

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2002 of 2015

ORDER:

Questioning the judgment in Crl.A.No.47 of 2011 on the file of the District and Sessions Judge, Visakhapatnam, wherein an order of the Joint Collector, Visakhapatnam passed in C.C.NO.109 of 2007, dated 24.05.2008 was confirmed, the present Criminal Revision Case is filed.

The facts in issue are as under:

Pursuant to a news item published in Eenadu Daily Paper, the Deputy Tahsildar (Civil Supplies), Elamanchili along with Village Revenue Officer, Uppavaram surprised the fair price shop of Uppavaram Village and other places of Narendrapuram and Mallavaram Villages. On verification the following variations were noticed:

Commodity	Opening Balance	Receipt	Total	Issues	Closing Balance	Ground Balance	Variation
PDS Rice	0.20	67.80	68.00	36.52	31.48	31.35	(-) 0.13
AAY Rice	--	14.70	14.70	9.45	5.25	5.25	--
AP Rice	--	0.30	0.30	0.20	0.10	0.10	--
Sugar	--	4.48	4.48	1.00	3.48	3.48	--
K.Oil	023	1330	1353	362	991	980	(-) 11 litres

The Deputy Tahsildar, in his report submitted that as per the allotment of the Tahsildar, Atchuthapuram, kerosene oil allotment was 1730 litres and the wholesale kerosene dealer delivered 1730 litres of kerosene oil in two spells i.e. 1330 litres on 21.04.2007 and 400 litres on 25.04.2007. It is stated that the FP shop dealer entered 1330 litres in the stock register and failed to enter 400 litres of kerosene oil in the stock register. Hence, it was found that 400

litres of kerosene was diverted by the FP Shop dealer.

The Deputy Tahsildar, Elamanchili, in his report dated 20.06.2007 stated that he took possession of 220 litres of PDS kerosene oil and an auto bearing No.AP 31 U 9752, which was intercepted by the Sub-Inspector of Police at Kondakarla Junction, along with B.Appa Rao, Fair Price Shop Dealer, Uppavaram Village and B.Siva, auto driver. A case in Crime No.53 of 2007 came to be registered against the Fair Price Shop dealer and the auto driver.

From the narration of the above facts, it is clear that kerosene oil to an extent of 980 litres was seized at the Fair Price Shop whereas 220 litres was seized at Kondakarla Junction. Basing on the said reports, three charges came to be framed against the petitioner herein.

After considering the material placed on record and after hearing both the parties, the primary authority ie. Joint Collector ordered 100% confiscation of value of 220 litres of PDS kerosene oil seized from the Auto bearing No. AP 31 U 9752 and the stock seized from the Fair Price Shop, Uppavaram including a fine equal to the value of 220 litres of PDS kerosene oil. Aggrieved by the same, the petitioner herein preferred an appeal. After hearing both the parties, the appellate authority confirmed the same. Challenging the same, the present revision is filed.

Learned counsel for the petitioner submits that there was no delivery of 400 litres of kerosene in the second spell to E.Srinivasa Rao on 25.04.2007 and that the signature of the said individual, who is alleged to have received the said kerosene, is forged by the wholesale dealer on the delivery receipt. In view of the above, he submits that diversion of 220 litres of PDS kerosene does not arise. He further submits that in view of acquittal of the petitioner in the criminal case the allegation of diversion gets falsified.

On the other hand, learned Additional Public Prosecutor strongly opposed the revision contending that acquittal in a criminal case was on technical grounds and the same has no bearing on these proceedings. He submits that 220 litres of PDS kerosene was diverted though it was delivered to the Fair Price Shop of the petitioner. Since both the forums have concurrently ordered 100% confiscation, he submits that there are no merits in the revision and the same is liable to be dismissed.

It is to be noted that during pendency of the appeal, the petitioner herein filed Crl.M.P.Nos.399 and 400 of 2012 to send the delivery receipt dated 25.04.2007 said to have been issued by E.Srinivasa Rao to the hand writing expert for comparing the signature of the said individual with his admitted signatures. A counter came to be filed by the State opposing the same. After hearing both sides, the appellate Court allowed the petitions. The said order has become final. Pursuant to the said direction, the Court issued an official Memorandum to the District Collector, Visakhapatnam to produce the relevant original bills books before the Court. It is necessary to extract the relevant portion of the said letter, which is as under:

“It is submitted that in this case, the two original bills i.e. Bill No.5 dated 21.04.2007 and Bill No.28 dated 25.04.2007 which were available with the authorized FP Shop dealer were not seized by the Deputy Tahsildar (CS), Elamanchili while booking 6-A case against the respondent dealer on 27.04.2007, as such, submission of the original bills which are in the hands of the dealer and his representatives, cannot be produced before the Court by this office at this juncture.

It is submitted that the second copy of the bill No.28 dated 25.04.2007 which is available with the wholesale dealer SKO dealer M/s. Sri Kanthi Agencies, Nakkapalli was obtained, as the original bill No.28 dated 25.04.2007 is not available in this office. However, the second copy of the bill No.28 dated 25.04.2007 obtained from the wholesale SKO dealer M/s. Sri

Kanthi Agencies, Nakkapalle, who stated to have delivered 400 litres of K.Oil to Sri E.Srinivasa Rao, cousin brother of Sri B.Appa Rao, dealer of FP Shop No.24, Uppavaram Village, Achuthapuram Mandal, is herewith submitted for kind perusal and necessary action.”

From the above, it is relevant to note that the original bill book containing the delivery receipt dated 25.04.2007 issued in token of delivery of 400 litres of kerosene to E.Srinivasa Rao, was not seized by the Deputy Tahsildar and the same is available with the Fair Price Shop Dealer. If really, the argument which is now sought to be advanced is correct, nothing prevented the petitioner from producing the original bill book containing the delivery receipt, which is very much available in his hands. As per the contents of the letter of the District Collector, the petitioner should have disproved the charges levelled against him. Instead of doing so, he filed the petitions for the purpose of sending for the delivery receipt book to hand writing expert, which is un-warranted. It would be appropriate to refer to the observation made by the Joint Collector in his order dated 05.02.2011 to prove the complicity of the petitioner, which is as under:

“If the seized stocks in the auto do not belong to the respondent, it is not explained what has happened to 400 litres of kerosene delivered on 25.04.2007 and on perusal of record of the wholesale dealer it is clearly evident from the signature of E.Srinivasa Rao, who is the cousin of the 1st respondent has received 1330 litres of kerosene on 21.04.2007 and 400 litres on 28.04.2007, the stocks release certification when compared with the signatures of E.Srinivasa Rao, it is tallying as such denial at this juncture stating that the signature of his cousin E.Srinivasa Rao was forged, is absolutely incorrect and false, the complainant has established that the kerosene stock delivered in the 2nd spell was delivered by the respondent and a F.I.R. was also registered by the local police while the kerosene was being diverted in the Auto and denial by the respondent stating that the stocks seized by the local police do not belong to him is

incorrect and false, and hold that the charges are to be proved.”

If the contents of the letter issued by the District Collector, observations made by the District Collector and the conduct of the petitioner are taken into consideration, the defence taken by the petitioner falsifies his own case. Apart from that the material on record discloses that though show-cause notice under Section 6-B of the E.C.Act and subsequent notice calling upon his presence on 22.09.2007, 19.04.2008, 17.05.2008 and 24.05.2008 were issued to the respondents, there was no response nor any explanation submitted for the charges levelled. No explanation is forthcoming to show as to why the petitioner herein never responded to the charges levelled against him.

Having regard to the circumstances stated above, I see no merits in the revision and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.04.2016
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