HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1005 of 2005

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the order passed in Crl.A.No.75 of 1999, dated 02-03-2005, passed by the Sessions Judge, Nizamabad, confirming the confiscation of 30% of the seized stock as ordered by the Joint Collector, Nizamabad in Case No.S6/1589/98, dated 12-07-1999.

The petitioner is a dealer of high speed diesel and other motor spirits. On credible information about malpractices and adulteration in the sale of M.S. and H.S.D. by the petitioner, the Inspector of Police, VCCS Department, along with his staff proceeded to Kamareddy, on 26-05-1998, met the Mandal Revenue Officer, Kamareddy and Inspector, Legal Metrology (W&M), Kamareddy and all of them reached the petrol bunk of the respondent at 9.30 A.M. and found respondent No.2 transacting the business and on enquiry, he stated that Sri Ch. Subramanyam – petitioner herein is the Proprietor of the said bunk and that on 19-02-1998 the bunk was inspected by the Sales Officer, B.P.C., Nizamabad. On demand, the 3rd respondent produced petroleum products licence, explosive licence, density register, stock register, bill book and invoice book. The Inspector of Police, VCCS Department made physical verification of stock available in tank Nos.I and II with dip rod and found the variations, which are as follows:

a) Variation between sales as per metre & DIP	:	1,880 liters
b) Percentage of variation	:	562 liters
c) Variation of HSD beyond permissible limits (i.e., 4%)	:	1,318 liters by less.

The petitioner did not give any explanation about the variation but the Inspector of Police, VCCS Department, collected samples of HSD from Tank I & II. Since the variation of stock of HSD is beyond permissible limits the complainant has seized the available stock of 14,162 liters HSD worth of Rs.1,56,206/- under the cover of panchanama for contravention of Clause 3(1) of A.P. Petroleum Products (L&Rs) Order, 1980, Clause 5 read with Clause 2(e) of the Motor Spirit and H.S.D. (Prevention of Malpractices) in supply and (Distribution) Order, 1990 read with Sections 7 and 8 of Essential Commodities Act, 1955 and handed over the same to the Mandal Revenue Officer, Kamareddy for safe custody and filed report under Section 6-A of Essential Commodities Act, 1955 (for short, 'the Act') for confiscation of the entire stock.

On receipt of the report, the Joint Collector issued interim custody on 20-06-1998 for disposing off the same with a direction to remit sale proceeds, pending finalization of under 6-A of the Act.

The Joint Collector issued Show Cause Notice, dated 19-09-1998 under Section 6-B of the Act calling upon the petitioner to give explanation for variation.

The revision petitioner filed written explanation on 23-11-1998 stating that on the date of inspection they indented MS 4 Kiloliters and HSD 8 Kiloliters and the same was arrived while inspection was in progress, this was not allowed to be unloaded and the vigilance authorities did not take the same into account and they did not violate any of the control orders and were falsely implicated in the case. They further contended that the variation is false and that the Inspector of Police, VCCS Department, and the Vigilance Cell did not allow the third respondent or any of his staff member to observe inspection proceedings and contended that the Inspector of Police, VCCS Department, failed to allow the permissible variation of 0.25% on sale of 4,96,162 liters of HSD and if permissible variation is taken properly, there is absolutely no variation. It is also contended that as per Clause 2(j) of the HSD Order 1990 in case of variation beyond the permissible limits in the stock of Motor Spirit or High Speed Diesel, the dealer's explanation has to be called for before any action is taken under the provisions of the HSD

Order, 1990 but the complainant did not seek any explanation either from the appellant or from the third party. But the Joint Collector did not accept the explanation and passed order for confiscation of 30% of the seized stock or its value in favour of the Government under Section 6-A of the Act.

Aggrieved by the order of Joint Collector, an appeal under Section 6(c) of the Act was filed and the same was dismissed confirming the confiscation order of the Joint Collector.

