BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : .06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)No.705 of 2016
and
CRL MP(MD)No.9991 of 2016

Orders Reserved on 28.11.2016

Rajendiran : Petitioner/Accused

Vs.

State Rep. By
The Inspector of Police,
CSCID, Thanjavur
(Crme No.317 of 2009) : Respondent/Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order passed by the learned Principal District and Sessions Judge, Thanjavur made in C.A.No.56 of 2010, dated 18.10.2012 by modifying the order of the District Revenue Officer, Thanjavur made in S.R.137/2009/M3, dated 25.01.2010 and set aside the same as illegal.

For Petitioner :Mr.T.Lenin Kumar
For Respondent :Mr.P.Kandasamy
Govt.Advocate (crl.side)

O R D E R

This Revision has been filed praying to call for the records pertaining to the order passed by the learned Principal District and Sessions Judge, Thanjavur made in C.A.No.56 of 2010, dated 18.10.2012 by modifying the order of the District Revenue Officer, Thanjavur made in S.R.137/2009/M3, dated 25.01.2010 and set aside the same, as illegal.

2. The respondent herein registered an FIR on 13.09.2009 in Crime No.317 of 2009, under Section 6(4) of the Tamil Nadu Schedule (RDCS) Order, 1982 r/w 7(1)(a) of the Essential Commodities Act, 1955 against the four accused persons and the Revision Petitioner herein is the second accused and also the owner of the vehicle, which was used for transportation of 80 bags of PDS rice, weighing

50 Kgs each that is total of 4000 Kgs and the said PDS rice and vehicle were also seized by the respondent.

3. The petitioner filed Cr.M.P.No.2356 of 2009 before the learned Judicial Magistrate No.2, Thanjavur, who directed to handover the vehicle to the petitioner. Confiscation proceedings were initiated against the petitioner herein, who is the owner of the seized vehicle in this case, by the District Revenue Officer, Thanjavur, who on enquiry by his order, dated 25.01.2010, directed to release the vehicle on payment of Rs.48,720/- towards fine, failing which, the said vehicle would be confiscated to the Government.

4. Aggrieved by that order, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Thanjavur in Crl.A.No.56 of 2010 and the same was partly allowed vide its order dated 18.10.2012, modifying the fine amount of Rs.48,720/- by reducing to Rs.36,000/- and confirming all other aspects of the order, dated 25.01.2010, passed by the District Revenue Officer in his proceedings SR.No.137/2009/M3.

5. Aggrieved over the said impugned order, dated 18.10.2012, passed in C.A.No.56 of 2010, by the learned Principal District and Sessions Judge, Thanjavur, the present Revision is filed to call for the records pertaining to the order passed by the learned Principal District and Sessions Judge, Thanjavur made in C.A.No.56 of 2010, dated 18.10.2012 and set aside the same.

6. The learned counsel appearing for the Revision Petitioner would submit that the impugned order has been passed in violation of the order of this Court in W.P.No.1892 of 1994, dated 19.12.2000 because the Confiscating Authority has not followed any of the procedures contemplated under the Commissioner's Circular; that the Adjudicating Authority have not enquired the card holders from whom the PDS rice was said to be purchased. To substantiate the said allegation that the petitioner was not given an opportunity of filing an appeal against the Quality Certificate and that when there was no legal authentication for the Quality Certificate, it cannot be relied upon by the Adjudicating Authority to decide the seized rice as PDS rice and when there was no specific provision for double boiling rice, the respondent cannot seize the double boiling rice, as PDS rice, and hence, the impugned order is liable to be set aside.

7. The learned Government Advocate (crl.side) appearing for the respondent, on instructions and on the basis of the counter statement of the respondent, would submit that the District Revenue Officer, Thanjavur / Confiscating Authority has duly followed all the procedures enumerated by the Law; that as per the Circular in R.C.No.82/31833/2000, dated 09.12.2000, Office of the Commissioner of Civil Supply and Consumer Protection it is not necessary to give sample to the accused; that the enquiry of the card holder is

immaterial, as the petitioner's guilt has been proved, as the other accused persons had confessed with whom the petitioner was hand in glove in committing the crime and the petitioner cannot be allowed to contend that he had no knowledge about the transportation and that the Deputy Manager of TNCSC Limited, Thanjavur Region and the Assistant Quality Inspector of TNCSC Limited, Thanjavur Region are qualified and competent certified Authorities and hence, the Quality Certificate is valid and there is no necessity to set aside the impugned order.

