THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2213 OF 2005

ORDER:

This criminal revision case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed questioning the propriety and illegality in the judgment dated 31.10.2005 in Criminal Appeal No.380 of 2001 passed by the Principal Sessions Judge, East Godavari, Rajahmundry, whereby the criminal appeal was dismissed, affirming the order dated 08.12.2001 passed by the Joint Collector, East Godavari, Kakinada, in Reference No.V9/CS/839/2001.

02. The Mandal Revenue Inspector, Malkipuram, along with Village Administrative Officer, Kesanapalli, surprised fair price shop No.30 of Turupupalem in the presence of mediators, inspected the stock and found that there was variation by way of deficit of 1.03 quintals of rice and 0.01 quintals of sugar, drafted a panchanama in the presence of mediators and filed report before the Joint Collector under Section 6-A of the Essential Commodities Act, 1955. Basing on the report, the Joint Collector issued a show cause notice calling upon the petitioner to explain the reason for variation of 1.03 quintals of rice and 0.01 of sugar between the stock on ground and registers. The petitioner submitted his explanation contending that bag containing 1.03 quintals of rice was kept separately for card holders who approached him previously without cards for the said rice on the ground that there is marriage in their house. Disbelieving the explanation submitted by the petitioner, the Joint Collector passed an order for confiscation of the stock.

03. Aggrieved by the order passed by the Joint Collector, the petitioner preferred an appeal before the Principal Sessions Judge, East Godavari, Rajahmundry, the same was dismissed on 31.10.2005 holding that the explanation given by the petitioner is false in view of the material on record and that the report of Mandal Revenue Officer discloses that on 27.07.2001 at about 7.30 to 8.00 p.m. when the petitioner sold rice which was being transported by Nalli Gopala Rao of Turupupet, it was protested by Kukkala Peddiraju and was handover to panchayat clerk under a receipt and the same was reported to him on the next day i.e. 28.07.2001. In the mediators report, it was categorically stated that in the fair price shop there was only 1.77 quintals of rice. Finally, the Mandal Revenue Officer seized rice of one quintal from grampanchayat office where it was kept on the previous day when it was being illegally transported, and the learned Sessions Judge concluded that the petitioner was indulging in clandestine business in PDS rice and illegally sold one quintal of rice on the previous day of inspection and therefore the order passed by the Joint collector was upheld.

04. Aggrieved thereby the present revision is filed on various grounds, mainly on the ground that on 27.07.2001 at about 7.30 to 8.00 p.m. when the shop was closed, some card holders approached the petitioner and requested to release rice since there was a marriage in their house and that the petitioner made it clear to bring cards so that he can make entries in the stock register and release the rice, but this fact was not considered by the learned Sessions Judge, committed an error in dismissing the appeal and

prayed to set aside the order passed by the learned Sessions Judge.

05. During hearing, Sri Ch.Dhanamjaya, learned counsel for the petitioner, reiterated the contentions urged in the grounds of revision and requested this court atleast to revise the confiscation to a minimum extent.

06. The Public Prosecutor for the State of Andhra Pradesh supported the judgment passed by the learned Sessions Judge whereby affirmed the order passed by the Joint Collector on the ground that the petitioner violated the conditions of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, and the order cannot be interfered with in the revision while exercising jurisdiction under Sections 397 and 401 Cr.P.C.

07. Admittedly the petitioner is the fair price shop dealer of Turupupalem, on inspection of the fair price shop, the Mandal Revenue Officer found deficit of 1.03 quintals of rice and 0.01 quintals of sugar in the stock and drafted a panchanama in the presence of mediators. The petitioner did not dispute the variation, but contended that 1.03 quintals of rice and 0.01 quintals of sugar was kept aside, as some of the card holders approached him for supply of rice as there was a marriage function in their house. Thus, the deficit found is not a ground to seize the entire stock available in the shop and the order of confiscation of 50% of the stock is also excessive according to the contention of the petitioner.

08. As seen from the material available on record, the explanation submitted by the petitioner for the show cause notice

issued by the Joint Collector is *ex-facie* false for the reason that on 27.07.2001 at about 7.30 to 8.00 p.m. when the petitioner sold rice which was being transported by Nalli Gopala rao of Turupupet, it was protested by Kukkala Peddiraju and was handover to panchayat clerk under receipt and the same was reported to Mandal Revenue Officer and the inspection took place on 28.07.2001, found deficit in the stock on ground and registers, and thereby he is not entitled to get any relief in the present revision.

09. Clause 16 of Andhra Pradesh State Public Distribution System (Control) Order 2008 permits any officer or persons authorised by the Government empowered to inspect, search and seize stocks of schedule commodities, ask questions for production of documents. Therefore, the Mandal Revenue Inspector by exercising power Clause 16 of Andhra Pradesh State Public Distribution System (Control) Order 2008 conducted search and seized the stock, on account of variation found in the stock on ground and books, as such search and seizure cannot be faulted. The petitioner failed to give a plausible explanation for the deficit or variation in the stock and the petitioner being the dealer of fair price shop deprived the poor legitimate card holders to enjoy the benefit of the scheme and diverting the stock clandestinely for unlawful gain. As such the petitioner is not entitled to claim any exemption under section 6-C of the Essential Commodities Act, 1955. Therefore the order passed by the Joint Collector and affirmed by the Principal Sessions Judge, East Godavari, Rajahmundry, are totally in consonance with the object of Andhra Pradesh State Public Distribution System (Control) Order, 2008.

10. Hence, I find no ground to interfere with the order passed by the Principal Sessions Judge, East Godavari at Rajahmundry, in view of the limited power of this Court under Sections 397 and 401 Cr.P.C., as I find no manifest perversity or apparent error in the order passed by the appellate court. Consequently, the criminal revision case is liable to be dismissed.

11. In the result, the appeal is dismissed.

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

M.SATYANARAYANA MURTHY, J

11.08.2017
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