

*** THE HON'BLE SRI JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL REVISION CASE Nos.182, 236 AND 237 OF 2017

% 20.02.2017

Miriyala REnuka Devi and others

....Appellants

Vs.

\$ The State of Andhra Pradesh, rep. by Public Prosecutor,

High Court at Hyderabad and others

.... Respondents

!Counsel for the Appellants : SRI V.H.V.R.R.SWAMY

Counsel for the Respondent: PUBLIC PROSECUTOR

<Gist :

>Head Note:

? Cases referred:

1. AIR 2007 SC 2626
2. 2006(4) ALT 758
3. 2016(2) ALD (CrI.) 684
4. 2007(5) ALD 824

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.182, 236 AND 237 OF 2017

COMMON ORDER:

These three revisions almost since involve same questions of law, though facts are different, thereby taken up for common disposal from different hearings.

2. Heard both sides and perused the respective impugned orders of the District Collector vis-à-vis the lower appellate Court and the respective grounds of revisions and the respective contentions raised with provisions and propositions of law in relation thereto.

3. The common questions of law involved in answering the respective revisions are:

1. Whether the confiscation proceedings of the learned Collector confirmed or to some extent modified, as the case may be, by the respective Sessions Judges, while sitting in appeal, are unsustainable and there are no grounds for initiation of proceedings for confiscation and the very seizure itself is not sustainable and there is no violation of any Statutory provisions or Control Orders and the same are in ignorance of the said provisions or settled propositions and, if so, liable to be set aside?

2. To what result, respectively?

4. The factual background necessary to mention in dealing with the respective revisions are:

CrI.R.C.No.182 of 2017:-

a) The Tahsildar, Kanchikacherla filed a petition under Section 6A of the Essential Commodities Act, 1955

(for short, “the Act”) before the District Collector, Krishna, Machilipatnam in E.C.P.No.331 of 2012 about the seizure of 182.00 quintals of the so called Public Distribution System (PDS) Rice, which was being transported in the lorry bearing No.AP 16 TB 7459 worth Rs.13,11,220/- of rice @ Rs.1,710/- per quintal without any documents from Kuchipudi Village of Kodada Mandal to various rice mills in Mandapeta of East Godavari District from Miriyala Nageswara Rao of Kodada Village and two others on 09.09.2012 at Kesara Village, Kanchikacherla, in the presence of mediators for contravention of certain Control Orders and handed over the same to the MLS Point, Incharge, Kanchikacherla, and vehicle was handed over to the SHO, Kanchikacherla Police Station, for safe custody and to confiscate the entire seized stock to the Government. The Tahsildar also pointed out that the respondents were illicitly transporting PDS Rice without any documents; that respondent No.1 was in the habit of purchasing rice meant for PDS illicitly and doing business in rice (food grains) without valid licence/permission from the authorities concerned with the active connivance of other respondents. Thus, the respondents interrupted the process of smooth functioning of Public Distribution System in contravention of Clause 17(A) of the Andhra Pradesh Public Distribution System (Control) Order, 2008 (for short, “the Control Order, 2008”) and in contravention of Clause 2000 of the Andhra Pradesh Scheduled Commodities (LS&R) Order, 2008 without

licence and transporting the same without bills illegally that resulted in the seizure of the stock.

The said petition was taken on file as E.C.P.No.331 of 2012 by the District Collector and interim orders were passed on 20.11.2012 directing the Tahsildar, Kanchikacherla, to dispose of the seized stock by conducting public auction and submit sales list for confirmation. Thereby, respondent No.4 filed W.P.No.32764 of 20012 and, by order dated 17.10.2012, has obtained stay orders on sale of the seized stock, pending finalization of the case and the vehicle was released to respondent No.2 on furnishing bank guarantee of Rs.2,00,000/-.