8. Perused the materials on record and carefully considered the submissions advanced by both sides.

9. Revision petitioner is the accused person in this crime arrayed as A2. The case of the prosecution is that the first accused purchased the PDS rice from the ration card holders for low price and sold the same to the second accused / Revision Petitioner, who in turn, would polish the rice, grind it and resale it again for profit and the owner of the vehicle, which was used for transporting 80 bags of PDS rice, weighing 50 Kgs each on the date of occurrence and A3 and A4 are driver and cleaner of the said vehicle respectively. A2 and A3 fled away from the place of occurrence. A1, A3 and A4 were arrested and their confessions statement were recorded. 4000 Kgs of PDS rice was seized and the vehicle / van of the second accused was also seized on the date of occurrence by the respondent.

10. The District Revenue Officer, Thanjavur, has passed the impugned order in respect of the vehicle of the petitioner herein, which was used for the commission of the offence. As per Section 6 (A)(1) of the Essential Commodities Act, 1955, an order of confiscation may be ordered, if the Confiscating Authority is satisfied that there has been a contravention of order made under Section 3 in relation there to,

(a) the Essential Commodity so seized

(b) .....

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

11. In this case on hand, 4000 Kgs of seized PDS rice have been confiscated to the Government, as per the order dated 25.01.2010 of the District Revenue Officer / Confiscating Authority. As per second proviso of Section 6-A(1), in the case of vehicle used in carrying such essential commodity, the owner of such vehicle shall be given an option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such vehicle.

12. In this case, 4000 Kgs of rice, which was said to be transported through a vehicle, which belongs to the petitioner herein was also confiscated to the Government. Since the said rice is meant for Public Distribution System, as per Quality Analysis

Report, the vehicle used for transporting the said PDS rice belongs to the petitioner, admittedly, who is the owner. In lieu of its confiscation, the petitioner is given an option to pay a fine amount of Rs.48,720/-, being the market price (4000 x 12.60), at the date of seizure, as per the order dated 25.01.2010, for release of his vehicle. The petitioner, as the owner of the vehicle, which was used in this case, has contended in his appeal before the learned Principal District and Sessions Judge, restricting his contention with regard to the only ground that the fine amount imposed by the Confiscating Authority / District Revenue Officer is excessive and it would affect the appellant, who is earning his livelihood by running the lorry for hire. The appellate Court has found that there is no record available with regard to any market value of the rice as on the date of the seizure. It is not in dispute that 4000 Kgs of rice was seized, however, the appellate Court considering the fact that no record is available to show the market price of the rice on the date of its seizure and also the seizure of 4000 Kgs of rice, which is said to PDS rice, modified the fine amount reducing to Rs.36000/-, which would be on the safer side not exceeding the market value of the rice seized. The Revision Petitioner also not filed any documents to show that the reduced find amount is an excessive for the rice seized.

13. The compliance of instructions followed at the time of seizing the rice, as per the proceedings dated 21.01.1988 of the Commissioner of Civil Supply referred in order dated 19.12.2000 in W.P.No.1892 of 1994 of this Court does not arise in the matter of confiscation of the vehicle used for transporting the rice. The said decision referred by the counsel for the petitioner is also not applicable to the case on hand. Considering the quantity of the PDS rice seized from the vehicle of the petitioner, the appellate Court fixed the fine amount by reducing it as Rs.36,000/-, which is not excessive one, but reasonable amount and this Court is not inclined to interfere with the fine amount ordered by the appellate Court / Principal Sessions Court, Thanjavur in its order dated 18.10.2012 in C.A.No.56 of 2010 on its file.

14. In the result, the Criminal Revision stands dismissed. Consequently, connected criminal miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
   Thanjavur.

2. The Judicial Magistrate No.II, Thanjavur.

3. The Chief Judicial Magistrate,
   Thanjavur at Kumbakonam.

4. The District Revenue Officer,
   Thanjavur.

5. The Inspector of Police,
   CSCID, Thanjavur

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

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

MPK
TE/SV-MMS/SAR-I : 19/06/2017 : 5P/8C

Order made in
Crl.RC(MD)No.705 of 2016 and
CRL MP(MD)No.9991 of 2016
Dated:- 08.06.2017