

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.2831 & 2837 OF 2017

COMMON ORDER:

The present Criminal Petitions are filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the proceedings in C.C. No.144 of 2016 and C.C. No. 308 of 2016 on the file of Judicial Magistrate of First Class, Nandikotkur, Kurnool District.

2. The petitioners who are arraigned as accused respectively in the aforesaid Calendar Cases respectively. They alleged to have committed the offences punishable under Section 420 of IPC and Section 7(1) of the Essential Commodities Act, 1955 (for short, 'the Act').

3. Heard Sri Shaik Noor Ahmed, the learned counsel for the petitioner in Criminal Petition No.2831 of 2017 and Sri V.H.V.R.R. Swamy, the learned counsel for the petitioner in Criminal Petition No.2837 of 2017.

4. The learned counsel for the petitioners would submit that a Division Bench of this Court in **Maimuna Begum v. State of Telangana**¹ interpreted Clause 17 (A) of A.P. State Public Distribution System (Control) Order, 2008 and the observations in paragraphs-10 & 11 that Clause 17 (A) of the Control Order, 2008 would attract when there is interruption of food grains from the state of Food Corporation of India godown till it reaches the intended beneficiary i.e., cardholder and, therefore, to quash the proceedings.

5. The observations in paragraphs-10 & 11 in **Maimuna Begum** (1 supra) run thus:

¹2016 (2) ALD (CrI.) 684

“10. The only other Clause on which the learned Government Pleader placed reliance is Clause 17(A) of the Control Order, 2008 which reads as under:

“17.(A) *Interruption in the process of Distribution:-* No Fair Price Shop dealer or card holder or any person shall be allowed to cause interruption or interfere with the process of smooth distribution of scheduled commodities under Public Distribution system or other Government schemes at any level right from Food Corporation of India godown point to Fair Price Shop point, till the scheduled commodity reaches the intended beneficiary. Any such attempt of interruption or interfering with such process shall be treated as an abetment and be deemed to have contravened this order, thereby committing an offence under [Section 8](#) of the Essential Commodities Act, 1955.

11. A careful reading of the above re-produced Clause shows that the same is attracted if a fair price shop dealer or cardholder or any person causes interruption or interferes with the smooth distribution of scheduled commodities under the public distribution system or other Government schemes at any level right from the Food Corporation of India godown to the fair price shop point, till the scheduled commodity reaches the intended beneficiary. From the unequivocal plain language of this provision, it is clear that it gets attracted when there is interruption of food grains from the stage of FCI godown till it reaches the end beneficiary i.e., cardholders. The provision does not comprehend any activity relating to any commodity falling under the Control Order, 2008 once it reaches the cardholder. There is no whisper either in the detention order or in the grounds of detention that any of the **detenus** is interrupting the smooth functioning of the scheduled commodities from the FCI godown point till it reaches intended beneficiary. On the contrary, the whole allegation against the **detenus** is that they have been purchasing the PDS rice from the cardholders. Therefore, this activity of the **detenus** completely falls outside Clause 17(A) of the Control Order, 2008. Once there is no prohibition on such activity either under the 1955 Act or under the Control Order, 2008 which undisputedly is the only Order that governs distribution and control of rice meant for public distribution system, the **detenus** cannot be accused of committing any offence. As the respondents failed to show that the **detenus** have contravened the provisions of any other Control Order framed under [Section 3](#) of the 1955 Act, the alleged activities of the **detenus** are not liable for any penal action. Once their activities do not constitute an offence under law, their preventive detention under the provisions of the 1980 Act cannot be sustained.”

6. The aforesaid decision was rendered in the context of adjudicating upon the orders of detention passed under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

7. On the other hand, the learned Assistant Public Prosecutor placed reliance on a common order passed by a learned Single Judge of this Court in Criminal Petition Nos.14959, 14988 and 15260 of 2016, dated 9.11.2016.

Facts in Criminal Petition No.2831 of 2017:

8. The facts would show that the petitioner herein is a resident of Saibaba Peta, Nandikotkur town and he was ready to transport 9 bags of PDS rice, 50 kgs each, in front of his house to Kurnool to sell them in black market for profit and seized 9 bags of PDS rice in the presence of panchayatdars. Basing on the panchanama, a case was registered in Cr. No.32 of 2016 for the offences under Section 420 of IPC and Section 7 (1) of the Essential Commodities Act, 1955, and he was arrested in the aforesaid crime and released on bail. After completion of investigation, the investigating officer laid the charge-sheet.

Facts in Criminal Petition No.2837 of 2017:

9. The facts would show that the petitioner herein is a resident of Saibaba Peta, Nandikotkur town and was found ready to transport 15 bags of PDS rice, 50 kgs of each kept in front of his house to Kurnool to sell them in black market for profit and seized 15 bags of PDS rice in the presence of panchayatdars. Basing on the panchanama, a case was registered in Cr. No.103 of 2016 for the offences under Section 420 of IPC and Section 7 (1) of the Essential Commodities Act, 1955, and he was arrested in the aforesaid crime and released on bail. After completion of investigation, the investigating officer laid the charge-sheet.

10. Identical grounds have been agitated by the learned counsel for the petitioners.

11. Firstly, the charge-sheets filed do not contain as to what Control Order passed under Section 3 of the Act is violated to register the case under Section 7 of the Act, which deals with penalties, and, in the absence of failure to specify Control Order, proceedings are liable to be quashed.