A show cause notice was issued to the respondents about the confiscation of the seized stock and the respondents attended the hearings through Advocate and filed explanation stating that respondent No.4 is doing business in rice with valid licence and he is real owner of the seized stock and respondent No.1 is his son and respondent No.2 is his daughter in law, respondent No.3 is the driver of the vehicle of respondent No.2 and respondent No.1 is only looking after the affairs of his rice mill in his absence and the allegations of illicitly transporting the PDS Rice by procuring unauthorisedly for sale at various places of Mandapet of East Godavari, are incorrect; that the rice is procured from own mill of respondent No.4, who is doing business with a valid license and, as such, no permit or licence is required for

transporting of super fine variety, as he is a food grain licence holder within the State as per G.O.Ms.No.56, dated 30.10.2009, and there are no valid grounds for seizure; that the only option is to follow the procedure laid down under Cr.P.C. and not to invoke the proceedings under Section 6A of the Act.

From the respective seizure report material and report of the Tahsildar and on contest of the respective respondents, the District Collector vide order dated 09.05.2013 observed that said contentions of the respondents are neither correct nor acceptable, as according to Clause 7(a)(1) of the A.P. Procurement (Levy) Order, 1984, every miller/dealer has to transport the rice for sale along with a release certificate issued by the Collector (Civil Supplies) or District Supply Officer and one of the respondents have been transporting 182 quintals of the food grain (rice) without any valid bill and without even release certificate issued by the Competent Authority, which is clear and also from the statement of respondent No.3 that at the time of inspection for seizure in the presence of the mediators to the Tahsildar that respondent Nos.1 and 4 are in the habit of purchasing PDS Rice from card holders and transporting the same to other places for sale to higher rates to gain illegally and that also supports to the conclusion of the rice is a PDS Rice and clandestinely dealing with the rice that is meant for the consumer beneficiaries, since diverted by intervention of process of smooth functioning of PDS and

the same is nothing but violation of Sections 17 and 17A of the Order and they are liable for prosecution under Clause 17B of the Order, besides liable for criminal prosecution, and the seized stock is liable for confiscation in ordering confiscation. by also saying same is also in the contravention of the conditions 5, 6, and 7(i) of the licence issued under the AP Scheduled Commodities (LR & S) Order, 2008, as purchasing PDS rice and transporting the same to other places for illegal profit and that documents are suffice for confiscation of the entire stock and in ordering 100% confiscation of 182 quintals of the seized PDS rice and for levy of penalty on the owner of the vehicle of Rs.1,25,000/- for illegal transportation of PDS Rice.

When respondent No.4 questioned the said proceedings in appeal, the learned Sessions Judge, Krishna, Machilipatnam in E.C.Appeal No.121 of 2013, by the impugned order dated 20.10.2016, modified 100% confiscation to that of 75%; and levy of penalty of Rs.1,25,000/- to that of Rs.75,000/-, while upholding the findings regarding validation of the confiscation proceedings and violation of the provisions and the findings in support of it by learned Sessions Judge are that the rice is a PDS rice and there is contravention of the Orders 2008 with no bills or documents or permit or authorization statutorily required from levy and Control Orders, respectively, that too as on the date of seizure, when the Order and Licence Storage and Regulation

Order, 2008 are in force and the violation of which and the statement of respondent No.3 before the Tahsildar, at the time of seizure, also substantiates the same, and contra to it, but for oral contention of respondent Nos.1 and 4 could produce nothing.

Crl.R.C.No.236 of 2017:-

- b) The Tahsildar, Peddamandadi Mandal filed a petition under Section 6A of the Act before the Joint Collector, Mahabubnagar District, in Case No.CS6/492/2015 about the seizure of 136.20 quintals of the so called Public Distribution System (PDS) Rice, which was being transported in the lorry bearing No.AP 16 U 0653 worth Rs.2,83,500/- of the rice @ Rs.1,710/- per quintal without any documents from Wanaparthi to Sherpally of Bhoothpur Mandal from the lorry owner Shaik Khaja Moinuddin in the presence of mediators for contravention of certain Control Orders and handed over the stock to Smt.S.Sreedevi, Prop M/s.Sri Lakshmi Venkateswara Rice Mill, Ghanpur, for safe custody under proper acknowledgment and vehicle was handed over to the Station House Officer, Peddamandadi Police Station for safe custody.

