THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO. 2011 OF 2017

ORDER:

This revision is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 06.06.2016 in Crl.A.No.59 of 2015 passed by the Principal District and Sessions Judge, Ranga Reddy, at L.B.Nagar reducing the confiscation of stock from 100% to 50%.

2. The Assistant Supply Officer, Circle III, Saroornagar along with their officials on 6.8.2014 at about 12.30 a.m. along with two mediators proceeded to inspect shop Nos.1 an 2 at plot No.89/B-2, Kattedan, Rajendranagar, they inspected M/s. Hyderabad Flour Mills, Kattedan, at that time, the petitioner and another were transacting the business, on enquiry they informed that they are carrying on business for purchasing wheat and converting into atta and selling the same with the assistance of one Kancharla Venkatesh (appellant No.2 in Crl.A.No.59 of 2015), on verification of the stock, the inspecting agency noticed 50 kgs and 25 kgs of atta in some plastic bags and they stated that they received the same from Puranapool, Hyderabad, Narayanapeta and Kalvakurthy areas and the bags are having quantity of wheat and 320 empty packets of amma hastam PDS wheat are available besides wheat and the packets filled with amma hastam PDS wheat packets were also noticed. On enquiry, the inspecting agency learnt that the stocks of PDS packets were purchased from unknown persons at Hyderabad old city for Rs.12/- per bag and converting into atta refilled in plastic bags i.e. 25 kgs and 50 kgs with brand name 'Hyderabad Gold Chakki Atta' and was being sold in the market at higher rate for monetary gain. The petitioner produced the Xerox copy of VAT certificate, but failed to produce licenses and way bills etc., but found stock of wheat and atta worth Rs.4,30,725.10 ps. and the same was seized and handed over to MLS point incharge, Kistamathpur, Rajendranagar under acknowledgement for safe

custody and filed report by the Joint Collector under Section 6-A of the Essential Commodities Act.

3. On receipt of report under Section 6-A of the Essential Commodities Act, the Joint Collector issued show cause notice under Section 6-B of the Essential Commodities Act calling upon the petitioner and others as to why the seized stock cannot be confiscated for violation of Clause 17(A) of A.P. State Public Distribution System (Control) Order, 2008 i.e. storing of PDS atta and doing illegal and clandestine business.

4. Upon hearing both sides, the Joint Collector in 6-A Case No.A7/544/CS/2014 dated 21.10.2014 specifically passed the following order:

> "Therefore, in exercise of powers conferred under Section 6-A (1) () of the Essential Commodities Act, 1955, I hereby order that 'confiscation of 100% of entire seized stocks i.e. PDS in (7) gunny bags rice and (115) kplostic bags of rice totally (122) bags of PDS rice on weighment (60.95) quintals worked out to Rs.4571.25 ps. and (18) bags of broken rice on weighing (9.00) quintals, worth R.6300/- total worth Rs.10,871.25 ps. into government account."

5. The entire order of the Joint Collector discloses that the civil supplies authorities seized PDS rice and ordered confiscation to the government for violation of clause 17(A) of A.P. State Public Distribution System (Control) Order, 2008 i.e. PDS in (7) gunny bags rice and (115) plostic bags of rice totally (122) bags of PDS rice on weighment (60.95) quintals worked out to Rs.4571.25 ps. and (18) bags of broken rice on weighing (9.00) quintals, worth R.6300/- total worth Rs.10,871.25 ps. into government account.

6. Though the entire seizure report is with regard to wheat and atta, but curiously the Sessions Judge while noting the defect in the order modified the confiscation of 100% of seized stock to 50% without recording any finding as to whether the stock seized is an essential commodity or not and whether the stock seized by the Assistant Supply Officer is the wheat, atta or PDS rice as recorded by the Joint Collector.

7. During hearing before this Court, the learned counsel for the petitioner Sri V.H.V.R.R. Swamy contended that the orders passed by both the Joint Collector and Appellate Court i.e. Sessions Judge are inconsistent with one another and neither of them recorded whether the items seized are essential commodities or not and more so, the order passed by the Joint Collector pertains to PDS rice which is not the subject matter of the report in total body of the allegations in the order and at the same time, the Sessions Judge though expected to record its finding, did not record any finding and committed a serious error in reducing the confiscation order from 100% to 50%.

8. The order passed by the Joint Collector is manifestly perverse for the reason that the items seized by Assistant Supply Officer is wheat and atta but not PDS rice. But, issuing a direction for confiscation of PDS rice is a glaring error apparent on the face of the record. Therefore, the order passed by the Joint Collector and confirmed by the appellate Court i.e. Sessions Judge are hereby set aside directing the Joint Collector to decide the proceedings under Section 6-A of the Essential Commodities Act afresh for affording reasonable opportunity to both the parties in accordance with law since a finding is required to be recorded as to whether the items seized by the Assistant Supply Officer, Saroornagar are essential commodities or not and if so, whether it is liable for confiscation or not and that apart while exercising power under Section 397 Cr.P.C. cannot decide what was the items seized in the report except based on the body of the order which is contrary to the findings recorded by the Joint Collector.

9. Accordingly, the revision case is allowed remanding the matter to the Joint Collector to record a specific finding as to whether the goods seized by the Assistant Supply Officer are essential commodities and if so, whether it is liable for confiscation based on the G.O.Ms.No.22, dated 23.04.2009 and the law declared by this Court in SRI SAI TRADERS REP. BY ITS PROPRIETOR AND

OTHERS v. ASSISTANT SUPPLY OFFICER, CIRCLE-I, VIJAYAWADA AND OTHERS[1] and judgment of Apex Court in K. JANARDHAN PILLAI AND ANOTHER v. UNIION OF INDIA (UOI) AND OTHERS[2] as expeditiously as possible and in any event not later than three months from the date of receipt of copy of this order.

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

M.SATYANARAYANA MURTHY,J

DATE:28-08-2017
ccm

[1] 2006(4) ALT 758

[2] (1981)2 SCC 45

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