Assailing the confirmation of confiscation by the Sessions Judge the present revision is filed mainly on the ground that 0.25% on average sales of 0 to 600 Kiloliters is permissible variation and letter, dated 09-06-1998 sent to the 2nd respondent by Bharat Petrolium Corporation Limited it is also clearly stated that both the panchanama and the F.I.R. show that they have not taken account the allowable loss of 25% on quantity of average 600 Kiloliters and 20% on additional quantity beyond annual sale of 600 Kiloliters. After taking above allowable losses into account, retail outlet had incurred a loss of 214 liters (0.04%). As stipulated by the control order the explanation needs to be sought deleting the loss incurred. In the said case the negligible negative variation of 214 liters can be assigned to evaporation loss due to extreme summer. This reason for loss is evident as the dealer was found to be selling right quality and right quantity of the product. But the Court below did not consider the good conduct of the petitioner for the last seven decades and at no point of time they did commit any such violation and thereby ordering confiscation of 30% of the stock is illegal.

It is also contended that both the Joint Collector and the Sessions Judge did not consider the observations of evaporation losses from the report of the Prof.M.C. Dwivedi, Department of Chemical Engineering, IIT, on 26-06-2001, wherein it was clearly stated that the excessive evaporation losses presently @ 1.4% as compared earlier @ 1.6% for motors spirit and 0.70% presently as compared to 0.20% earlier for high speed diesel are probably due to variation in Physio Chemical Characteristics and various types of losses were specified in the said report. This report was also not taken into consideration. It is further contended that due to high temperature differences also, there is every possibility of variation but this was also not considered and prayed to set aside the order under challenge.

Though the revision case is listed before this Court for final hearing learned counsel for the petitioner did not appear and represent the matter and in such case this Court cannot dismiss the revision case for default. But, the Court can decide the revision verifying the record as held in ***Misha Sharma v. Vinod Kumar Sharma***[1]**,** wherein it is made clear that a revision petition cannot be dismissed for default. Even if the petitioner or his advocate does not appear the court shall examine the record and decide the revision on merits.

Persuaded by the law declared by Delhi High Court, I would like to decide this present revision verifying the material on record.

The only contention before this Court from the grounds urged in the revision is that there is excessive evaporation on account of high temperature during the dates of inspection but not due to any violation or malpractice of the petitioner. He also raised certain other contentions with reference to the letter issued by the Bharath Petroleum Corporation and the report of Prof.M.C. Dwivedi. But the report of Prof.M.C. Dwivedi is not binding on the Court as it has no statutory value. More over, the letter issued by the Bharath Petroleum Corporation is not based on any physical verification and such letter will have no bearing on the present issue.

Undisputedly, there is variation between book balance and ground balance and the petitioner did not question the mode of taking measurement in Tank Nos.I and II based on

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[1] 1990 Cr.LJ. (NOC) 57 (Del.)

'dip'. In such case, it is not open to the petitioner to raise any other contention with regard to mode of measuring HSD in tank Nos.I and II and finding variation between book balance and ground balance.

As per the notification issued in Control Orders, in Schedule II of Clause 2(j) Details of Norms for Permissible Stock Variation; variation in stocks in underground tanks is considered to be beyond normal operational level when the inspection condition establishes that the variation in stocks in the underground tanks is beyond 4% of tank stock over the above; for handling losses in high speed diesel: the permissible stock variation is 0.25% on annual average sales of 0-600 kiloliters; 0.20% on annual average sales of above 600 Kiloliters. The permissible variation as per Schedule II handling loss of 0.20% which comes to 993 liters, was clearly deducted by the Joint Collector in his order and opined that the balance variation of stock is only 325 liters. The petitioner did not choose to produce any kind of documentary evidence to prove that permissible variation is 0.25% as pleaded. But the explanation given by the petitioner under Section 6(b) of the Act is not plausible and estimation of such variation based on the norms of Prof.M.C. Dwivedi's report is not a ground to reverse the concurrent finding recorded by the Joint Collector and Sessions Judge. Therefore, the concurrent finding of both the Joint Collector and the

Sessions Judge cannot be interfered by this Court while exercising powers conferred under Section 397 and 401 of Cr.P.C. Unless there is manifest perversity or apparent error in the concurrent finding recorded by both the Joint Collector and the Sessions Judge, normally this Court would not interfere with the same.

In the present case, nothing is brought to the notice of this Court about such manifest perversity or apparent error in the concurrent finding recorded by both the Joint Collector and the Sessions Judge, thereby I am unable to interfere with the fact finding regarding variation, and ordering confiscation of 30% of the seized stock to the Government. Hence, I find no ground to reverse and set aside the order passed by both the Joint Collector and the Sessions Judge in Case No.S6/1589/98 and Crl.A.No.75 of 1999. Therefore, the Criminal Revision case is devoid of merits and liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 24, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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