HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1164 of 2005

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed challenging the order, dated 11-11-2004 in C.M.A.No.57 of 2000 passed by the Principal District Judge, Eluru, against the orders passed by the District Collector in Roc.No.CSI/155/ECA/99, dated 26-06-2000, dismissing the C.M.A. filed by the petitioners herein.

The petitioners herein are the dealers of edible oils and food stuffs having obtained licence under the provisions of Essential Commodities Act (for short, 'the Act'). On information, the complainant along with the staff and mediators, on 30-11-1999, surprised M/s.Sri Possarapu Somasundarm and Brothers Wholesale Pulses Dealers, Nidadavole, and petitioners herein was found attending to the business operations. On physical verification of ground stocks with reference to the entries made in the stock registers, bill books after clubbing both the stocks of the godown and the shop, the complainant noticed the following variation in the stock of schedule commodities:

Sl. No	Commodity	Opening Balance Quintals	Sales Qtals.	Book Balance Qtals.,	Ground Balance Qtals.,	Variation Qtls.,	Value of stock Rs.
1.	Green Gram Dal	12-50	--	12-50	13-00	(-) 0-50	28,600-00
2.	Sanaga (Bengal gram Dal)	28-25	--	28-25	28-25	--	50,850-00
3.	Red Gram dal (100 Kgs. 25Kgs)	25-00	--	25-00	20-00	(-) 5-00	50,000-00
4.	Red Gram dal (50 Kgs. 70Kgs)	35-00	--	35-00	32-00	(-) 3-00	54,400-00
5.	Black Gram Dal	4-50	--	4-50	10-00	(+) 5-50	22,000-00
6.	Fried Gram Dal	17-40	--	17-40	17-40	--	33,060-00
7.	Ground Nuts	3-00	--	3-00	4-00	(+) 1-00	6,400-00
8.	Skinless Green Gram Dal	3-00	--	3-00	3-00	--	6,900-00
9.	Maida	46-50	--	46-50	40-50	(-) 5-00	48,600-00
10.	Ravva	45-50	-	45-50	47-50	(+) 1-50	51,700-00
11.	Atta	11-00	1-00	10-00	9-00	(-) 1-00	9,000-00
12.	Vanaspathi (11 tins – 15 kgs)	2-85	--	2-85	2-85	--	9,500-00
13.	Sun Flower oil	16-85	--	16-85	16-85	--	55,000-00
14.	Battani	--	--	--	--	--	--
15.	Black Gram	67-00	--	67-00	67-00	--	1,07,200-00
						Total	5,33,210-00

Thus, the petitioners herein failed to maintain the registers, records and accounts properly resulting in variation in the stock and the petitioners herein are in an un-authorized possession and hoarding of pulses, oils and food grains without entering into the record.

Based on the irregularities committed by the petitioners herein, the stock was seized by the concerned authorities under the cover of panchanama in the presence of mediators and filed report before the District Collector. On receipt of the report under Section 6-A of the Act, the District Collector issued a Show Cause Notice calling upon the petitioners herein to file their explanation regarding variation found in the ground stock with reference to book balance. Having dissatisfied with the explanation framed two charges for violation of Control Orders.

The District Collector upon hearing arguments of both the parties and considering the material on record ordered confiscation of 50% of the seized stock or its value to the Government by exercising power under Section 6-A of the Act.

Aggrieved by the order of confiscation passed by the District Collector, Civil Miscellaneous Appeal No.57 of 2000 was preferred before the Principal District Judge, Eluru, instead of filing Criminal Appeal under Section 6(c) of the Act. However, the appeal is construed as Criminal Appeal under Section 6 (c) of the Act and the Prl. District Judge deleted item Nos.12 and 13 based on the Division Bench judgment of this Court reported in ***2000 (1) ALT 14 (DB)*** and confirmed confiscation order passed by the District Collector in other items and reduced confiscation to 25% from 50% in respect of other items.

The present revision is filed on the ground that both District Collector and appellate Court did not consider the explanation of the petitioners herein regarding the discrepancy in the ground stock and book balance based on the Ryotwari voucher issued by the Agricultural Market Society Check Post and committed an error in rejecting the contention.

The other contention raised before this Court is that there was no variation in item Nos.2, 6, 8, 14 and 15. But both the District Collector and the District Judge erroneously passed the confiscation order under item Nos.2, 6, 8, 14 and 15 and finally it is contended that when the inspection was done during the course of business transactions at 1.00 P.M. to 3.00 P.M. the petitioners are expected to make necessary entries in the stock register at end of the day but only because of failure to make necessary entries in the stock register the order of confiscation is erroneous on a ground that there is variation in essential scheduled commodities referred to table annexed it and placed reliance on the judgment of this Court in ***M/s.Kundanmal Ramlal, Hyderabad rep. by its Partner, Bhagirath Pawar. V. The Ex. Officio Secretary, F&A Dept., Govt., of A.P., Hyderabad and others***[1].

