

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.3032 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the judgment dated 21-10-2016 passed in Criminal Appeal No.19 of 2016 on the file of the Sessions Judge, Nizamabad, wherein and whereby the order passed by the Joint Collector, Nizamabad, dated 18-01-2016 in Case No.CS6/315/2015, was modified

2. Heard learned counsel for the petitioner and the learned Special Assistant Public Prosecutor.

3. The contention of the learned counsel for the petitioner is two fold viz., (1) either the Joint Collector or the appellate Court has not considered the material available on record in right perspective and arrived at a wrong conclusion that the petitioner diverted PDS rice to black-market and (2) three times penalty imposed by the Joint Collector, which was confirmed by the 1st appellate Court is on higher side.

4. Per contra, learned Special Assistant Public Prosecutor submitted that the Joint Collector and the appellate Court considered the material available on record in right perspective and hence, there are no grounds, much less, valid grounds to interfere with the orders of both Courts below.

5. A perusal of the record reveals that the petitioner is the fair price shop dealer in respect of shop No.15 of Durki village and Mandal, Nizamabad District. A perusal of the record further reveals that the Civil Supplies Officials inspected the shop of the petitioner and found variation of 13.72 quintals of PDS rice, 1.05 quintals of AAY rice and 107 packets of ½ kg sugar. The Joint Collector called for the explanation of the petitioner with regard to variation of the

stock, for which the petitioner submitted an explanation. Being not satisfied with the explanation of the petitioner, 6-A proceedings were initiated against the petitioner.

6. The Joint Collector, Nizamabad, after affording reasonable opportunity to the petitioner, arrived at a conclusion that the petitioner diverted the PDS rice, AAY rice and Sugar to the black market. The Joint Collector confiscated 100% of the value of the seized stock and also imposed penalty of three times the difference between the market rate and Public Distribution System rate of the commodity.

7. Aggrieved by the said order of the Joint Collector, the petitioner preferred CrI.A.No.19 of 2016 on the file of the Sessions Judge, Nizamabad, who after considering the material available on record, dismissed the appeal by modifying confiscation of 100% value of the entire seized stock to 40% of the value and confirming the order of the Joint Collector in all other aspects. Hence, this revision.

8. The predominant contention of the learned counsel for the petitioner is that the petitioner has not indulged in black marketing. Due to over-sight, he could not maintain the records.

9. It is the duty of the fair price shop dealer to maintain the records as per the provisions of the Essential Commodities Act. The Court shall not lightly interfere with the concurrent findings of the fact recorded by the Courts below. The fact remains there is variation of stock at the time of inspection of the fair price shop of the petitioner.

10. At the time of arguments, the only relief sought for by the learned counsel for the petitioner is to reduce the imposition of penalty of three times the difference between the

market rate and Public Distribution System rate of the commodity, which is on higher side. To substantiate the same, learned counsel for the petitioner has drawn attention of this Court to the order passed by this Court in Crl.R.C.No.2609 of 2014, dated 10-03-2015, which reads thus:

“As seen from the material placed on record, the petitioner indulged in black marketing of wheat and there is record to show that the petitioner was not supplying wheat to the Cardholders. On an appreciation of facts and circumstances of the case, the lower appellate Court having observed that the confiscation ordered by the Joint Collector is based on record, confirmed the order of the Joint Collector. In view of the observations made, this Court finds no illegality or irregularity in the judgment of the lower appellate Court. But however, the quantum of confiscation and imposition of penalty to the extent of three times the difference between the market rate and public distribution system rate of the commodity which was diverted appear to be on higher side. It is also to be noted that there was no variation in PDS rice. Having regard to the said circumstances, the order of confiscation of 100% value of the seized stock in favour of Government is reduced to 40%. However, imposing penalty of three times the difference between the market rate and public distribution system rate of the commodity which was diverted, (6.20 quintals of wheat) being on a higher side, is reduced to 1 ½ times.”

11. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the Criminal Revision Case is disposed of by reducing the penalty of three times the difference between the market rate and Public Distribution System rate of the commodity, which was diverted (14.78 quintals of rice and 107 packets of sugar) i.e., worked out to Rs.1,08,350/-, which is being on higher side, to two times. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 19.12.2016.

Hsd