

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2985 OF 2015

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the petitioner-claimant, challenging the concurrent findings recorded by the learned Principal Sessions Judge at Khammam in Criminal Appeal No.42 of 2013 dated 01.08.2014, and the Joint Collector, Khammam, in Miscellaneous Case No.70 of 2012 dated 01.02.2013.

2. The Assistant Supply Officer, Khammam, along with other officials surprised the house bearing No.4-2-160/3, Srinivas Nagar of Khammam Town, in the presence of mediators and found one person by name Mukkera Venu – respondent No.2. On enquiry, he disclosed that he has purchased rice from rice millers @ Rs.1,800/- per quintal and selling the same @ Rs.2,000/- per quintal. On that, the Assistant Supply Officer along with the other officials observed the said premises and found 70 quintals of Samba Masuri Super Fine rice in 280 plastic bags (each bag weighing 25 quintals). When the officials insisted the 2nd respondent to produce licence issued by the Civil Supplies Department to carry on business, he informed that he possessed licence to carry on business in the premises he obtained on lease and for the last four months he was carrying on business in the said premises without the licence and requested to excuse him. Dissatisfied with the explanation, the Assistant Supply Officer seized 70 quintals of Samba Masuri Super Fine rice in 280 plastic bags as

he was carrying on business without licence and thereby, violated Clause 2(K)(4) and (3) of the Andhra Pradesh Scheduled Commodities Dealers (Licensing Storage and Regulation) Order, 2008 (for short, 'the Order') read with Section 3 of the Essential Commodities Act, 1955 (for short, 'the Act'), in the presence of the mediators under the cover of panchanama and the report was filed under Section 6-A of the Act before the Joint Collector.

3. On receipt of the report, the Joint Collector issued a show cause notice in compliance of Section 6-B of the Act, calling upon the 2nd respondent to give explanation for carrying on business without any licence in the premises bearing No.4-2-160/3.

4. The petitioner filed a claim petition through his Advocate claiming that it is the proprietary concern dealing with trading of all kinds of food grains, having licence and carrying on business in the premises bearing Door No.2-4-161 at Harkarivari Street, Khammam and that the premises bearing Door No.4-2-161 was in dilapidated condition, so he intended to remove the premises and in the meanwhile he purchased 60 quintals of Samba Masuri Rice from Vasavi Traders, Korutla of Karimnagar District, and stored the same in the house bearing No.4-2-160/3 of Srinivasa Nagar, Khammam, along with four quintals of stock already available, with an intention to shift the business after getting renovation of the godown, but, in the meanwhile, as his wife suffered from an eye problem, he visited L.V. Prasad Eye Hospital, Hyderabad on 06.02.2012 and 07.02.2012 and he was informed about the seizure of stock concerned. He also

contended that he possessed licence and the 2nd respondent is no way concerned with the stock and he is not a tenant in the premises and he is working as hand-in-glove with the inspecting officials. The petitioner along with the claim petition so made before the Joint Collector, filed Photostat copy of the document. The Joint Collector upon hearing argument of the Assistant Supply Officer and the learned counsel for the petitioner before the Joint Collector, disbelieved the case and ordered confiscation of 100% seized stock.

5. Aggrieved by the order passed by the Joint Collector in M.C.No.70 of 2012, the petitioner preferred Criminal Appeal No.42 of 2013 before the Principal Sessions Judge, Khammam and it was ended in dismissal confirming the order of the Joint Collector, having found no illegality or irregularity in the order passed by the Joint Collector, warranting interference of the appellate Court. Aggrieved by the order passed by the Joint Collector and confirmed by the Sessions Court, questioning the propriety, illegality and irregularity of the order passed by the authorities below, the present revision is filed on various grounds.

6. The main contention of the petitioner before this Court is that the petitioner was carrying on business in the premises bearing Door No.2-4-161 at Harkarivari Street, Khammam, and produced licence issued in Form-B under Clause 3(ii) of the Order, but due to circumstances beyond his control, he shifted his business to his own residential premises bearing Door No.4-2-160/3 and produced the certificate dated 14.02.2012 issued by the Municipal Office,

Khammam. Thus, it is clear from the material placed before the Court that the petitioner is owner of the premises bearing Door No.4-2-160/3 of Srinivasa Nagar, Khammam. It is no doubt that the petitioner obtained licence to carry on business for purchase, sale/storage of scheduled commodities vide licence No.29/2009 to store the scheduled commodities in house bearing No.2-4-161 at Harkara Well Street, Khammam and carry on business in the said premises as per Clause 2 of Form-B licence issued by the District Supply Officer, Khammam, but the petitioner was found carrying on business at a different place i.e., house bearing Door No.4-2-160/3, which belongs to him. Even if the explanation offered by the petitioner is accepted, there is a procedure to be followed for shifting the business from one premises to the other premises.

7. Section 2(K) of the Order defined the word 'dealer', which means any person engaged in the business of purchase, movement, sale, supply, distribution or storage for sale of any of the commodities specified in the schedule-1 whether as a wholesaler or retailer or producer or manufacturer or exporter but except importer, whether or not in conjunction with any other business and includes his representatives or agent.

Thus, the petitioner is a dealer of scheduled commodity as defined under Section 2(K).

8. Under Clauses 3 and 4 of the Order, dealer has to obtain licence to carry on such business by making an application in Form-A as prescribed under Schedule-III of the Order and every

licence issued must be in Form-B under Schedule-III. The petitioner obtained licence to carry on business at premises bearing Door No.2-4-161, but he was carrying on business in a different premises on the pretext that the premises became dilapidated, but no intimation was given for shifting business from one premises to other premises to carry on business either by sale or store (as godown). Thus, carrying on business at different premises other than the premises to which he agreed to carry on business is deemed to be carrying on business without any licence. Therefore, the petitioner violated condition Nos.3 and 4 of Clause 2(K) of the Order. As per the terms and conditions of the Form-B licence, petitioner is required to comply several formalities, but they are not necessary for the purpose of deciding the present issue.

9. Since the petitioner violated condition Nos.3 and 4, the Joint Collector rightly passed the order of confiscation of seized stock and rightly confirmed by the learned Sessions Judge to order confiscation, but confiscation of 100% of seized stock to the State is unreasonable and therefore, the confiscation of seized stock is reduced to 50% from 100%.

10. In view of my foregoing discussion, the Criminal Revision Case is allowed in part modifying the order of confiscation of stock from 100% to 50% and the authorities concerned, if they realized any amount by sale of the confiscated stock, are directed to repay the value of 50% of the seized stock to the petitioner under proper

acknowledgement within three (03) months from the date of receipt of a copy of this order.

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

M.SATYANARAYANA MURTHY,J

Date:20.10.2017
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