.

3. Heard Mr.C.Prakasam, learned counsel appearing for the petitioner and Ms.M.F.Shabana, learned Government Advocate (Crl.Side) appearing for the respondents.

4. The learned counsel appearing for the petitioner vehemently contended that the learned First Additional Sessions Judge, Erode, failed to consider the facts and circumstances of the case and to follow under Section 6[4] of TNSC [RDCS] Order 1982 and no evidence has been adduced to show that the rice has been purchased from the card holders and the respondents did not examine the card holders and did not obtain any statement from them as per the Judgment of this Court in 2001 (3) Law weekly page 815. Before the Courts below, no evidence to show proper sample was taken from the alleged seized PDS rice bags. Further, the Sessions Court failed to consider the seizure of 200 bags of rice each 50 kg on suspicion, it is illegal and arbitrary.

5. Further the learned counsel appearing for the petitioner would contend that the lorry owner/appellant has no knowledge about the illegal transportation of the rice and the vehicle ceased by the Authority as stated by the prosecution. Hence, considering the above aspects, the revision has to be allowed and the orders of the lower Courts are set-aside and the vehicle has to be returned to the owner of the Vehicle.

6. The learned Government Advocate appearing for the respondent filed written objection and mainly contended that the trial Court, after considering the entire records and in the facts and circumstances of the case, and passed an appropriate order and also the First Additional Sessions Judge, Erode perused the entire materials and documents, confirmed the order of the District Revenue Officer and there is no illegalities and infirmities in the orders passed by the Courts below and hence, revision has to be dismissed.

7. This Court heard the arguments of both sides and perused the documents viz., Mahazar, Confession Statement of the parties recorded by the Police and the Show cause notice issued by the Authorities, before seizing the vehicle and also the order of the District Revenue Officer.

8. A perusal of the entire records, this Court is of the considered view that there is no material evidence available against the petitioner herein, in respect of the allegation of illegal transportation of PDS rice or in connivance with the smuggler. In the absence of above, the learned counsel for the petitioner mainly contended that there cannot be a charge of illegal transportation of PDS rice by the Vehicle owner.

9. The learned counsel relied on the decision in the case of Assistant Forest Conservator v. Sharad Ramehandra Kale, of Supreme Court [Criminal Appeal No.617 of 1989 dated 27.11.1997] wherein paragraph No.2, it is held as follows:

2 The truck of the respondent was ordered to be confiscated by the Assistant Conservator of Forest, as it was found involved in commission of a forest offence. That order was confirmed by the Conservator of Forest. Against his order, the respondent preferred an appeal to the Sessions Court but it was dismissed. Therefore, he approached the High Court with a petition under Article 227 of the Constitution. The High Court set aside the order of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act. This finding was based upon the evidence on the record. Therefore, we do not consider it proper to interfere with such finding.

He further relied on the judgment reported in (1998) A I H C 5029 [Sub-Divisional Forest Officer V. Vijay B. Gulati and others] wherein paragraph No.6, it is held as follows:

6. Forefeiture of the vehicle under the Act is a penal provision. Such penal provision has to be strictly constructed and wherever there is a doubt, the benefit should go to the owner of the vehicle. It would not be proper for us to extend the scope of that provision by reading into it words which are not there and thereby widen the scope of the provision relating to confiscation. The words referable to the owner of the vehicle and the word 'or' used therein are all disjunctive and cannot be read in conjunction. They do not connote that all of them have to collectively prove their innocence with regard to want of knowledge or consent of commission of forest offence. They have to be understood in the context in which they are used having regard to the object and intendment of the Act. The owner may drive the vehicle and in that event he has to prove the want of knowledge and consent of the commission of the offence. If he is not accompanying the vehicle and his agent is accompanying, then the