At the request of respondent No.3-owner of the seized lorry, for release of the lorry, the same was released on furnishing bank guarantee for an amount of Rs.2,00,000/-, pending disposal of 6A proceedings. A show cause notice was issued to the respondents framing charges that they were indulging in clandestine

business by diverting PDS rice into black market for illegal profits, in violation of the Control Order, 2008 and transporting the same without bills illegally, that resulted the seizure. The respondents attended the hearings through the Advocate and filed explanation, stating that the respondents are doing business in rice with valid licence and that the seized stock is not PDS Rice and the said rice is being transported under valid documents.

A show cause notice was issued to the respondents framing charges that they were indulging in clandestine business by diverting PDS rice into black market for illegal profits in violation of the Control Order and transporting the same without bills illegally, that resulted in the seizure. The respondents attended the hearings through the Advocate and filed explanation stating that the respondents are doing business in rice with valid licence and that the seized stock is not PDS Rice and the said rice is being transported under valid documents.

From the respective seizure report, material and report of the Tahsildar and on contest of the respective respondents, the Joint Collector vide order dated 28.11.2015 ordered for confiscation of 100% of the value of the seized stock and imposed a fine of Rs.10,000/- on the owner of the seized lorry; that respondent Nos.1 and 2 are indulging in diversion of Government Rice into black market; and also directed the Tahsildar to utilize the seized stock of 136.20 quintals under PDS and adjust the sale proceeds into CS Head of Account.

Crl.R.C.No.237 of 2017:-

The Assistant Supply Officer, Circle-II, Vijayawada filed a petition under Section 6A of the Act before the Joint Collector, Krishna, Machilipatnam in E.C.P.No.93 of 2011 against Miryala Narasimha Rao, respondent No.7, and ten others for contravention of certain Control Orders and seized the ground stock all worth Rs.2,89,000/- on 30.03.2011. It was also pointed out that the respondents were indulging in clandestine business of diverting PDS Rice into black market, which was meant for distribution under PDS to the BPL families; that respondent No.7 has purchased 170.00 qtls of PDS Rice with the active connivance of respondent Nos.5 and 6 and transporting the same from Vijayawada to other places through lorry bearing No.AP 16 TW 6828; and that the respondents have contravened the condition 2(c) of Annexure-1 & Clause 17(A) & 17(B) of Order, 2008. While so, the seized vehicles were released to the owners on their furnishing bank guarantee, pending finalization of 6A of the Act.

The said petition was taken on file as E.C.P.No.93 of 2011 by the Joint Collector and interim orders were passed on 22.06.2011 with a direction to the Tahsildar, Kanchikacherla to dispose of the seized stock to the card holders under Public Distribution System and remit the sale proceeds under Revenue Deposits. Thereby, when the respondents have filed W.P.No.21859 of 2011, this Court directed the first respondent to dispose of the claim

petition filed by the writ petitioner and pass appropriate orders in accordance with law.

A show cause notice was issued to the respondents about the confiscation of the seized stock and the respondents attended the hearings through the Advocate and filed explanation, stating that the seized stock of rice is not PDS rice and that even assuming that seized rice belongs to PDS, the only option left to the authorities is to follow the procedure laid down under Cr.P.C. and not to invoke the proceedings under Section 6A of the Act and requested to release the seized stock and the vehicles.

From the respective seizure report, material and report of the Tahsildar and on contest of the respective respondents, the Joint Collector vide order dated 26.01.2013 ordered for confiscation of 100% value of seized stock in favour of the Government and also imposed a penalty of 20% of Bank Guarantee on each owner of the lorries bearing Nos.AP16 TW 6828, AP 7V 688 and AP 7V 1503, respectively, for illegal transportation of rice and also ordered for disposal of the confiscation of the seized stock by conducting public auction after appeal time is over.

