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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2016

Delivered on : 19.07.2016

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

Crl.O.P. (MD) .No.7055 of 2016

and

Crl.M.P. (MD) .Nos.3559 and 3560 of 2016

Siva @ Sivakumar

..Petitioner/Accused No.4

Vs.

State rep. by the

1.The Inspector of Police,

C.S.C.I.D. Tirunelveli.

(Crime No.38 of 2013)

..1st respondent /Complainant

2.K.Ragupathi Raja,

Inspector of Police,

C.S.C.I.D., Tirunelveli.

..2nd Respondent/

Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the proceedings in S.T.C.No.9 of 2015 on the file of the learned Judicial Magistrate No.II, (C.C.I.W. Special Court), Tirunelveli and quash the same as illegal.

For Petitioner

: Mr.T.Lenin Kumar

For respondents

: Mr.A.P.Balasubramani,

Government Advocate

(Criminal side)

ORDER

The object of the Essential Commodities Act is to provide for control of the production, supply and distribution of trade and commerce in essential commodities in the interest of the general public, so that the *supplies* of such commodities *may be maintained or increased* and to secure their *equitable distribution* so that they may be made available to the general public at *fair prices*.

2.0. Section 3 of the Essential Commodities Act, 1955 confers power on the Central Government to make orders providing for regulating or prohibiting the production, supply and distribution of any essential commodity and the trade and commerce therein.

2.1. Section 5 of the Essential Commodities Act, 1955 empowers the Government to direct that the power to make orders may be exercised by the State Government thereby delegating the said powers.



3.0. Adam Smith in his famous book "The Wealth of Nations" made a fundamental proposition that an economy could be co-ordinated and managed by a *decentralized system of prices*, what he termed the "invisible hand". This being in stark contrast to the Marxian proposition of *centralized control*. Indeed most modern economies, as history has proved, have evolved by using a *hybrid of both decentralized market mechanism as well as Governmental control*. The fundamental and basic postulate being that effective use of pricing, distribution, control and regulation of production leads to designated changed, effective co-ordination of economic functions in *managing the wealth of the Nation*. The Essential Commodities Act, 1955 is one such paramount legislation not merely to regulate and manage the economic resources but also to serve as a *socio-beneficial legislation* in keeping with the high ideals laid down in the Constitution of India.

3.1. This objective has to be kept in mind when the accused seek quashing of the proceedings on the ground that no case is made out against him.

4.The Inspector of Police, Civil Supplies C.I.D., Tirunelveli / the second respondent herein has preferred a complaint alleging that when he (along with police party) was on surveillance, he saw a vehicle, bearing Registration No.TN-10-Q-2473 loaded with gunny bags, parked on the left side of Tirunelveli to Nagerkoil Road, near Panakudi Bye-pass Road and on inspection, he came to know that, that *rice meant for Public Distribution System* and therefore, he seized the rice bags and also the vehicle. Based upon the said complaint, a case has been registered in Crime No.38 of 2013 against the owner of the vehicle - A1 and unnamed accused persons under Clause 6(4) of TNSC (RDCS) Order 1982 r/w Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Subsequently, an alteration report has been filed in which A1 and A2 are stated to have purchased PDS rice from A3, A4 and A5 and they intended to sell it to A8 with the assistance of A6 and A7.

5.After investigation, the first respondent filed a charge sheet and the same has been taken on file in S.T.C.No.9 of 2015 by the learned Judicial Magistrate No.II, (C.C.I.W. Special Court), Tirunelveli. Seeking to quash the same, the petitioner / A4 has come up with this petition.

6.0. The prosecution, in order to substantiate the charges, relied upon the expert opinion (LW10), which states that from the composition of the rice, it is clear that the rice seized resembles the rice distributed under PDS scheme.

<https://hcservices.ecourts.gov.in/hcservices/>

6.1. LW1 and LW2 are Head Constables, attached to the C.S.CI.D. Tirunelveli, who have allegedly made statements about



the recovery of the lorry, recovery of the rice bags and collection of samples for being sent for examination. LW3 and LW4 are the witnesses with regard to the observation mahazar and sketch. LW5 and LW6 are the hearsay witnesses, who have spoken about the engagement of recovery vehicle by the Police to take the offending vehicle to the concerned Police Station. LW7 and LW8 are the independent witnesses, who have spoken about the so called confession alleged to have been given by the seventh accused Stalin @ Stalin Kumar. LW9 is a Godown Keeper, who has spoken about the storage of the offending materials in the godown. LW10 is the Quality Inspector, who has spoken about the certificate issued by him with regard to the nature of the rice seized by the Police.

