THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.70 of 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment dated 31.10.2013 passed in Criminal Appeal No.71 of 2013 on the file of the Court of the Principal Sessions Judge, Ranga Reddy District (for short, 'the appellate Court'), wherein and whereby, the order dated 07.06.2013 in 6-A Case No.A7/589/2013 on the file of the Collector (CS), Ranga Reddy District, was modified.

2. The contention of the learned counsel for the petitioner is three fold: (1) The appellate Court as well as the District Collector have not properly considered the material available on record; (2) The findings recorded by the authorities below are not supported by oral and documentary evidence; and (3) The District Collector as well as the appellate Court failed to consider that the petitioner has not deviated from the procedure as contemplated under the Essential Commodities Act, 1955.

3. *Per contra,* the learned Public Prosecutor submitted that the material available on record clinchingly establishes that the petitioner has not followed the procedure as contemplated under the Essential Commodities Act. He further submitted that the petitioner failed to maintain the records; therefore the order passed by the appellate Court is sustainable. He also submitted that there is no illegality or irregularity in the order of the appellate Court, which warrants interference of this Court.

4. Now the point that arises for consideration is:

Whether there is any illegality or irregularity in the judgment of the appellate Court dated 31.10.2013 in Criminal Appeal No.71 of 2013, which warrants interference of this Court or not?

5. The petitioner is the Proprietor of M/s. Sri Lekha Traders, Plot No.35, H.No.6-123, Balapur X Road, Saroornagar Mandal, Ranga Reddy District. He had obtained trading licence bearing No.101/FGL/Retain/R.R.East/2009, which was valid upto 31.03.2013 and he has been carrying on rice business. On 10.05.2013, on receipt of credible information, the Regional Vigilance Enforcement Officials, Hyderabad (Rural), visited the premises of the petitioner and verified the stocks as per the records with reference to physical stocks. On verification, the Vigilance Officials found there is a variation of 264 quintals of rice and 43.75 quintals of broken rice and conducted panchanama. As per the inspection report, the petitioner contravened Clauses 10, 11 and Conditions 3, 7(i) and 11 of A.P.Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 read with Section 3 of the Essential Commodities Act. The Vigilance Officials called for the explanation of the petitioner. Being not satisfied with the explanation submitted by the petitioner, a charge memo was issued with the following charges:

"1) It is charged that the respondents stored 264 Qtls of Rice and 43.75 Qtls., of Broken Rice as against the storage limit of 100 Qtls., in urban areas as prescribed for Retailers under Cl.10 of APSCD (LS&R) Order, 2008.

2) The Respondent has failed to maintain accounts and registers and not produced stock register, sale register &

bill book. Thus, contravened condition 3 of license issued under APSCD (LS&R) Order, 2008.

3) The respondent has failed to produce acknowledgement in token of applying for renewal of license and violated the condition 3 & 11 of license issued under APSCD (LS&R) Order, 2008."

6. After affording a reasonable opportunity to both the parties, the District Collector arrived at a conclusion that there is a variation of stocks, thereby the petitioner contravened the provisions of the Essential Commodities Act and ordered confiscation of 100% of entire stocks of rice of 307.75 quintals, worth of Rs.8,44,500/- to the Government account. Feeling aggrieved by the order of the Collector, the petitioner filed Criminal Appeal No.71 of 2013 before the appellate Court. The appellate Court after affording a reasonable opportunity to both the parties modified 100% of the seized stocks to that of variation in the stocks, viz., 164 quintals of rice and 43.75 quintals of broken rice and ordered refund of 100 quintals of rice or the value thereof to the petitioner under Section 6C(2) of the Essential Commodities Act. Hence, the revision.

7. A perusal of the record reveals that the petitioner filed an application for renewal of the licence and the same was granted by the competent authority. It is an admitted fact that by the time of inspection, the petitioner was having valid licence. It further reveals that there is a variation of 164 quintals of rice and 43.75 quintals of broken rice. The petitioner has not afforded explanation much less cogent and convincing explanation for variation in the stocks. It is the duty of the petitioner to maintain the registers as contemplated under the provisions of the Essential

Commodities Act. The material available on record clinchingly establishes that the petitioner has not properly maintained the registers as contemplated under the provisions of the Essential Commodities Act.

8. I am fully agreeing with the findings recorded by the District Collector and the appellate Court with regard to the violation of the rules by the petitioner in maintaining the account books. The District Collector ordered confiscation of 100% of entire stocks. It is not in dispute that the permissible variation is 6%, whereas the variation of the stocks is more than permissible limit in this case. The appellate Court taking into consideration the facts and circumstances of the case, modified 100% of the seized stocks to that of variation in the stocks.

9. It is not the case of the second respondent that the petitioner indulged in black-marketing. There is no mention in the order of the District Collector that the petitioner has not maintained the account books with an ulterior motive to divert the stocks to black-marketing. No specific finding was also given by the appellate Court that the petitioner was diverting the rice and broken rice for black-marketing. The traders sometimes may commit mistakes in maintaining the records. Simply because the petitioner failed to maintain the records that itself is not a valid ground to confiscate the entire stocks. It is not the case of the second respondent that the petitioner committed similar type of mistakes previously.

10. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to modify the order

of the appellate Court to order confiscation of 50% of the variation of the stocks.

11. Accordingly, the Criminal Revision Case is partly allowed modifying the order of the appellate Court to order confiscation of 50% of the variation of the stocks instead of 100%.

12. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 14.12.2016
Ivd