

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CRIMINAL PETITION NOS.14959, 14988 AND 15260 OF 2016

COMMON ORDER:

In all these petitions, this Court is called upon to decide an identical question; therefore, it is expedient to decide all these three criminal petitions by common order.

In all the petitions, defacto complainants during inspection found lorries carrying PDS rice interrupting Public Distribution System contravening the provisions of Essential Commodities Act and the details are given hereunder.

Crl.P. No.	Defacto complainant	Place of seizure	Details of lorries	Quantity
14959/2016	U.D.R.I, Civil Supplies, Sathupalli	Warangal Kalluru Main Road side HP Petrol Bunk	AP 24 TB 2228	440 plastic bags
14988/2016	Deputy Tahsildar, Wyra	Wyra Village	AP 6 TB 6325	200 Bags
15260/2016	Deputy Tahsildar, Kurnool	Jupadu Village, Jagannadha Gattu near Kurnool Town	(1) AP 21 TZ 2689 (2) AP 21 TZ 4043 (3) AP 21 TY 8795 (4) AP 21 TZ 5990	178 Bags

The defacto complainant seized the vehicles and goods under panchanamas and on the strength of the same, reported the matter to the police. Police registered the crime against the petitioners in Crl.P.No.14959 of 2016 for the offences punishable under Section 420 of I.P.C. and Sections 7 and 8 of Essential Commodities Act, in Crl.P.No.14988 of 2016 under Sections 7 and

8 of Essential Commodities Act and in Crl.P.No.15260 of 2016 under Sections 420 and 406 read with 34 of I.P.C. and Section 7 (1) of Essential Commodities Act.

The present petitions are filed raising identical grounds in all the petitions. The main contentions are as follows:

- (a) The petitioners were found transporting rice with all necessary documents in the vehicles and seized the vehicles and goods thereunder on suspicion, even if the entire allegations are accepted on its face value, it would not constitute the offence;
- (b) F.I.Rs are silent as to what control order passed under Section 3 of the E.C. Act is violated, to register a case under Section 7 of E.C.Act, which deals with penalties and in the absence of violation of any specific control order, the F.I.Rs. are liable to be quashed.
- (c) It is further contended that the petitioners do not require any license to carry on business of sale of rice under any of the control order and when the petitioners transporting rice with all necessary documents, it does not amount to contravention of any of the control order in view of the judgment in W.P.No.7811 of 2016 and batch dated 13.07.2016, but in violation of the principle laid down in the above judgment, the defacto complainants lodged complaints with the police and police registered the same as crimes against the petitioners.
- (d) It is also contended that in view of the principles laid down in “**State of Haryana and others v. Ch.Bhajan**

Lal and others¹” and “***Girish Sarwate v. State of A.P.***”², the registration of crime against the petitioners is nothing but abuse of process of law and the Court has to quash the proceedings.

During hearing learned counsel for the petitioners Sri V.H.V.R.R.Swamy admitted that the petitioners are transporting rice being the owners of rice mill, but did not possess any license and no license is required for such business. In the entire complaint, nothing was disclosed about contravention of any control order issued under Section 3 of Essential Commodities Act and in the absence of contravention of any control order, the complaint itself is not maintainable and drawn the attention of this Court to a Judgment of Division Bench of this Court rendered in W.P.No.7811 of 2016 and batch dated 13.07.2016 and general guidelines to exercise jurisdiction under Section 482 of Cr.P.C. in “***State of Haryana and others v. Ch.Bhajan Lal and others***” (referred supra) and finally it is contended that the registration of crime by the police in all the three cases in pursuance of the complaint of the defacto complainant is nothing but abuse of process of law and to meet the ends of justice, this Court has to exercise its inherent jurisdiction under Section 482 of Cr.P.C. and prayed to quash all the crimes registered against the petitioners in all the three (3) petitions.

