THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.1522 of 2006

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C challenging confiscation order dated 30.01.2004 passed by the Joint Collector, Kakinada in reference No.V10/CS/657/2003 and confirmed on 05.05.2006 by the Principal Sessions Judge, East Godavari, Rajahmundry in Crl.A.No.49 of 2004 raising various contentions.

2. Since the counsel for the petitioner on record died, the name of the petitioner was printed in the cause list. When the matter reached, there was no representation for the petitioner. As per the decision in **Misha Sharma and others v. Vinod Kumar Sharma**[1] the criminal case cannot be dismissed for default, but this Court can decide the revision on merits without waiting for counsel or the petitioner. Persuaded by the law declared by the Delhi High Court, I would like to decide the present revision case verifying the available material.

3. The petitioner is a fair price shop dealer at Narsingapuram Village. Some complaints have been lodged by the villagers including ward member about irregularities committed by the petitioner. On the basis of complaints, the Enforcement Deputy Tahsildar, Kakinada visited Fair Price Shop No.42 of the petitioner at Narasingapuram Village on 01.07.2003 at about 11.00 AM. But the said shop was found closed. As the wife of the petitioner did not give proper reply, the inspecting team waited till 04.30 P.M for arrival of the petitioner. The Inspecting team in the presence of mediators broke open lock of fair price shop, having no other alternative. The wife of the petitioner produced records of the fair price shop from their residence. On verification of the ground balance of

[1] 1990 Cri.L.J. NOC 57 (Delhi)

stock, found variation of 14.26 quintals of all types of rice including PDS rice, SGRY rice and draught pension rice, surplus of 106 litres of kerosene oil and 16 kgs of sugar. On the basis of variation the inspecting team concluded that registers were not properly maintained. Under the cover of mediators report, ground stock and books were seized by the Enforcement Deputy Tahsildar and filed a report before the Joint Collector under Section 6(a) of the Essential Commodities Act, 1955. The Joint Collector called upon the petitioner to give explanation to the show cause notice for the variations found in the ground balance and book balance.

4. The petitioner submitted his explanation contending that on oral instructions of the Mandal Revenue Officer, he adjusted 10.30 quintals of rice from SGRY to ASL works. The said 10.30 quintals of rice is not entered in books, much less supported by any voucher issued by anybody as instructed by MRO. Therefore, the variation of the alleged adjustment of 10.30 quintals of rice is explicit from the record and explanation of the petitioner was not accepted by both the authorities.

5. Further the explanation of the petitioner for deficit in the rice is that one quintal of rice was taken by the Sarpanch for distribution to the labour with an undertaking to furnish coupons after receiving them from the agencies concerned. This is also not supported by any material and if really, he supplied rice to the Sarpanch on his promise in the absence of any evidence, such explanation cannot be accepted. Therefore, the deficiency in ground balance and book balance is accepted by the petitioner, since the explanation was not convincing.

6. The petitioner also gave explanation for variations of stock in sugar i.e. 16 kgs (excess) between book balance and ground balance. But no explanation was given except stating that it was marginal and

minor quantity, which cannot be accepted. It is also found that 106 liters of kerosene oil (excess) between book balance and ground balance. The explanation given by the petitioner is that the three card holders i.e. Vakada Satyavathi, Rayudu Satyavathi and Dangeti Venkata Ramana, who are running small hotels and having quota of 30 litres, they requested the petitioner to keep the stock of 90 litres for one day, so that they send some one to paying amount. But this explanation is not convincing and when they have not paid for their quota of kerosene and did not take delivery of the same, why he made entries in the sales register and the same was not explained by the petitioner. Thus, surplus of 106 litres of kerosene and 16 kgs of sugar was not unexplained. Therefore, the Joint Collector while exercising power under Section 6(a) of the Essential Commodities Act for contravention of A.P. State (Public Distribution System) Control Order passed the order for confiscation and the same was confirmed.

7. In view of the limited jurisdiction of this Court under Sections 397 and 401 of Cr.P.C., this Court cannot exercise power of revision in the present facts of the case, in view of findings recorded by the Courts below. Therefore, I find no grounds warranting interference of this Court and consequently, the criminal revision fails and liable to be dismissed.

8. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 27.10.2017
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