12. Second, in view of the judgment in Writ Petition No.7811 of 2016 and batch referred to in the above, no contravention can be viewed, and, therefore, no offence has been committed by the petitioners in these two Criminal Petitions making them liable under Section 7 of the Act, and, consequently, the offence punishable under Section 420 of IPC cannot be maintained.

13. The facts narrated above as to seizure of PDS rice under a cover of Panchanama is not in dispute in both the Criminal Petitions. Only the quantities mentioned in the Criminal Petitions in Seizurenamas respectively are different.

14. A learned Single Judge of this Court in Criminal Petition Nos.14959, 14988 & 15260 of 2016, dated 9.11.2016, has referred to the ruling in **Maimuna Begum**(1 supra), relied on by the learned counsel for the petitioners, and has opined thus,

"The main reason for challenging the complaints before this Court is that sale of PDS rice is not an offence in the absence of any contravention of Control Order in view of the principle laid down in W.P. No.7811 of 2016 and batch wherein the Division Bench of this Court while deciding a Writ of Certiorari filed under Article 226 of the Constitution of India to declare G.O. Rt. No.1024, dated 11.05.2016 confirming the detention of the petitioner's husband as illegal, arbitrary and to grant Habeas Corpus directing the respondents to produce the petitioner's husband.

In the facts of the above judgment, the detenue indulged in sale of PDS rice by purchasing PDS rice from cardholders after supplying by the Fair Price Shop dealer to the cardholder. So, it is clear that there was no interruption in the process of distribution as contemplated in clause 17 (a) of the A.P. State Public Distribution System (Control) Order since the process is limited till the commodity reaches the intended beneficiary i.e. cardholder from Fair Price Shop godown. Therefore, purchase of PDS rice from the beneficiary or cardholder does not amount to interruption in the process of distribution under Clause 17(a) of the A.P. State Public Distribution System (Control) Order. But the facts of

the present case are distinct as the petitioners herein transporting PDS rice after recycling, thus, it can be termed as interruption of Public Distribution System. Since it was not case of the defacto complainants that the petitioners purchased the rice from cardholders or beneficiaries and thereafter started transporting the same. Hence, the principle laid down in W.P. No.7811 of 2016 and batch has no application and on the strength of the principle laid down by the Division Bench of this Court in W.P. No.7811 of 2016 and batch, the present proceedings cannot be quashed at the threshold."

and declined to quash the proceedings, though at the inceptive stage, the request made therein by the respective petitioners was to quash the First Information Reports, the very same Clause 17(A) comes into vogue in the present petitions also.

15. I have no attraction except to follow the decision of the learned Single Judge, which observations have been extracted in the above.

16. Therefore, the second submission made by the learned counsel for the petitioners in these two criminal petitions would not merit to accede to the relief sought for by the petitioners herein.

17. Concerning the first submission that there is no specific mention of the Order which said to have been contravened by the petitioners, very same argument was advanced before the learned Single Judge in the aforesaid three Criminal Petitions. While answering the said question raised by the learned counsel for the petitioners therein, the learned Single Judge observed thus:

"Finally, learned Public Prosecutor (Andhra Pradesh) contended that when it is alleged that the petitioners contravened a particular Control Order, which is in force and covered by the Essential Commodities Act, they have to comply with the same and failure to comply with the specific Control Order would amount to an offence and in support of his contention he placed reliance on a judgment of the Apex Court rendered in "**State of Bihar v. Gulab Chand Prasad** (AIR 1982 SC 58)", wherein the accused violated the statutory order covering Soda ash, which is in force by then, and the dealer violated Clauses 3 and 4 of the Order. When the accused approached the Court to quash the proceedings, High Court quashed the complaint, but the matter carried to the Supreme Court. The Supreme Court made a serious comment that it is unwise to ignore the existence of a subsisting order and to dispose of a proceeding as if no such order was there and set aside the order of High Court quashing the complaint.

In the present case, there is no mention in the F.I.R. about the violation of particular Control Order i.e., A.P. State Public Distribution System (Control) Order and Telangana State Public Distribution System (Control) Order, but the allegations made in the complaints lodged by the defacto complainants on their face value would constitute an offence punishable under Sections 7 and 8 of the Essential Commodities Act and clause 17 (A) of A.P. State Public Distribution System (Control) Order and Telangana State Public Distribution System (Control) Order.

In the present cases, the contention of the petitioners is that there is no mention about the violation of any particular Control Order, but that by itself is not sufficient to quash the proceedings when the allegations made in the F.I.Rs. would constitute an offence on their face value."

18. It is, therefore, needless to state that transportation of PDS rice by the petitioners herein amounts to interruption of Public Distribution System accounting for infraction of Clause 17 (A) of Telangana/Andhra Pradesh State Public Distribution System (Control) Order, 2008, since the petitioners herein diverted PDS rice from Public Distribution System depriving the true poor beneficiaries under the Scheme and transporting the same for sale. Nothing more is required to answer the submissions made by the learned counsel for the petitioners and to hold that the prosecution of the petitioners does not amount to the abuse of process of law.

19. The present Criminal Petitions are, therefore, dismissed.

The learned Judicial Magistrate of First Class, Nandikotkur, Kurnool District, is directed to dispose of C.C. No.144 of 2016 and C.C. No. 308 of 2016 on his file, uninfluenced by any of the observations made in the above.

As a sequel thereto, miscellaneous petitions if any pending in both Criminal Petitions shall stand closed.

A.SHANKAR NARAYANA

Date:05.06.2017

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