Learned Public Prosecutor (Telangana State) contended that the petitioners were found in possession of P.D. rice in contravention Clause 17 (A) of Telangana State and Andhra

¹ AIR 1992 SC 604

² 2004 (6) ALD 855 (FB)

Pradesh Public Distribution System control order (for short, hereinafter referred to as “Control Order”) for unlawful gain and in the absence of any explanation how the petitioners came into possession of P.D.S. rice while admitting transportation of rice, the burden of proof is on the petitioners to prove that they are transporting rice without contravening any of the control order. Even otherwise, mere non-quoting of specific clause of control order in the F.I.R. would not vitiate the entire proceedings when the allegations made in the F.I.Rs. on their face value show the contravention of particular control order and placed reliance on a judgment of Apex Court rendered in “**Tulsi Ram v. State of U.P.**”³, “**Chunduru Siva Ram Krishna and Anr. v. Peddi Ravindra Babu and Anr.**”⁴, “**Kolla Srinivas v. State of A.P. and Anr.**”⁵ and “**The Institute of Chartered Accountants of India v. Vimal Kumar Surana and Anr.**”⁶

Learned Public Prosecutor (Andhra Pradesh) contended that the rice is an essential commodity and it is PDS rice as per the information of the defacto complainants and transporting PDS rice is nothing but interruption of Public Distribution System and thereby it is an offence under Clause 17 (A) of A.P. State Public Distribution System (Control) Order, 2008 read with Section 7 of Essential Commodities Act, placed reliance on judgments of Apex Court in “**K.Janardhan Pillai and another v. Union of India and others**”⁷, “**Raj Kiran Das v. The State of Bihar &**

³ AIR 1963 SC 666

⁴ AIR 2009 SC 3250

⁵ 2005 (2) ALD (Crl.) 250

⁶ (2011) 1 SCC 534

⁷ (1981) 2 SCC 45

***Another*⁸ and “*State of Bihar v. Gulab Chand Prasad*⁹”**

In view of rival contentions, the points that arise for consideration are:

- (1) Whether the allegations made in the complaints, which set the criminal law into motion would constitute an offence on the face value of those allegations?
- (2) Whether the transportation of PDS rice amounts to interruption of Public Distribution System in contravention of Clause 17 (A) of Telangana and Andhra Pradesh State Public Distribution System (Control) Order, 2008, if so, failure to quote the relevant control order vitiates the entire proceedings in all these cases?

P O I N T Nos.1 and 2:

In Crl.P.No.14959 of 2016, it is specifically mentioned that the lorry bearing No.AP 24 TB 2228 was found carrying 440 plastic bags of rice loaded at Lakshmi Narasimha Swamy Rice Industries, Kodad and along with the goods the driver of the vehicle was carrying necessary documents. The said lorry was stopped and on interrogation, the driver of the lorry disclosed the details of rice mill, where the goods were loaded and the destination of transport etc. on request of Chitti Nagaraju. Later, samples were collected to verify whether it is PDS rice or not. On examination, it is stated that the rice being transported is PDS recycle rice. Therefore, the transportation of PDS rice is nothing but interruption of Public Distribution System.

⁸ (1998) 3 PLJR 911

⁹ AIR 1982 SC 58

In Crl.P.No.14988 of 2016 it is stated that on 24.11.2015 at 04.30 a.m. the defacto complainant along with Inspector of Police, Vigilance and Enforcement, Warangal found that vehicle No.AP 6TB 6325 illegally transporting 200 Bags of PDS rice and stopped the vehicle and on interrogation the driver of the vehicle stated that such rice was loaded near Wyra Petrol Bunk. Thereafter, police sent the rice load to MLS point, Wyra for safe custody. Thus, the petitioner interrupted Public Distribution System. Samples were drawn from the rice bags and examined and found that it is PDS rice and lodged complaint.

Similarly, in Crl.P.No.15260 of 2016 the complaint disclosed that on 23.09.2016 at 11.30 hours at old poultry and cattle shed located in the fields of Thimma Reddy of Kurnool Town, near Jagannadhagattu, Dupadu Village, Kallur Mandal, four autos bearing Nos.AP 21 TZ 2689 belonging to Allipeera, AP 21 TZ 4043 belonging to V.Ramanjaneyulu, AP 21TY 8795 belonging to Chakali Sudheer and AP 21 TZ 5990 belonging to B.Tirumalesh were carrying PDS rice, on that police seized the vehicles. Therefore, the transportation of PDS rice is nothing but interruption of Public Distribution System.