7. Whether these materials *prima facie*, even accepting the entire allegations in those statement to be true and correct, would substantiate the charge against the petitioner / A4 is the issue raised in this case.

8. The learned counsel for the petitioner has raised twin contentions:

(a) The allegations made against the petitioner does not make out any offence, as there is no material to show that the rice seized was purchased from the ration card holders.

(b) The certificate issued by the Quality Inspector cannot be the basis for the prosecution, as the same does not have any legal effect.

9. The learned Government Advocate appearing for the respondents would submit that on the basis of the confession given by A1 and A2, the petitioner/A4 was added as an accused and that the Quality Inspector has given a clear finding that the rice seized from the accused should have been the one meant for distribution under Public Distribution System and the same in turn proves that the petitioner/A4 should have purchased the same from the card holders.

10. In order to appreciate the first contention of the learned counsel for the petitioner, it would be necessary to look into the provisions of Clause 6(4) of TNSC (RDCS) Order, 1982 r/w Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Clause 6(4) relates to Supply of Scheduled Commodities, as per which no person shall purchase any scheduled commodities obtained on a family card. Section 7 (1)(a)(ii) of the Essential Commodities Act, 1955 relates to Penalties which reads as follows;

"7. Penalties.- (1) If any person contravenes any order made under Section 3 -

(a) he shall be punishable -

<https://hcservices.ecourts.gov.in/hcservices/> in the case of an order made with reference to clause (h) or clause (i) of sub - Section (2) of that section, with imprisonment for



a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months."

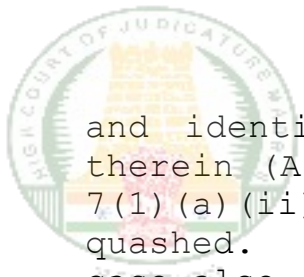
11.A bare perusal of Clause 6(4) of the TNSC (RDCS) Order, clearly indicates that for maintaining the prosecution against the accused (who is stated to be the seller), there should have been materials to show (a) the purchase of the scheduled commodities; (b) that purchased from a ration card holder. The existence of these two conditions is not disjunctive but conjunctive. In other words, both the conditions must exist together.

12. But, in this case, there is not even an iota of material to show that the petitioner / A4 had purchased the contraband from the family card holders. Not even a single statement from any of the witnesses that either they are the card holders or that they sold the rice distributed to them under the card. Except the alleged confession statement of A1 and A2 that they purchased contraband from the petitioner / A4 and two others, there is also no material produced on the side of the prosecution to implicate the petitioner / A4. On this ground alone, the entire proceedings in S.T.C.No. 9 of 2015 is liable to be quashed.

13.The other ground on which the petitioner/A4 sought to quash the proceedings is that when there is no authorization to the Quality Inspector under the Essential Commodities Act, the certificate issued by him does not have any legal effect and thus, the same cannot be the basis for the prosecution.

14.This Court has, time and again, held that one cannot be prosecuted for smuggling rice meant for PDS solely on the basis of a certificate issued by a Quality Inspector stating that the rice seized from the accused was PDS rice. In this case, it has been stated by the Quality Inspector (LW10) that from the composition of the rice, which was taken up for analysis, he came to know that the rice is meant for Public Distribution System. In the absence of materials to show that the rice under examination was purchased from card holders, this material that it is a PDS rice, has no evidentiary value.

<https://hcservices.courts.gov.in/hcservices> 15. The learned counsel for the petitioner relied upon an unreported judgment of this Court, dated 23.04.2016, in CrI.O.P. (MD).No.1540 of 2010, wherein under similar set of circumstances



and identical facts, proceedings taken against the petitioners therein (A3 to A5) under Sections 6(4) of TNCS (RDCS) Order, r/w 7(1)(a)(ii) of the Essential Commodities Act were ordered to be quashed. The said decision squarely applies to the facts of this case also.

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15. Under the abovesaid circumstances, the proceedings against the petitioner/A4 in S.T.C.No. 9 of 2015 on the file of the learned Judicial Magistrate No.II, (C.C.I.W. Special Court), Tirunelveli, is quashed.

16. This Criminal Original Petition is accordingly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1. The Judicial Magistrate No.II,
(CCIW Special Court), Tirunelveli.

2. The Inspector of Police,
C.S.C.I.D. Tirunelveli.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Leninkumar, Advocate in SR.37804

Cr1.O.P(MD)No.7055 of 2016
19.07.2016

gcb

PBK/NGM-MP/SAR-I 21.07.2016 ::5P-5C:(IT)