BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.327 of 2015 and
M.P.(MD)No.3163 of 2016

[Orders Reserved on 23.03.2017]

State Rep.by
The Inspector of Police,
Civil Supplies C.I.D.,
Kuzhithurai
(Crime No.260/2012) : Petitioner/Respondent/Appellant

Vs.

1. Sheik Usman
2. B.M.Sheriff : Respondents/Appellants/Respondents

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the Judgment passed by the Sessions Court, Kanyakumari Division @ Nagercoil in Crl.Appeal No.44/2013 and Crl.M.P.No.2464 of 2013 Common Judgment passed in C.A.No.44 of 2013 & Crl.M.P.No.2464 of 2013, dated 16.12.2013 convict the respondents / accused of the charges framed against them.

For Petitioner : Mr.P.Kandasamy, Govt.Advocate (crl.side) appeared on 23.03.2017
(Mr.T.Mohan, Additional Government Pleader appeared on 03.11.2017)

For Respondents : Mr.A.Dennison, appeared on 23.03.2017
(None appeared on 03.11.2017)

ORDER

The Criminal Revision has been filed praying to set aside the Judgment passed by the learned Sessions Judge, Kanyakumari Division @ Nagercoil in Crl.A.No.44/2013 and Crl.M.P.No.2464 of 2013, dated 16.12.2013 and to convict the respondents / accused of the charges framed against them.

2. The Criminal Revision is taken up for final hearing, in the admission stage itself, with the consent of the counsel appearing on either side.

3. The case of the petitioner is that the petitioner along with the police party was on vehicle inspection at Melpuram Check Post, on reliable information, at about 1.00 a.m., on 11.10.2012, a lorry bearing Registration No.KL-19-A-786, belonging to the accused

was found 6216 Kgs of Public Distribution System Rice and a case has been registered in Crime No.260 of 2012, under Sections 6(4) of TNSC [RDCS) Order 1982 r/w Section 7(1)a (ii) of the Essential Commodities Act, 1955 and the said rice along with lorry were seized under Mahazar, on the basis of the confession statement recorded from the driver / A3 and cleaner / A4 of the lorry, after their arrest and the seized properties were kept at the Government godown at Konam and the sample of the said rice was sent to the Quality Inspector, who after analysis certified that it was PDS rice. Therefore, a report along with complete records pertaining to the above case were submitted to the District Revenue Officer, Kanyakumari District, for further proceedings under Sections 6(A) of the Essential Commodities Act, 1955 and a detailed enquiry was conducted by the District Revenue Officer and order was passed on 15.05.2013 stating that 6216 Kgs., of P.D.S Rice was transported to Kerala State through the lorry bearing Registration No. KL-19-A-786, without any proper licence or certificate and confiscated the said PDS rice to the Government and imposed a sum of Rs.1,00,000/-, as fine, to the seized lorry in default of payment of fine, the said lorry is to be seized. Aggrieved by that order, the respondents herein preferred C.A.No.44 of 2013, for setting aside the order of confiscation and also Crl.M.P.No.2464 of 2013, for interim custody of the seized lorry before the learned District Judge, Kanyakumari District at Nagercoil and the said criminal appeal was allowed vide order, dated 15.12.2013, by setting aside the proceedings of the District Revenue Officer dated 15.05.2013 in F1/32919/2012 and directed to hand over the seized lorry bearing Registration No. KL-19-A-786, which is in the custody of the Police. Aggrieved by the Judgment of the appellate Court, the present Criminal Revision has been preferred to set aside the said Judgment passed in C.A.No.44 of 2013 and Crl.M.P.No.2464 of 2013, dated 16.12.2013 by the learned Sessions Judge, Kanyakumari District at Nagercoil.

4. The learned Government Advocate (crl.side) appearing for the revision petitioner would submit that the bills which show that the seized rice was purchased from R2 herein and the Sales Tax particulars for the year 2012-13 are false and created after the occurrence and were submitted before the DRO proceedings, Kanyakumari District, since those bills were not produced before the Investigating Officer during the interrogation of the driver of the lorry and also cleaner; that non-examination of attesting witnesses of the seizure mahazaar separately and non-examination of the Quality Control Authority are not fatal to the prosecution and Section 6(E) of the E.C.Act, 1955 specifically bars any Court to pass any orders with regard to disposal of the vehicle used for illegal transportation of essential commodities, which was sent for confiscation to the District Collector under Section 6(A) of the E.C.Act, 1955 and the individual should not be permitted to enrich at the cost of the public at large. The Revision Petitioner has produced the copy of the orders passed in the proceedings of the DRO in F1/32919/2012, dated 15.05.2013 and also the impugned common Judgment passed by the appellate Court / Sessions Judge, Kanyakumari

at Nagercoil in C.A.No.44 of 2013 and Crl.M.P.No.2464 of 2013, dated 16.12.2013.