The allegations made in all the three complaints would go to show that PDS rice is being diverted from Public Distribution System depriving the real poor beneficiaries under the scheme and it is not the case of the petitioners that the same is not the PDS rice, but contended that it is PDS rice and for carrying business of sale of rice business, no license is required. However, the petitioners did not deny the transportation of rice in the vehicles referred to in the complaint and when the petitioners are found in

possession of alleged PDS rice, it is for them to prove how they came into possession of such rice in view of Section 106 of Indian Evidence Act since the onus of proof lies on them. However, in the entire F.I.R. the police did not specify the contravention of any control order, but registered the crime for the offences punishable under Section 420 of I.P.C. and Sections 7 and 8 of Essential Commodities Act. Mere failure of police to quote the specific control order is not a ground to quash the proceedings since the allegations made in the complaint would disclose that the petitioners interrupted Public Distribution Process, which is in violation of Clause 17 (A) of A.P. State Public Distribution System (Control) Order, 2008, which is as follows:

“No Fair Price Shop dealer or card holder or any person shall be allowed to cause interruption or interfere with the process of smooth distribution of scheduled commodities under Public Distribution system or other Government schemes at any level right from Food Corporation of India godown point to Fair Price Shop point, till the scheduled commodity reaches the intended beneficiary. Any such attempt of interruption or interfering with such process shall be treated as an abetment and be deemed to have contravened this order, thereby committing an offence under Section 8 of the Essential Commodities Act, 1955.”

Thus, transporting PDS rice before it reaches the intended beneficiaries i.e. card-holders amounts to interruption of Public Distribution process under A.P. State Public Distribution System (Control) Order 2008. The word ‘any person’ referred in Clause 17 (A) of the Control Order, 2008 indicates every person, who interrupted Public Distribution Process is liable for punishment under Sections 7 and 8 of Essential Commodities Act.

Section 7 deals with penalties against a person, who contravened any of the order made under Section 3 of the

Essential Commodities Act.

Section 3 of the Essential Commodities Act deals with powers to control production, supply, distribution, etc. of essential commodities and it permits the Central Government to pass any control order for securing equitable distribution of essential commodities and availability of fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, and provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein by any order. Thus, A.P. State Public Distribution System (Control) Order, 2008 is a control order issued by the Government in exercise of power conferred under Section 3 of the Essential Commodities Act.

In any prosecution for any offence under the Essential Commodities Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution as per Section 10-C of the Essential Commodities Act. "Culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. For the purpose of Section 10-C of the Act, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Thus, the statutory presumption shall be drawn as per Section 10-C of the Act, when the petitioners are found transporting PDS rice. In the prosecution, if any, launched against them by filing Charge Sheet would give

raise to a defence that he had no *mens era* and in the event of his failure to rebut the presumption, the Court can presume that the petitioners/accused have committed an offence.

Learned Public Prosecutor for Telangana State contended that when the crime is registered under Section 420 of I.P.C., proof of possession of PDS rice is sufficient and the Court can conclude that it is only for wrongful gain. In support of his contention, he placed reliance on a judgment of the Apex Court rendered in “**Tulsi Ram v. State of U.P.**” (referred supra), wherein it is held that it was not necessary to prove that there occurred wrongful gain and wrongful loss; establishment of one of them either wrongful gain or wrongful loss is sufficient to convict the accused for the offence of cheating.

In “**Kolla Srinivas v. State of A.P. and Anr.**” (referred supra) this Court held that if the charge-sheet proves that accused desist a person to take any legal action which he is entitled then accused shall be liable for Criminal intimidation. The said principle has no direct application to the present facts of the case.

Learned Public Prosecutor (Telangana State) further contended that when the petitioner sought for quashing of proceedings at the threshold i.e. at the crime stage, the Court has to exercise its discretionary power sparingly keeping in mind various principles laid down by the Apex Court and in support of this contention, he placed reliance on a judgment reported in “**Chunduru Siva Ram Krishna and Anr. V. Peddi Ravindra Babu and Anr.**” (referred supra), where the Apex Court held that when at an initial stage a prosecution is asked to be quashed, the

test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint filed *prima facie* establish the offence. But at this stage, the principle laid down in the above said judgment is not relevant to the present facts of the case.