When the respondents questioned the said proceedings in appeal, the learned Sessions Judge, Krishna, Machilipatnam, in E.C. Appeal No.234 of 2013, by the impugned order dated 20.10.2016 modified 100% confiscation to that of 75%, and penalty of 20% to 10% each of the Bank Guarantees on the owners of the lorries

bearing Nos.AP16TW 6828, AP 7V 688 and AP 7V 1503, respectively.

5. It is impugning the respective orders, the present revisions are filed with the contentions in the grounds of revisions vis-à-vis the oral submissions of the learned counsel for the respondents to the collector proceedings and partly successful appellants before the lower Court, by impugning the findings of the lower appellate Court in the revisions are, that the learned Collector and the learned Sessions Judges failed to consider that PDS Rice is not an essential commodity; that clause 2(W) of the Control Order mentions that for scheduled commodity supplied to the fair price shops and not otherwise, clause 7(a) of the Order has no application and there is no contravention of any of the clauses under the Control Order and once there is no contravention of Section 3 of the Act, no confiscation shall arise; that Section 6A proceedings shall not arise as the seized stocks are not essential commodities; that initiation of Section 6A proceedings would arise only when the seized stocks are essential commodities; that when the seized stocks are essential commodities then only proceedings can be initiated and not otherwise and thereby prayed for setting aside the orders and for release of entire stock and also for refund of the penalty imposed while releasing the vehicles.

6. In deciding the above, points for consideration in the factual matrix in the three revisions arise and before discussing the facts further, it is necessary to mention the legal position:

- (a) The Essential Commodities Act 10 of 1955 is an Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and

commerce in certain commodities for securing availability and equitable distribution of such commodities. It is an undisputed fact that the proceedings under Section 6A of E.C.Act are penal in nature and quasi criminal so far as confiscation is concerned, needless to mention the prosecution under the other provisions of Act, particularly under Section 7 of the Act as a criminal offence for contravention of Section 3 of the E.C.Act. It is apt to mention herein the observations of the Hon'ble High court in the decision reported in 2008(3) LS-106(DB) in A.Siva Reddy vs. Collector, that even the interim disposal order under Section 6A of the Act, involve civil consequences. There is no quarrel on the proposition relied on by the appellants reported in (1) 1977 Cri.L.J.-1800 in Madhav Keshav Mirashi vs., the State at para-17 that, an authority being created as a full fledged appellate authority under Section 6-C it has all the powers of the original authority including to examine whether the discretion has been properly exercised by the Collector in passing the order under Section 6-A and to substitute its own decision regarding discretionary powers in place of the exercise thereof by the original authority. However, coming to the other proposition relied from this decision regarding *mens rea* required to prove from the contention of the appellants from placed reliance of paras 11 to 16 of the judgment concerned, what was laid down in the above paras in that decision was that the requirement of *mens rea* as like for a penal offence under Section 7 of E.C.Act also required to be proved for confiscation for the contravention of the Control Order in proceedings under Section 6-A of the Essential Commodities Act, 1955. In fact, the amended E.C.Act, Section 10-C, is crystal clear in its wording that, any prosecution for any offence under this Act, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state (intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact) but it shall be a defence

for the accused to prove the fact that he had no such mental state with respect to the act charged.

- (b) When that *prima facie* material is there for the seizure/detention of their stock validly from the above proceedings of the Enforcement Deputy Tahsildar, that was perused and taken cognizance under Section 6A of the E.C.Act by the Collector (CS), the contention of the appellants that there is no valid seizure shown contravention of any Control Order is unsustainable and baseless. It is needless to say the settled proposition from the Constitutional Bench expressions of the Apex Court that, even any of the procedure regarding the search and seizure not validly done by following the procedural traits, seized article is admissible in evidence to the proceedings, including for criminal in nature, as held in Porammal's case of 1974(1)-SCC-345 followed in Alasaray Mohammad's case of 1978-SCC (Cr1)-198; and State of Punjab vs. Baldev Singh's case for AIR 1999-SC-2355.
- (c) Coming to the other decision of 1983-S.R.C.-159 Kerala High Court covered by decision No.8 of list of decisions submitted by the appellants relied upon concerned, it was held that under Section 6-A proceedings for confiscation, the order of confiscation depends upon satisfaction by the Collector (CS), which is a discretionary power vested in him to exercise in a fair and judicious manner, the provisions of Section 6-A and 6-B, though not mandatory, enables the Collector to conduct an enquiry before ordering confiscation rather to proceed on formation of his opinion and the notice to state the proposal to confiscation of the seized article for the person affected with two opportunities, one to make representation in writing and the other of being heard.

