

**HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CRIMINAL PETITION No.8396 OF 2017**

**ORDER:**

This Criminal Petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings against the petitioner-A.2 in C.C. No.66 of 2017 on the file of V Metropolitan Magistrate at Gannavaram, Krishna District, in connection with Crime No.379 of 2015 of Gannavaram Police Station, Vijayawada City, registered for the offences under Sections 408 and 420 I.P.C. and Section 7 of the Essential Commodities Act.

2. Heard the learned counsel for the petitioner-A.2 and the learned Assistant Public Prosecutor for respondent No.1-State, apart from perusing the material available on record.

3. Learned counsel for the petitioner-A.2 would submit that the petitioner-A.2 has not purchased PDS rice from fair price shop dealers; moreover, the said rice do not belong to PDS Rice Scheme; even if the allegations made in the charge sheet and complaint are taken as true, no offence is made out against the petitioner-A.2 as alleged by the prosecution; there are no witnesses with regard to the alleged purchasing and selling rice by the petitioner-A.2; and ultimately, prayed to allow the application as prayed for.

4. On the other hand, learned Assistant Public Prosecutor opposed the relief sought by the petitioner-A.2.

5. In view of the contentions putforth by both sides, the point for determination is, whether the proceedings in C.C. No.66 of 2017, in the circumstances of the case, can be quashed?

6. The case of the prosecution is that on 11.12.2015, on credible information about the diversion of PDS rice into black market,

L.W.1-Vasireddi Rama Koteswara Rao, Special Deputy Tahasildar, PDS Gannavaram Mandal; L.W.2-Chintanaboina Srinivasa Rao, Assistant Director, Regional, Vigilance and Enforcement Department, Vijayawada; and L.W.3-Dokiparthi Velugondaiah, Assistant Executive Engineer, Vigilance and Enforcement Department, Vijayawada rushed to the spot at RTA Check Post, Chinaoutapalli, Gannavaram Mandal along with mediators L.W.6-Korlakunta Venugopala Rao, L.W.7-Kumba Ranga Rao and L.W.8-Parimi Koteswara Rao and conducted vehicle checking at about 7-30 hours on that day. They found a lorry bearing No.AP 16TW 5724 transporting stocks without any bill. When L.W.1 to L.W.3 verified the lorry, they found plastic bags filled with PDS rice. When L.W.1 to L.W.3 questioned the driver of the lorry (A.1), he confessed that from one week he is working as driver on lorry bearing No.AP 16TW 5724 belonging to A.3 and on that day morning at 6-00 hours, the petitioner-A.2 who is husband of A.1 informed to take rice to Hanuman Junction and asked him to come, so he went to the petitioner-A.2 at 6-30 hours and they handed over the subject lorry with rice bags and instructed to deliver the same at Hanuman Junction and also informed A.1 as they did not have any bill for the same. The confession of A.1 further reveals that the petitioner-A.2 has three lorries, A.2 used to purchase PDS rice from dealers at Gannavaram and surrounding places and sell the same to the millers and that at Hanuman Junction, the said rice will be loaded in the van. L.W.1 seized the PDS rice which were in 213 bags being 8,740 quintals and also seized the lorry bearing No.AP 16TW 5724 in the presence of the mediators-L.Ws.6 to 8. Thereafter, after completion of investigation, the Station House Officer, Gannavaram Police Station, Vijayawada City filed charge sheet against A.1 to A.3 for the offences under Sections 408 and 420 I.P.C. and Section 7 of the Essential Commodities Act. As per the confession of A.1, the panchanama was conducted by the investigation on

11.12.2015 in the presence of L.Ws.6 to 8, the allegation is that A.2 used to purchase PDS rice from the dealers and sell the same to the rice millers. There are no direct witnesses of the petitioner-A.2 purchasing the subject PDS rice weighing 8,740 quintals seized from the lorry bearing No.AP 16TW 5724.

7. In the course of submissions, learned counsel for the petitioner-A.2 has brought to the notice of this Court that L.W.4 and L.W.5 are witnesses examined by the prosecution to prove that the rice was purchased from the dealers. The statement of L.W.4-Chinta Gyaneswar reveals that he is eking out his livelihood by agriculture, previously he was Sarpanch, he is having rice mill, the petitioner-A.2 used to purchase rice from his mill, the petitioner-A.2 is having a lorry, he came to know that on 11.12.2015, the Civil Supplies Officials conducted raid at RTA check post at China Avutapalli and seized ration card rice. The statement of L.W.5-Kothapalli Krishna reveals that the petitioner-A.2 used to purchase rice from him and from other rice millers and used to sell the same to the shop owners. L.W.4 and L.W.5 are only material witnesses in this case. There are no other witnesses to show that the subject rice were purchased from the fair price shop dealers or ration card holders. No sanctity or value is assigned to the confession given by A.1. As per the prosecution case, the petitioner-A.2 is the main accused. A.3 is the wife of the petitioner-A.2. In the circumstances of the case, there is no material to hold that the subject rice weighing 8,740 quintals are PDS rice and the same were purchased from the ration shop dealers or ration card holders. Under these circumstances, the continuation of the proceedings against the petitioner-A.2 is nothing but abuse of process of law. When there is no accusation against the petitioner-A.2, the facts and circumstances of the case do not constitute the accusation against the other accused in this case, i.e., A.1

and A.3. The continuation of the proceedings against them also is abuse of process of law. Therefore, the proceedings in C.C.No.66 of 2017 are liable to be quashed against all the accused.

8. Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner-A.2 as well as other accused, i.e., A.1 and A.3, in C.C. No.66 of 2017 on the file of the V Metropolitan Magistrate at Gannavaram, are quashed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

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**Dr. SHAMEEM AKTHER, J**

Date: 01-02-2018

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