

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1764 OF 2017

ORDER:

The present Criminal Revision Case is preferred by the appellant in E.C. Appeal No.117 of 2016 on the file of Sessions Judge, Krishna Division, Machilipatnam, questioning the order dated 10.04.2017 passed by him refusing to interfere with the order dated 28.03.2016 in ECP No.128/2014 passed by the Collector (CS), Krishna, Machilipatnam.

2. When concurrent findings of fact involved, interference in a Revision case is not warranted. Still, in case the petitioner questions the propriety or legality as to the order under challenge the same can be examined.

3. The facts have been that when Vigilance and Enforcement Cell received credible information on 14.3.2014 at 3.00 p.m., that there was Black Gram stored illegally, the officials surprised the house of the revision petitioner and found 140.90 kgs of Black Gram. To explain the purpose of the visit too the house of the revision petitioner, when questioned about the illegal storage, the revision petitioner stated to them that his brothers have got 20 acres of land in Bhatlapenumarru and they have raised the first crop as paddy and second crop as Black Gram and that he also purchased Black Gram from the farmers nearby villages and told them that he sells to the traders on commission basis. When they enquired, the revision

petitioner told them that he has not taken any Food Grain License/TOT registration, VAT from the concerned departments for his business purpose and has not produced any other documents. The value of the Black Gram seized is shown as Rs.7,04,500/- and the said quantity was seized and handed over to Sri Dandamudi Vamsi Krishna, M/s. Vamsi Krishna Fertilizers, Kuchipudi, Movva Mandal for safe-custody. A report was submitted to the Collector (CS), Krishna, Machilipatnam to initiate action under Section 6-A of the Essential Commodities Act, 1955 (for short, 'E.C. Act') for infraction of clause 2k (1) of A.P. Scheduled Commodities Dealer (Licensing, Storage and Regulation) Order, 2008. A show-cause notice was issued by the Collector under Section 6-B of E.C. Act and the appellant/revision petitioner has given written explanation stating that the seized Black Gram was only agricultural produce and he stored it to sell the same in open market for better price, but he is not a person doing business in Black Gram and mere keeping of Black Gram is no contravention as held in **Manipur Administration v. M. Nila Chandra Singh** [AIR 1964 SC 1533] and single instance of storing of food grains would not constitute carrying on business as laid down in **Satyanarayana Balkishan v. State of Andhra Pradesh** [1971 AWR (1) 254] and as per clause 3 of A.P. Hoarding of Food Grains Order, 1973. The learned Collector considered the explanation offered by the revision petitioner, having not convinced, ordered for confiscation of 60% value of seized stock in favour of Government. The said order was challenged in E.C. Appeal.

4. The learned Sessions Judge, Krishna, Machilipatnam, formulated the following three points:

- (1) Whether appellant did clandestine business without any valid license and thereby contravened clause 2k (1) and 3 of A.P. Scheduled Commodities Dealers (L & RS) Order, 2008?
- (2) Whether order of the Joint Collector, Krishna, Machilipatnam is sustainable under law?
- (3) To what relief?

5. The learned Sessions Judge has extracted clause 2k (1) of A.P. Scheduled Commodities Dealers (L & RS) Order, 2008 and clause 3 of A.P. Prevention of Hoarding of Food Grains Order, 1973, and then referred to the statement of the appellant recorded by the inspecting authorities and considering the admissions made by him before the authority that he purchased Black Gram from the farmers and later selling the same to other dealers and acting as commission agent and doing business in pulses unauthorizedly, opined that the said statement clinchingly shows that the revision petitioner has been doing business without possessing valid licence. He has also opined that on account of non-examination of any of the family members to prove that they raised Black Gram and produced 151.00 quintals of Black Gram as contended by him and mere filing of certificates issued by revenue officials will not suffice to confirm that the seized stock was agricultural produce of the family members discarded the stand taken by the revision petitioner.

6. The very same contention raised before the District Collector in E.C. Case has been consistently canvassed before the learned District Judge and also before this Court. His whole case is that the seized black gram was produced from his own leased lands and stored the same in his house to sell it in the open market on the basis of best price, as such, seizure of his own agricultural produce was illegal and he never did business in black gram and, as such, obtaining license under the Provisions of the Control Order does not arise, besides agitating that keeping of the stocks without doing any business was not a contravention and more over a single or an isolated transaction does not come within the purview of 'dealer'.

7. A perusal of the order of the Primary Authority and the learned District Judge would clearly show that in the written explanation he has clearly admitted that the seized stock was stored to sell in the open market on the basis of better price and sought to dismiss the case registered under Section 6-A of the E.C. Act and release the seized stock in his favour. But, as could be seen from the orders passed by the authorities below that when a statement was made by the petitioner, in the first instance, before the Inspecting Officer in the presence of the mediators, on the date of inspection, he mentioned that for the last few years his father was purchasing black gram from the farmers and selling the same to others, getting marginal benefits and acting as commission agent, and as his father has become aged, he (Petitioner) has been doing his father's business i.e.,

purchasing the black gram from the farmers and selling to others acting as commission agent and expressed ignorance of obtaining Food grain License for doing business in pulses. Thus, it is clear when it came to submission of explanation when show-cause notice was issued by the District Collector, he moulded his explanation stating that he stored it for selling when better price is fetched, and he was not doing business in pulses.

8. It appears, in order to wriggle himself out of the prior statement made before the Inspecting Authority, he has set up a different version before the District Collector. Noting the same, the District Collector did not accept the explanation offered by him, and thereby passed the order for confiscation of 60% value of the seized stock. The learned District Judge though, concurred with the finding recorded by the District Collector, still, taken a lenient view and felt just and reasonable to reduce the percentage of confiscation from 60% to 30% of the seized stock to meet the ends of justice. Though, the learned counsel pointed out the relevant entry in the schedule to gain some advantage, but the said entry does not favour him so also the ruling referred to in the above relied on by him that if a person involves in single transaction of selling pulses it cannot be construed as doing business in pulses, for the reason the very statement he made before the Inspecting Authority cannot be erased from record. Thus, there is absolutely no infirmity, nor patent illegality in the concurrent

findings recorded by the authorities below warranting interference.

The present Criminal Revision Case lacks merit.

9. The present Criminal Revision Case is, accordingly, dismissed confirming the order passed by the learned Sessions Judge in the E.C. Appeal.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

Date: 07.11.2017
Gbs/Mgr

