

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Writ Petition No.47/2016

Mr. Sachin Vishvanath Naik,
Age 46 yaers, Occ. Trader,
Resident of H.NO.335,
Nagzar, Curti, Ponda-Goa.

Petitioner

Versus

1. Additional Collector-I,
cum Additional District Magistrate,
North Goa District,
Office of the District Collector, North-Goa,
Panaji, Goa.

2. State of Goa,
Through Chief Secretary
Assembly Complex, Porvorim-Goa.

Respondents.

Shri C. Padgaonkar, Advocate for the petitioner.
Shri S.R. Rivankar, Public Prosecutor for the respondents.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
DATE : 13th February, 2017.

ORAL JUDGMENT (Per Nutan D. Sardesai, J.)

1] Heard Shri C. Padgaonkar, learned Advocate for the petitioner and Shri Rivankar, learned Public Prosecutor for the respondent.

2] Rule. Heard forthwith with the consent of the learned counsel. Shri Rivankar, learned Public Prosecutor waives service on behalf of the respondents.

3] The petitioner has offered the challenge to the judgment and order dated 3.10.2015 passed by the learned Additional Sessions Judge at Ponda upholding the order passed by

the learned Additional Collector-I cum Additional District Magistrate, North Goa District Panaji in Case No.ECA/1/2012-MAG/44. The report was made under Section 6-A of the Essential Commodities Act, 1955 ("Act" for short hereinafter) made by the SDPO, Ponda requesting for confiscating of the essential commodity and vehicle seized in the course. The Inspector of Civil Supplies on 2.11.2012 had filed the complaint with the SDPO alleging that the petitioner was found to have illegally 277 of rice bags including 1 bag of wheat and bag of mixed of rice and wheat for sale/transportation being a public control commodity and meant for public distribution. It is further alleged that the truck bearing Registration No.KA-31-5021 containing 250 bags of rice was loaded in front of the petitioner premises for the purpose of transportation besides three open bags of rice.

4. The petitioner according to Inspector of Civil Supplies was unable to produce any legal document for the storage/transportation and accordingly sealed godown alongwith 277 bags found at the spot, 504 empty plastic gags, 405 empty jute/gunny bags apart from the truck loaded with 253 bags of rick and other material giving rise to the registration of an offence at the Ponda Police Station under Section 420 read with Section 34 IPC and Sections 3 and 4 of the Act. The SDPO, Ponda pursuant to his report under Section 6-A of the Act had requested the

respondent no.1 to confiscate the said essential commodity including the vehicle etc., and the respondent no.1 ordered such confiscation vide the judgment dated 22.4.2013. He had approached the learned Additional Sessions Judge in Appeal who upheld the judgment of the respondent no.1 and therefore, he was constrained to invoke the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for setting aside the judgment of the respondent no.1 dated 22.4.2013 and that of the Additional Sessions Judge dated 3.10.2015.

5. Shri C. Padgaonkar, learned Advocate for the petitioner contended that the license was issued in the name of his late father and on his death the quota was lifted by his mother. The confiscation had proceeded on the premise that the supplies for public distribution were done without any permit and there was mis-direction of essential commodities meant for the public distribution. He submitted that the complaint and the report under Section 6-A of the Act was mis-placed and as rice and wheat were not controlled commodities. Besides he relied on the Gazette Notification dated 15.2.2002, pursuant to which rice and wheat were not at all controlled commodities and therefore the impugned judgments had to be quashed and set aside and he was entitled to receive the proceeds from the auction carried out of the seized rice and the other commodity.

6. Shri S.R.Rivankar, learned Public Prosecutor adverted to the complaint dated 2.11.2012 and submitted that the Officer had rightly acted on the basis of the information received by her and lodged the complaint with the Police. The petitioner who was running the Fair Price Shop was found in possession of the confiscated goods which controlled commodity which was seized from his residence and therefore in terms of Section 6(2) the respondent no.1 had rightly proceeded to dispose off the same.

7. We have heard Shri Padgaonkar, learned Advocate for the petitioner and Shri S.R.Rivankar, learned Public Prosecutor on behalf of the respondents and also perused the compilation of the additional documents produced on record by the petitioner.

8. Be that as it may and on consideration of their arguments and more particularly taking into the account the fact that rice and wheat are not controlled commodities within the meaning of Section 3 of the Notification dated 15.2.2002 which reads as, "With the coming into effect of this Order any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarsegrains, sugar, edible oil seeds and edible oils and shall not require a permit or license therefore under any order issued under the Essential Commodities Act, 1955," the question of issuing notice to the petitioner and seizing the goods on the premise that they were controlled commodities would essentially not arise. Besides in

terms of Section 3 of the Notification dated 15.2.2002, the dealer would not require any permit or license to sale or transport or otherwise dispose off any quantity of wheat, rice etc., and which is to take effect immediately, the proceedings initiated against the petitioner pursuant to the report under Section 6-A of the Act would not survive. Moreover, there was no particular rebuttal of the petitioner's case that the Fair Price Shop was earlier run by his father, who held the license in his name and that on his death the quota was lifted by his mother.

9. In view thereof, we are of the view that the impugned judgment dated 22.4.2013 ordering the confiscation of the commodity rice and the vehicle and that the learned Additional Sessions Judge in Appeal No.48/2013 dated 3.10.2015 cannot be sustained and therefore quashed and set aside. Having held that the food grain is seized from the residence of the petitioner was not controlled commodity and that no license was required in terms of the Gazette Notification dated 15.2.2002, the petitioner would be entitled to the sale proceeds of the auction of the seized commodity. In these terms, the petition stands disposed off. Rule is made absolute accordingly.

NUTAN D.SARDESSAI, J.

F.M.REIS, J.

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