

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1343 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the judgment dated 26.02.2018 passed in CrI.A.No.50 of 2016 on the file of the Court of the Principal Sessions Judge, East Godavari, Rajamahendravaram, confirming the orders passed by the District Collector in Ref.V3/780/2015.

The facts of the case are that a case was booked against the petitioner under Section 6A of the Essential Commodities Act (for short, "the Act") for contravention under the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 2005 (for short, "the Order, 2005"). On receipt of reliable information, the Vigilance and Enforcement Officials, Rajahmundry, inspected tanker bearing No.AP 12V 0259 on 11.12.2015 and in the presence of the mediators, when the inspection team questioned the persons found with the tanker, they stated that the vehicle is transporting diesel from ESSAR loading point, Kakinada, to the retail outlet of M/s. Sri Nidhi Agencies, Yanaam. The said tanker was supposed to deliver the motor spirit at Yanaam. However, it was diverted from Kakinada to Jaggampeta unauthorisedly without any proper

document of ESSAR Oil Company, which is in violation of Government norms. On enquiry, it was informed that on the instructions of their owner that the petitioner herein diverted the vehicle to Jaggampeta area. In those circumstances, they have seized the vehicle and booked case under Section 6A of the Act. They have also seized the stock and handedover the same to Sri S. Bapanna, clerk of Sri M/s. Laxmi Agencies, ESSAR Bunk, Jaggampeta, for safe custody. In connection with the said offence, a show cause notice was issued to the petitioner as to why the entire seized stock should not be confiscated to the Government under Section 6A of the Act. The case was heard on 02.01.2016. The petitioner and his counsel were present. In spite of issuance of show cause notice, the petitioner failed to submit any explanation. The petitioner orally submitted that the transporter has done the mistake in diverting the vehicle from Kakinada to Jaggampeta area. Therefore, the Collector and District Magistrate, East Godavari District, Kakinada, passed orders dated 04.01.2016 for confiscation of 100% on the value of the seized stock to the Government under Section 6A of the Act and 10% penalty was imposed on the value of the seized vehicle. Aggrieved by the said orders, the petitioner filed an appeal in CrI.A.No.50 of 2016 on the file of the learned Principal Sessions Judge, East Godavari, Rajamahendravaram. After hearing, the lower appellate Court on 26.02.2018 dismissed the appeal confirming the orders passed by the Collector and District

Magistrate, Kakinada. Questioning the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner contended that no opportunity was given to the petitioner before the primary authority and there is no service of Section 6A notice on any party resulting violation of principles of natural justice. Learned counsel also brought to the notice of the Court that the lower appellate Court erred in dismissing the appeal of the petitioner while remanding the other appeals filed by other persons to the primary authority for fresh disposal. The show cause notice was issued on 25.12.2015 and case was posted to 02.01.2016 and on the same day it was disposed of without giving any opportunity of submitting an explanation or being heard to the petitioner. The alleged diversion of vehicle is not within the knowledge of the petitioner or his partners and as such the findings given by the lower appellate Court is unsustainable in law.

Per contra, the learned Public Prosecutor appearing for the respondent State has not opposed the contentions raised by the petitioner on the ground that he has not given an opportunity to submit his explanation as well as being heard.

Having heard both the learned counsel and a perusal of the material on record, including the judgment of the lower appellate Court, it is revealed that there is no finding as to whether a notice is served on the petitioner or not and any opportunity of being heard is given to him. That apart, from

the judgment of the lower appellate Court, it is seen that a finding has been given that the petitioner is neither the owner of the stock found in the lorry nor is a licensee/dealer of the Srinidhi Agencies at Yanam and the locus standi of the petitioner to challenge the impugned order is not made out. When there is no pleading as to how his interest is prejudiced, it cannot be said that he is an affected party. Before adverting to the same, when the petitioner's grievance is that he has not been given any notice and no opportunity of being heard is given to him to submit his explanation, the question of not pleading as to how his interest is prejudiced, may not arise.

Be that as it may, when the petitioner agitates that the principles of natural justice are violated by not giving an opportunity to submit his explanation by serving any notice, this Court deems it appropriate to give an opportunity to the petitioner to submit his explanation mentioning his locus standi as well as how his interest will be prejudiced if the proceedings are allowed to continue in confiscation of the stock.

Accordingly, the revision case is allowed setting aside the judgment in CrI.A.No.50 of 2016 dated 26.02.2018 on the file of the learned Principal Sessions Judge, East Godavari, Rajahmundry. Consequently, the petitioner is directed to submit his explanation to the show cause notice dated 25.12.2015 to the Collector and District Magistrate, East

Godavari, Kakinada, within two weeks from the date of receipt of a copy of this order. On such submission, the Collector and District Magistrate is directed to consider the same and pass appropriate orders in accordance with law, within four weeks thereafter.

Miscellaneous petition, if any, shall stand closed.

P. KESHA RAO, J

Date: 06.07.2018.
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