7. Coming to the confiscation of respective vehicles in the three cases, the counsel for the revision petitioners, respectively, submits that unless there are findings regarding violation of Section 3 of the Act arrived by the authorities, confiscation order of the vehicles cannot be passed and, even if any passed, they would

no way survive. There is no dispute on the proposition, but for to say, that the orders of the respective Collectors, modified or confirmed by the respective Sessions Judges, clearly show that the quantity of rice involved is a PDS Rice. Once that is the report of the Tahsildar and the mediators, including the version of the Drivers in one of the cases i.e., respondent No.3 in CrI.R.C.No.182 of 2017 in relation therein, and even to the contention of respondent No.4 therein much less of petitioner No.1 or in other cases of respective respondents, once as per Section10(c) of the amended Act, the presumption is in favour of the authorities the stock in prosecution for any offence or even for confiscation proceedings from the contention of similar analogy in ***Kailash Prasad Yadav and anr. V. State of Jharkhand and Anr***¹ to apply herein also of existence of culpable mental state on the part of the accused/respondents, respectively, in the Court shall presume so of intention, motive, knowledge and belief or reason to believe the fact within the knowledge and with intention and motive. It shall be for the accused in the reverse onerous to ask to rebut the presumption of lack of such intention, motive and/or knowledge or belief. Here, in any of these three cases, the respective respondents to the proceedings before the respective Collectors, did not file any record of any licence for rice milling business of trading or non-trading, as the case may be, and no way bills and/or any bills or any other recorded proof of the stock and for what purpose and to which destination the milled rice they were transporting, despite it is a clear case of the PDS Rice at the time of seizure with finding from such identification, which the

¹ AIR 2007 SC 2626

Court has to take judicial notice from the respective Tahsildars dealing with civil supply commodities out of their day to day dealings to identify, which stock is PDS, apart from the interception, for lack of bills and the presumption in favour of it. Nothing more is required in the case and there is no finding at all of the violation of the provisions. Thereby, the decision has no application to the present facts of these cases.

8. Even coming to the other decision referred to in ***Sri Sai Traders, rep. by its Proprietor and others vs. Assistant Supply Officer, Circle-1, Vijayawada and others***² where GO Ms.No.79, dated 29.06.2005, and GSR 104(E), dated 15.02.2002, one is of the State Government and the later of the Central Government referred, so also of A.P.State Public Distribution System Control Order, 2001, Clauses 2, (16) and (20) were also on the allegation of the rice meant for PDS black marketing, and the Government by G.O.Ms.No.79 supra stated that rescinding the A.P.Paddy and Rice (Requisitioning of Stocks) Order, 1966 issued in G.O.Ms.No.2121, Food and Agriculture (CS.IV) Dept., dated 29.06.1966, it would indicate that absolutely there is no restriction on movement of rice in the State of Andhra Pradesh and, in fact, Clause 16 of the AP State PDS Control order 2001, once that can be invoked for PDS Rice not exempted, even under the Government of India GSR 104(e) clause (vi) of the order, what was observed is that rice is a scheduled commodity and not an essential commodity, even taken the same, once it is a scheduled commodity, even today there is no licence or permit or way bill for the said rice to transport much less produced any

² 2006(4) ALT 758

amounts or stock registers of said paddy and conversion of the rice and not even licence in the rice mill trading or any trading produced in any case, especially, that decision has no application, apart from the seizure in the respective cases, is subsequent to the enactment of Licence Storage and Regulation Order 2008 and the Control Order.