Learned Public Prosecutor (Andhra Pradesh) placed reliance on “**K.Janardhan Pillai and another v. Union of India and others**” (referred supra) to contend that rice being transported is recycled PDS rice and it is food stuff within the definition of section 2 (a) (v) of the Central Act and the Apex Court defined the food stuff as follows:

'Foodstuffs' in the wider sense as including all articles of food which may be consumed by human beings after processing. It is in this wider sense that the said term has been understood by Indian Courts as can be seen from some of the decisions to which the Court shall presently refer.

Secondly, having regard to the history of legislation relating to foodstuffs dealt with above and the object of the Central Act which regulates the production, supply and distribution of essential commodities amongst the poverty-stricken Indian people, the expression 'foodstuffs' should be given a wider meaning as including even raw materials which ultimately result in edible articles. Any interpretation that may be given in this case should not be governed by its consequence on the impugned Order but in the light of the importance of the Central Act in the context of the national economy. A narrow interpretation may result in the exclusion of several articles from the purview of the Central Act although nobody has entertained any doubt so far about their

being essential commodities.

Further, in the said judgment, the Apex court held as follows:

“It is well known that the food eaten by human beings consists of cereals like wheats rice of other coarse grains, pulses, oilseeds, vegetables, sugar, fruits and nuts, animal foodstuffs and sea food like meat, beef, mutton and fish and dairy products like milk, butter, eggs etc. According to Webster's Third New International Dictionary, the word 'food' means fodder' also. One of the meaning of the word 'food' given in that Dictionary is 'material consisting of carbohydrates, proteins and supplementary substances (as minerals, vitamins) that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish energy for all activity of the organism'. In the same Dictionary 'foodstuff' is defined as 'a substance with food value' and 'the raw material of food before or after processing'. One of the usages of the said word is given as 'a bountiful crop of cereal foodstuffs'. Therefore, 'foodstuff' need not necessarily mean only the final food product which is consumed. It also includes raw food articles which may after processing be used as food by human beings.”

By relying on the above judgment, learned Public Prosecutor contended that the petitioners found transporting recycled PDS rice, which is food stuff and also comes within the definition of Food Stuff. Thereby, transporting such food stuff is nothing but contravention of A.P. State Public Distribution System (Control) Order.

Learned Public Prosecutor (Andhra Pradesh) also relied on another decision of Patna High Court rendered in **Raj Kiran Das v. The State of Bihar & Another** (referred supra) to the same effect.

Finally, learned Public Prosecutor (Andhra Pradesh) contended that when it is alleged that the petitioners contravened

a particular control order, which is in force and covered by the Essential Commodities Act, they have to comply with the same and failure to comply with the specific control order would amount to an offence and in support of his contention he placed reliance on a judgment of the Apex Court rendered in “**State of Bihar v. Gulab Chand Prasad**” (referred supra), wherein the accused violated the statutory order covering Soda ash, which is in force by then, and the dealer violated Clauses 3 and 4 of the Order. When the accused approached the Court to quash the proceedings, High Court quashed the complaint, but the matter carried to the Supreme Court. The Supreme Court made a serious comment that it is unwise to ignore the existence of a subsisting order and to dispose of a proceeding as if no such order was there and set aside the order of High Court quashing the complaint.

In the present case, there is no mention in the F.I.R. about the violation of particular control order i.e. A.P. State Public Distribution System (Control) Order and Telangana State Public Distribution System (Control) Order, but the allegations made in the complaints lodged by the defacto complainants on their face value would constitute an offence punishable under Sections 7 and 8 of the Essential Commodities Act and clause 17 (A) of A.P. State Public Distribution System (Control) Order and Telangana State Public Distribution System (Control) Order.

