

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL REVISION CASE No.647 of 2005**

**JUDGMENT:**

This revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), aggrieved by the order, dated 18.12.1995, in Case No.S6/1990/95, passed by the Joint Collector, Nizamabad, confiscating 50% of the stock to the State Government, seized by the Department during inspection of the shop of the petitioner and affirmed the same by the Sessions Judge, Nizamabad, in CrI.Appeal No.93 of 1998, on 18.01.2005.

2. The brief facts of the case are that during inspection of M/s.Bandi Bheemaiah, Wholesale and Retail Dealer of Fertilizer, the Inspector of Police, VCCS Department, found the following variations between ground stock and book balance (stock register).

| Sl.No. | Name of the stock | Ground stock | Stock register | Variation |
|--------|-------------------|--------------|----------------|-----------|
| 1.     | Fact 20:20        | 71           | 71             | --        |
| 2.     | Urea              | 561          | 266            | 103 less  |
| 3.     | Vijaya 17:17:17   | 20           | 23             | 3 less    |
| 4.     | Ammonium Sulphate | 39           | 29             | 10 excess |
| 5.     | Super             | 2            | 2              | --        |
| 6      | Potash (MOP)      | 10           | 10             | --        |

Thus, the book balance and ground stock is not tallying and it is contravention of clause 3, 5 and 35 of Fertilizer (Control) Order, 1985 read with Section 7 of Essential Commodities Act, 1955 (for short, 'the Act'). It is also found that the petitioner was not issuing invoice

to the purchasers and selling fertilizers at higher rate i.e., Rs.50/- in excess of retail rate. Therefore, seized entire stock from the premises of the shop under Section 6-A of the Act and filed report before the Joint Collector, Nizamabad. In turn, the Joint Collector, Nizamabad, issued a show-cause notice, dated 08.09.1995, under Section 6-A of the Act, calling upon the petitioner to file explanation to the show-cause notice and the petitioner filed explanation, dated 14.11.1995, contending that he sold two bags of urea to Bombay Gangaram at the rate of Rs.171/-, but not at the rate of Rs.180/- per bag, as the said person went to bring amount of shortage, he did not issue the bill by the time of inspection. He further admitted that he received 200 bags of urea on 06.08.1995 from Deepak Fertilizer, Hyderabad, through lorry and the same was not unloaded. Therefore, 200 bags of urea was not entered in the stock register. He further admitted that he received 200 bags of urea on the night of 05.08.1995 from Asian Agro Agencies, Nizamabad, and the same was also not unloaded. Therefore, no entries are made in the stock register. Finally, it is contended that 15 bags of Ammonium Sulphate were sold to Gangaram Rajanna on 04.08.1995 and he took delivery of only 5 bags on 04.08.1995 and kept remaining 10 bags in his shop informing that he will lift the bags within two or three days. He also contended that 50 bags of urea sold to one Naikidi Rajanna and 51 bags to one T.Chinnaiah, as the said persons possessed less amount they went to bring the balance money and took delivery of their respective bags,

meanwhile the Inspector of Police, VCCS Department, inspected the shop and seized the entire stock and records.

3. The Joint Collector, Nizamabad, ordered for confiscation of 50% of the seized stock to the State Government having found that the petitioner contravening the provisions of the Act. Aggrieved by the order of Joint Collector, he preferred Criminal Appeal No.93 of 1998, which ended in dismissal by the District Judge, Nizamabad, vide judgment, dated 18.01.2005, confirming the confiscation order passed by the Joint Collector, Nizamabad. Aggrieved by the judgment, the present revision is filed reiterating the same grounds.

4. During hearing, Sri J. Kanakaiah, learned counsel for the petitioner, would contend that the confiscation of 50% of the seized stock for minor variation is arbitrary and prayed to set aside the orders.

5. Undisputedly, Inspector of Police, VCCS Department, inspected the premises and found variation between ground stock and book balance i.e., stock register on various items stated above and the explanation offered by the petitioner is not plausible for the reason that 15 bags of Ammonium Sulphate was purchased by Gangaram Chinnaiah, 50 bags of Urea was sold to N. Rajanna and another 51 bags of Urea was sold by T.Chinnaiah and they did not lift the bags from the shop. The variation of Urea is 103 bags i.e., less and if the stock is not lifted by the said N.Rajanna and T.Chinnaiah, the

variation would be more than 200 bags. Further, the variation of Urea is 295 bags, but not 103 bags. Therefore, the explanation offered by the petitioner for the variation of ground stock and book balance of Urea is not accepted. The order passed by the Joint Collector, Nizamabad, confirmed by the District Judge, Nizamabad, is inconsonance based on material available on record. However, confiscation of 50% of the stock seized appears to be arbitrary since the variation is minimum. Therefore, confiscation of 50% of the seized stock is reduced to 25%.

6. Accordingly, the criminal revision case is allowed in part setting aside the order passed by the District Judge reducing to 25%. The respondent authorities return the fertilizers or its value of 25% of the seized stock to the petitioner after expiry of time of S.L.

7. Miscellaneous petitions pending, if any, shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

17<sup>th</sup> August 2017.

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