5. The learned counsel appearing for the respondents would submit that there is no material evidence to prove the fact that the seized rice from the lorry is PDS Rice and the Judgment of the appellate Court does not require any further consideration and hence, the present Revision is liable to be dismissed on devoid of merits. The learned counsel for the respondents, in support of his contentions, relies the decision of this Court in ***Beer Mohammed and 2 others Vs. The Inspector of Police, C.S.CID, Dindigul*** reported in reported in ***(2017 (1) TLNJ 44 (Crl))***

6. I have perused the materials available on record. Heard and considered the rival submissions advanced by either side.

7. On perusal of the order passed by the District Revenue Officer, Kanyakumari District at Nagercoil, the respondents / accused have submitted their written submissions / explanation along with the documents for perusal of the District Revenue Officer during enquiry. The District Revenue Officer has relied the evidence of the seizure officer, who was also cross-examined by the respondents / accused and also the quality certificate, dated 05.11.2012, issued by the Tamil Nadu Civil Supply Corporation, Konom, stating that the recovered rice is PDS rice, for passing the order of confiscation of rice and the release of lorry used for transporting the said rice on the date of occurrence. Admittedly, the Quality Inspector, who has given the said certificate was not examined before the District Revenue Officer by the appellant herein. No valid reason is assigned for non-examination of the said Quality Inspector or the Authority, who issued the said certificate, dated 05.11.2012. No witnesses have been examined to prove the fact that the respondents / accused purchased the rice transported through the said lorry from the family card holders. There is not even an iota of material to show by the prosecution that the rice distributed to family card holders was purchased by the accused and was transported through the said lorry. Mere production of certificate stating that the seized rice is PDS rice is not sufficient proof. The contents of the said certificate is not proved by examining the author of the said certificate. Prosecution has not proved that the rice seized from the lorry is the selling rice allocated for public Distribution System. One cannot be prosecuted for smuggling the rice meant solely on the basis of the certificate issued by the Quality Inspector or Authority stating that the rice seized from the accused was PDS rice. In the absence of the materials to show that the seized rice under examination was purchased from the card holders, the materials by way of production of a certificate that it is a PDS rice has no evidentiary value.

8. The appellate Court has found that the Sales Tax Receipt, dated 10.10.2012 (Page 67) and purchased bills for the rice from the Al Amin Trading Company / R2 (Page No.59) in the case records. The documents produced by the accused were not considered by the

District Revenue Officer in his enquiry proceedings. Investigation Officer also not examined before the District Revenue Officer by the prosecution. Hence, the seized rice from the lorry is not proved as PDS rice in the proceedings before the District Revenue Officer.

9. Considering the above facts and circumstances of the case and also the fact that the seized rice was not proved as PDS rice, this Court is not inclined to interfere with the Judgment *passed by the learned Sessions Judge, Kanyakumari @ Nagercoil in Crl.A.No.44/2013 and Crl.M.P.No.2464 of 2013, dated 16.12.2013 and to convict the respondents / accused of the charges framed against them.*

10. Considering the above facts and circumstances of the case and also the fact that the seized rice was not proved as PDS rice, this Court is not inclined to interfere with the Judgment of the appellate Court passed in C.A.No.44 of 2013 and Crl.M.P.No.2464 of 2013, dated 16.12.2013 of Sessions Court at Kanyakumari at Nagercoil.

11. In the result, this Criminal Revision stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
   Kanyakumari Division @ Nagercoil

2. The Inspector of Police,
   Civil Supplies C.I.D.,
   Kuzhithurai

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

<u>Copy To:</u>

The Record Keeper, Criminal Record Section,
Madurai Bench of Madras High Court, Madurai.

MPK
TE/KP/SAR-I : 15/11/2017 : 4P/5C

Orders made in
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M.P.(MD)No.3163 of 2016
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