During hearing, learned counsel for the petitioners reiterating the grounds of revision mainly contended that item Nos.7, 9, 10 and 11 are to be deleted as they are not scheduled commodities and other item Nos.2, 6, 8, 14 and 15 are not liable to be confiscated as there was no variation and

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[1] (A.P.) 1989 (2) Law Summery

requested this Court to pass appropriate order considering the judgment of this Court in Law Summary, referred supra.

Learned Public Prosecutor for the State of Andhra Pradesh would contend that item Nos.12 and 13 were already deleted by the Principal District Judge, Eluru, in the appeal itself and whereas item Nos.7, 9, 10 and 11 would fall within the definition of food stuff, which is a scheduled commodity. Therefore, confiscation of item Nos.7, 9, 10 and 11 cannot be faulted and apart from that regarding the entries, the District Court considered the entire bills and vouchers and found that there is variation between the ground stock and book-balance in the stock register and ordered confiscation and prayed to dismiss the revision confirming the order under challenge.

The first and foremost contention raised by learned counsel for the petitioners is that in item Nos.2, 6, 8, 14 and 15 there is absolutely no variation between book balance and ground balance and when there is no variation the question of hoarding the stock of pulses, food grains, oils, etc., without entering into the records does not arise and they are not liable to be confiscated. No doubt, as seen from the seizure panchanama no variation is found in item Nos.2, 6, 8, 14 and 15 between ground stock and book balance and in such case ordering confiscation of those items is illegal. But it is contended by learned Public Prosecutor that when there is variation in other items the Court can confiscate these items also. But this contention is without any substance and not based on law. Therefore, the order of confiscation of 25% of item Nos.2, 6, 8, 14 and 15 is hereby set aside.

The second contention raised before this Court is that item Nos.7, 9, 10 and 11 are not scheduled commodities and therefore, ordering confiscation of 25% of these items is illegal. But the contention of the petitioner is refuted by learned Public Prosecutor on the ground that these items would fall within the definition of food stuffs by relying upon a decision of Hon'ble Apex Court reported in ***K. Janardhan Pillai and another vs. Union Of India and others***[2].

Since those items though not specified as scheduled commodities, still, they are food stuffs those items would fall within the definition of food stuffs, which is included in the scheduled commodities, therefore, the contention of learned counsel for the petitioners is not acceptable in view of the principles laid down by the Hon'ble Apex Court in the judgment referred supra. Hence, request of learned counsel for the petitioners is turned down to delete these items from confiscation.

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[2] 1981 (2) SCC 45

The main endeavor of learned counsel for the petitioners is that as the inspection was done between 1.00 P.M. and 3.00 P.M., the question of making entries in the register would not arise since it is the practice of making entries at the end of business day and he placed reliance of the judgment of this Court in ***M/s.Kundanmal Ramlal's*** case, referred supra. But in the present case he produced only one voucher evidencing purchase of six quintals of black gram purchased from one Ryot under Ryotwari auction and obtained a receipt from the Agricultural Market Committee Society Check Post but this was considered by the District Collector and appellate Court and the receipt does not bear the seal of Check Post. Apart from that the sale of Myda, Atta and Readgram to Sasi Residential School, Nidadavol, was not entered in the register and if the credit bill passed by the petitioners in favour of Sasi Residential School, Nidadavol, is deleted there will not be any variation. But in Myda and Atta the variation is about 1.50 Quintals and 1 Quintal respectively and commodities sold to Sasi Residential School, Nidadavol is minimum. Even though that is taken into consideration still there is lot of variation in the ground stock with reference to book balance i.e., stock register. Therefore, the contention that the petitioners would make necessary entries in the stock register at the end of business day though acceptable but no other bills or vouchers are available with the petitioners to co-relate the ground balance with reference to book balance. Therefore, the District Collector and appellate Court considered those bills, vouchers, etc., and recorded a fact finding, which cannot be interfered by this Court while exercising power under Sections 397 and 401 of Cr.P.C., as concurrent finding of fact cannot be interfered except when the Court finds manifest perversity or apparent error in the fining. Therefore, I find no ground to interfere with the finding recorded by the trial Court with regard to item Nos.7, 9, 10 and 11 ordering confiscation of 25% of item Nos.7, 9, 10 and 11 while setting aside the confiscation of 25% of item Nos.2, 6, 8, 14 and 15 as there is no variation in those items and apart from that the variation in other items referred supra is more than permissible variation.

In the result, the Criminal Revision Case is allowed in part, setting aside the confiscation order of item Nos.2, 6, 8, 14 and 15 while confirming confiscation of 25% of other items.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 17, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1164 of 2005

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