said agent has to prove his want of knowledge and innocence. If the owner or his agent are not accompanying the vehicle, but only the Driver is there in the vehicle driving it, then the Driver has to prove his want of knowledge or innocence. The words "..... that each of them have taken all reasonable and necessary precautions against such use" cannot be understood to mean that all of them have to prove their want of knowledge or innocence collectively, but individually in any manner indicated above. If the driver accompanying the vehicle proves his innocence, question of referring the matter to either the owner or his agent does not arise at all. If the owner is not directly involved in the matter of consenting for the transportation at the original point and entrusted to his agent and if the agent does not have knowledge of the commission of forest offence or did not consent or connive, then also the vehicle cannot be confiscated regardless of the culpability of the driver. Even if both the driver and the agent are culpable, but the owner is innocent of the commission of the forest offence and if he did not consent or connive in the said offence, then also the vehicle cannot be confiscated. For criminal offence, anyhow the person-incharge of the vehicle will be proceeded against, but in so far as civil consequences are concerned, it is the owner who loses the property and if the commission of forest offence taken place without his knowledge or consent and if he had no role to play in the said offence, then it would highly be unreasonable to punish him by confiscation of his vehicle, which would be arbitrary violating Article 14 of the Constitution of India and also will be an unreasonable restriction of his fundamental right guaranteed under Article 19(1)(g) of the Constitution and ultimately it may breach the constitutional guarantee under Article 300-A. Authority of law does not mean enactment of law providing for confiscation, but such enactment should conform to the fundamental rights guaranteed in Part III of the Constitution of India as also the constitutional guarantee under Article 300-A. May be contextually the word 'or' may have to be read as 'and' and some time the word 'and' may have to be read 'or'. But the above legal provision involved for interpretation in the instant case can be given a plain meaning understanding 'or' as 'or' only and fastening liability of proving innocence on the owner, agent and driver not collectively by individually and even if there is a failure of proving innocence on the part of the Driver or Agent and if the owner proves innocence his vehicle cannot be confiscated. It is too unreasonable to fasten

liability to the owner to foresee all such events even illegal in the entire course of transportation miles and miles away from his place of residence or business where he may not have any semblance of control over his driver or agent. It is sufficient if the owner proves that at the time when the vehicle was entrusted to his agent or driver, if he was not accompanying to see that all legal formalities for the transportation of the vehicle were complied with and he had entrusted the transportation to the agent or driver by taking all reasonable precautions and once such steps have been taken by the owner, his responsibility and liability ceases and when vehicle leaves his control and is in the control of the agent or the driver and if the said agent or driver commits any offence like the one in the instant case, than such owner cannot be made liable for confiscation of his vehicle. We are not unaware of the common law liabilities of the principal for the lapses of the agent of that of the master for the lapses of the servant. In no case, however, where the principal or the master, as the case may be, is innocent can be made liable for the lapses of the agent or the servant as the case may be. Unless it is shown that the owner of the vehicle shared the culpability of the agent or the servant, as the case may be, or that the agent or the servant indulged in culpable acts with the knowledge of the owner of the vehicle it would amount to punishing the innocent. Confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely the driver in particular only when it is shown that he was carrying out the desires of the owner. This is the proposition we hold on this point to set at rest the controversy.

He would further brought to the notice of this Court, to the judgment of this Court in Criminal Revision No.1247 of 2010 order dated 23.02.2011 [State by The District Revenue Officer, Salem Dist., Salem v. Tmt.Yasoda and P.Jayapalan] wherein from paragraph Nos.6 to 11, it is held as follows:

7. The sum and substance of the prosecution version is to the effect that the 1st respondent is the owner of the lorry and the 2nd respondent is said to be the owner of the rice bags and the 2nd respondent hired the lorry belonging to the 1st respondent for transporting 320 bags, each measuring 50 Kgs, of Public Distribution System rice and the lorry was intercepted by the Civil Supplies CID police

resulting in the seizure of the said rice bags and the lorry.