In the present cases, the contention of the petitioners is that there is no mention about the violation of any particular control order, but that by itself is not sufficient to quash the proceedings when the allegations made in the F.I.Rs. would constitute an offence on their face value.

The Apex Court in **“State of Haryana v. Bhajan Lal”** (referred supra) laid down seven guidelines. Guideline No.1 is relevant, according to it, where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In **“Madhavrao Jiwaji Rao Scindia & anr. v Sambhajirao Chandrojirao Angre & ors.”**¹⁰, the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence.

Therefore, by following **“Madhavrao Jiwaji Rao Scindia & anr. v Sambhajirao Chandrojirao Angre & ors.”** (referred supra) the special facts or special features have to be taken into consideration to quash the criminal proceedings and to decide the *lis* between the parties, as held by the Supreme Court **“Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy and Ors”**¹¹.

In **“R.P. Kapur v. State of Punjab”**¹², the Apex Court held as follows:

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of

¹⁰ 1988 AIR 709

¹¹ 2011 (3) ACR 3156 (SC)

¹² AIR 1960 SC 866

the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

In view of the principles laid down by the Apex Court, this Court can exercise jurisdiction under Section 482 of Cr.P.C. only when the allegations made in the complaint on its face value would not constitute an offence; failure to quote contravention of specific clause of control order is irrelevant.

The main reason for challenging the complaints before this Court is that sale of PDS rice is not an offence in the absence of any contravention of control order in view of the principle laid down in W.P.No.7811 of 2016 and batch wherein the Division Bench of this Court while deciding a Writ of Certiorari filed under Article 226 of the Constitution of India to declare G.O.Rt.No.1024 dated 11.05.2016 confirming the detention of the petitioner's husband as illegal, arbitrary and to grant Habeas Corpus directing the respondents to produce the petitioner's husband.

In the facts of the above judgment, the detainee indulged in sale of PDS rice by purchasing PDS rice from cardholders after supplying by the Fair Price Shop dealer to the cardholder. So, it is clear that there was no interruption in the process of distribution as contemplated in clause 17 (A) of the A.P. State Public

Distribution System (Control) Order since the process is limited till the commodity reaches the intended beneficiary i.e. cardholder from Fair Price Shop godown. Therefore, purchase of PDS rice from the beneficiary or cardholder does not amount to interruption in the process of distribution under Clause 17 (A) of A.P. State Public Distribution System (Control) Order. But the facts of the present cases are distinct as the petitioners herein transporting PDS rice after recycling, thus, it can be termed as interruption of Public Distribution System. Since it was not case of the defacto complainants that the petitioners purchased the rice from cardholders or beneficiaries and thereafter started transporting the same. Hence, the principle laid down in W.P.No.7811 of 2016 and batch has no application and on the strength of the principle laid down by the Division Bench of this Court in W.P.No.7811 of 2016 and batch, the present proceedings cannot be quashed at the threshold.

Sri V.H.V.R.R. Swamy, learned counsel for the petitioners, by his over vehemence contended that the entire proceedings are vitiated only on the ground that the police did not mention the violation of particular control in the F.I.Rs. It is a known fact that on receipt of complaint from the defacto complainant, police register the same as crimes and issued F.I.Rs. to set criminal law into motion. Mere quoting wrong provision of law or failure to quote relevant provision of law is not a ground to quash the proceedings since the allegations made on their face value shall be taken into consideration at the crime stage. To exercise inherent jurisdiction under Section 482 Cr.P.C. by this Court, the truth or otherwise of the allegations made in the complaint cannot be gone

into at this stage. Hence, the contention of the learned counsel for the petitioners is without any substance legally and the same is negated.

On an overall consideration of the law laid down by various Courts and the Apex Court and present facts of the case, I find that the petitioners violated the clause 17 (A) of Telangana State and Andhra Pradesh State Public Distribution System (Control) Order on the face value of the allegations made in the complaints, as such the present complaints are not liable to be quashed.

In view of my foregoing discussion, I find no ground to quash the proceedings in these cases as they are devoid of merits. Consequently, the petitions are liable to be dismissed.

In the result, the petitions are dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:09.11.2016

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Note: Issue C.c. within a week.

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