

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.157 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment dated 22.02.2011 in Criminal Appeal No.61 of 2010 on the file of the Court of the District and Sessions Judge-cum-Appellate Authority under Essential Commodities Act, Visakhapatnam, wherein and whereby the order dated 31.07.2010 in C.C.No.99/2009/CSR5 on the file of the Joint Collector, Visakhapatnam was modified by reducing confiscation of seized stock from 100% to 50%.

2. The facts leading to filing of the present criminal revision case are briefly as follows:

The petitioners have been carrying on wholesale and retail rice business in shop bearing D.No.45-4-49/A, Akkayyapalem of Visakhapatnam Town. While so, the Assistant Supply Officer, Circle-I, Visakhapatnam conducted raid on the shop and found the following variation:

<u>S.No.</u>	<u>Commodity</u>	<u>Opening Balance</u>	<u>Receipt</u>	<u>Total</u>	<u>Sales</u>	<u>Closing Balance</u>	<u>Ground Balance</u>	<u>Variation</u>
<u>1.</u>	<u>Rice</u>	<u>135.00</u>	<u>0</u>	<u>135.00</u>	<u>27.50</u>	<u>107.50</u>	<u>84.00</u>	<u>(-) 23.50</u>

The petitioners submitted explanation stating that due to pressure of work, they could not mention the correct stock on the notice board. In spite of adjourning of the matter by the Joint Collector on 06.03.2010, 03.07.2010 and 31.07.2010 neither the petitioners nor their counsel appeared before the Joint Collector to defend the case. The learned Joint Collector having no other alternative, passed the order on 31.07.2010 and ordered to confiscate 100% of the stock seized from the petitioners in favour of the Government. Feeling aggrieved by the order of the Joint Collector, the petitioners filed Criminal Appeal No.61 of 2010 on the file of the Court of the District and Sessions Judge-cum-Appellate Authority under Essential Commodities Act, Visakhapatnam. The learned District Judge after considering the material available on record, allowed the appeal in part. Hence, the revision.

3. The contention of the learned counsel for the petitioners is two fold: (1) it is

not the case of the respondent that the petitioners indulged in black-marketing; therefore the orders passed by the Courts below are not sustainable either on facts or in law; (2) the appellate Court having arrived at a conclusion that the Joint Collector rejected the case of the petitioners summarily ought to have allowed the appeal.

4. *Per contra*, the learned Public Prosecutor representing the State submitted that the petitioners did not appear before the Joint Collector for the reasons best known to them. He further submitted that there is no illegality or irregularity in the order dated 22.02.2011 in Criminal Appeal No.61 of 2010. Hence, the present revision is not maintainable.

5. Now the crucial question that falls for consideration is whether the order 22.02.2011 in Criminal Appeal No.61 of 2010 is sustainable or not?

6. The gist of the allegation made against the petitioners is that they violated the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008. On 04.05.2009 at about 6:00 PM, the Assistant Supply Officer, Circle-I, Visakhapatnam visited the shop of the petitioners and found there is a shortage of 23.50 quintals of rice. The petitioners submitted the explanation stating that due to pressure of work, they could not mention the physical stock of the rice on the notice board. It is not the case of the respondent that the petitioners are diverting the rice for the purpose of black-marketing. The fact remains that the petitioners violated the procedure as contemplated under the A.P. Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008. As observed earlier, the Joint Collector ordered to confiscate 100% of the stock seized from the petitioners shop. The appellate Court modified the order by reducing the confiscation of stock to 50%. While disposing of the petitions of this nature, the Court has to take into consideration the ground realities as well as the nature of violation of the orders by the petitioners. The Court has to visualize the situation and pass appropriate orders in order to secure ends of justice. It is not the case of the respondent that the petitioners indulged in this type of activities previously. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to modify the order dated 22.02.2011 in Criminal Appeal No.61 of 2010. _____

7. In the result, the Criminal Revision Case is allowed in part by modifying the order 22.02.2011 in Criminal Appeal No.61 of 2010 on the file of the Court of

the District and Sessions Judge-cum-Appellate Authority under Essential Commodities Act, Visakhapatnam reducing the confiscation of the seized stock from 50% to 25%.

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

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T.SUNIL CHOWDARY, J

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Date: 14.07.2016

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