8. The crux of the question involved in this matter is to the effect that whether the prosecution has established the first and foremost ingredient to attract the contravention of Clause 6(4) of the Order to the effect that the seized rice bags are meant for Public Distribution System and whether the prosecution has proved that the said rice bags have been procured by utilizing the family cards. Before proceeding to consider the above said question involved in this matter, it is relevant to refer the very provision under Clause 6(4) of the Order. Clause 6(4) of The Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 reads hereunder:

6. Supply of Scheduled Commodities.-

(1).....

(2).....

(3).....

(4) No person shall purchase any scheduled commodity obtained on a family card.

9. A reading of the above said provision makes it crystal clear that in order to attract the said provision, it is the burden of the prosecution to establish that the 2nd respondent purchased or procured the seized rice bags on the basis of family cards. As far as the case on hand is concerned, it is seen that the prosecution has miserably failed to establish the said first and foremost requirement to attract the provision of Clause 6(4) of the Order and there is absolutely no material or evidence available on record to indicate or to establish that the 2nd respondent purchased the said rice bags on the basis of family cards. While considering the similar question, this Court in an unreported judgment dated 20.6.2001 in CrI.A.No.479/1999 has held hereunder:

" 3.The learned counsel appearing for the appellants submits that even if the entire facts are taken to be true, there is no material to show that the accused have violated Clause 6(4) of Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982. I see some force in the contention. Clause 6(4) of Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card

System) reads as follows:

"No Person shall purchase any scheduled commodity obtained on a family card."

Therefore, to make the accused liable, it must be shown by the prosecution that the accused purchased the scheduled commodity obtained on a family card. Without any fear of contradiction, this Court can say that the prosecution did not let in any evidence to indicate that the accused purchased the scheduled commodity which are purchased on a family card. P.W.6 in the cross-examination admitted that he did not investigate to find out the source of the rice, seized from the bus, and in the absence of any such evidence and in the absence of any evidence by the officer to find out the source, this Court cannot convict the accused for violation of Clause 6(4) of the Order on the ground that the rice that was seized was actually purchased from a person who obtained it on a family card."

10. The principle laid down by this Court in the unreported judgment cited supra is squarely applicable to the facts of the instant case as in this case also there is not an iota of material available on record to show that the seized rice bags have been purchased on the basis of family cards. The lower Appellate Court Judge has also rightly placed reliance on the unreported judgment of this Court cited supra. Therefore, this Court is of the considered view that there is absolutely no illegality or infirmity in the impugned order passed by the learned Principal Sessions Judge, Salem, warranting the interference of this Court.

11. Accordingly, the criminal revision is dismissed and the order of the learned Principal Sessions Judge, Salem dated 6.2.2009 made in Crl.A.No.7/2008, reversing the order passed in proceedings No.SR.No.603/2005/J3 dated 20.12.2007 of the District Revenue Officer, Salem, is hereby confirmed.

10. The above citations are applicable to the present case also. In this case also, there is no material available, so as to prove the fact that the seized PDS rice bags have been purchased on the basis of Family Ration Cards. Hence, this Court is of the considered view that in this case, in the absence of any proof as per the Principles laid down by this

Court against the petitioner herein, the impugned order passed by the DRO/1st respondent which was affirmed by the First Additional Sessions Judge, Erode, in lieu of seizure of the vehicle and levying fine are set-aside and the vehicle has to be returned to the owner of the vehicle on production of proper proof and in accordance with law.

11. In view of the above findings the order of the Trial Court and the First Appellate Court which are passed without applying the above Principles are liable to be set-aside. This Court finds illegality, infirmity in the impugned orders of the Courts below and hence the same are liable to be set-aside.

12. Accordingly the Criminal Revision is allowed and the orders of the learned Courts below are set-aside and the authorities are directed to return the vehicle to the Vehicle owner on proper proof in accordance with law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

1. The First Additional Sessions Judge,
Erode

2 The District Revenue Officer,
Erode, Erode District.

3 The Inspector Of Police,
CSCID, Erode.

4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.969 of 2010

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