9. Now coming to the other contention even referring to the PDS System Control Order, 2008, violation under Clauses 17 and 17A has no application concerned, the counsel placed reliance on the decision of a Division Bench of this Court in **Maimuna Begum v. State of Telangana and others**³, It is in fact, a preventive detention proceeding for illegally and clandestinely doing business in purchasing of PDS rice from other commodities from ration card holders to the petitioners, referring to Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 Sections 3 and 7 of the Act, and Clauses 17 and 17A of the Control Order, what was observed is only based on the respective contentions in setting aside the preventive detention order by the Division Bench therein is, that Section 3 was not contradicted and so far as Section 55 of ECA Act concerned, Section 7 of the said Act deals with penalties for contravention of any order made under Section 3 of the Act in the punishment prescribed thereunder and to contradict the penal Sections, it must be shown any contravention of any order made under the Act and the Control Order 2008 made by the State in exercise of its power under Section 3 read with Section 5 of the Act, if it is shown that the detenu carries on any of the activities in contravention of

³ 2016(2) ALD (CrL.) 684

the Control Order, then it attracts the penal sections and clause 17 of the Control Order envisages penalty for confiscation of the stock making false entry and diverting stocks and that supplies and to the fair price shop dealers and enumerated dealers and hawkers and not for others thereby has no application to the detenu; and even coming to clause 17 of the Control Order shows that the same is attracted to the fair price shop dealer, or card holder of any person interferes with smooth distribution of essential commodities under the PDS or other Government scheme at any level till schedule commodity reaches the intended beneficiary and from its reading, there is no whisper either in the detention order or in the grounds of detention that any of the detenu is interfering with the smooth functioning of the public commodities from the FCI godown till it reaches the intended beneficiary and the whole allegation is that they have been purchasing the PDS rice from card holders and it is outside the purview of Section 17A that applies upto the rice reaches the card holders and not later. This decision on its reading has no application to the facts. It is because it is not even the contention of any of the revision petitioners that after the PDS Rice reached the beneficiary and they purchased the same from the very beneficiaries, by invoking the express provisions so far as clause 17A of the Order.

10. In fact, in the cases on hand, some of the facts reveal that even FCI sealed bags were there among seized boxes, which clearly show diverting the stocks meant for beneficiaries before distribution to the beneficiaries as part of the PDS. Apart from it, it is important to note that it is not only in violation of the Control Order, but also in violation of the Licence Order, 2008 and further

violation of clause 7(a)(i) for transporting rice from one District to another thereunder. There is no permit obtained either from the District Supply Officer or District Collector (Civil Supplies). Once these are the violations, which clearly prone to seizure and initiation of the proceedings and prone to confiscation, the respective orders of the Collectors, as confirmed to that extent by the lower appellate authority, no way require interference, but for if at all to consider any interference, on the quantum, of confiscation of seized stock respectively, though not to reduce vehicle penalty.

11. Accordingly and in the result:

a) CrI.R.C.No.182 of 2017 is allowed in part viz., so far as the order of the Collector for confiscation of 100% of the seized stock modified to 75% by the learned District Judge is reduced to 50% of the seized stock or its value.

b) CrI.R.C.No.236 of 2017 is dismissed for the reason of penalty of Rs1,25,000/- imposed by the District Collector, on the vehicle owner (revision petitioner) that was reduced to Rs.75,000/- by the District Judge no way requires interference to reduce even further as it is a clear violation by the owner of the vehicle being none other than the wife of A1 and daughter in law of A4. and

c) CrI.R.C.No.237 of 2017 is allowed in part viz., so far as the order of the Collector for confiscation of 100% of seized stock modified to 75% by the learned Sessions Judge is reduced to 50% of the seized stock or its value.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE B. SIVA SANKARA RAO

20.02.2017

Note: LR Copy to be marked
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