## SMT. JUSTICE T. RAJANI

CRIMINAL PETITION NO. 1988 OF 2011

O R D E R :

This Criminal Petition is filed under section 482 of Cr.P.C., seeking quash of the Proceedings in C.C.No.141 of 2011 on the file of the Court of III-Additional Judicial Magistrate of First Class, Ongole, Prakasam district, registered for the offence punishable under section 406 of I.P.C., against the petitioner/Accused.

2. Heard Sri N.Ravi Prasad, learned counsel for the petitioner/accused and the learned Public Prosecutor representing the second respondent/State. None appears for the first respondent.

3. The allegations are that the petitioner has purchased GSFC Ammonium Sulphate and has stocked illegally in GFSC godown. The report also spells that a case under section 6-A of the Essential Commodities Act was registered and the entire stock was seized.

4. Sri N.Ravi Prasad, learned counsel for the petitioner now submits that the offence alleged is not attracted to the facts of this case. The petitioner only purchased the stock and stored it in the godown of the Company and he did not take delivery of the stock

and hence the question of maintaining the register does not arise at that point of time. He also submits that in the Criminal Appeal filed against the confiscation of the stock in Criminal Appeal No. 102 of 2011 before the Sessions Judge, Prakasam Division, Ongole, the learned Judge observed at para No.10 [g] as under :

> *" [g] As per the procedure, during the off-season month i.e., April, May, June, July, it is universal practice followed by fertilizer supplies that they will bring the material as per DOF supply plan to the State and they will allocate and bill the stock to their distributor by providing storage facility until season starts Therefore, the respondent/appellant purchased the stock during off-season month to meet the demand and nothing wrong in it by storing huge stock until season starts Once he took delivery, automatically it will be deducted from the Stock Register of GSFC Stock Register and also from the un-lifted Stock Register of the party maintained by the GSFC Stock Register and also from the un-lifted Stock Register of the party maintained by the GSFC Ware house. Then the respondent/appellant is bound to make necessary entries as soon as he took delivery and stored in his godown. The process is only billed, but not lifted the stock and it will be treated as un-lifted stock of the party in Company records. It is not the case of the complainant that there is no such record and on the other hand, there is record to that effect i.e., with regard to the stock purchased by the respondent/appellant i.e., bill for 538 MTs of Ammonium Sulphate from GSFC and it is very clear that it is un-lifted. During normal season i.e., September to January, distributors are bound to lift the stock within 30 days from the date of purchase. Storing of commodity is more important, which can be maintained either in his godown or Warehouse of the GSFC, subject to the conditions, other wise, it is very difficult to preserve the same, as there is every likelihood to perish, as this type of goods are perishable. In case, if they failed to lift the stock within 30 days from the date of purchase and intentionally kept in the Warehouse for the sake of wrongful gain by creating false demand to blackmarketing, then it will be viewed seriously, but*

*nothing on record to show that the respondent/appellant's godown is not having sufficient stock to supply, the same for distribution or to meet the demand. As per the material on record, it shows that the stock was purchased from 15/6/2010 to 21/8/2010 i.e., during off-season month, so also during normal season to meet the distribution and demand. The Mandal Agricultural Officer and Food Inspector, Ongole with Revenue Divisional Officer, Ongole, JDA, Ongole, ADA [Plant Protection], Ongole jointly inspected the GSFC Warehouse situated at D.No. 8-110-B at Throagunta village on 17/11/2010. There is no ariation in the record, but it shows that they have inspected in the month of November, 2010 during the normal season. Therefore, the distributors are bound to lift the stock purchased within 30 days to meet the demand. Nothing on record to show that there is any bar for un-lifting the stock but in case of abnormal delay in lifting the stock, Company will charge penalty for delayed lifting of the stock; where is any record and there is a general procedure being adopted for marketing of GSFC Fertilizers and where particulars are very clear with regard to description of the material allotted, billed, lifted and un-lifted stock of the respondent/appellant without any variation, it cannot be said that the respondent/appellant is doing business un-authorisedly with the same, and therefore contravened Clause 7 of FCO, 1985 r/w Sec.3 of Essential Commodities Act, 1955. The material on record is ery clear even physical Stock Register as in the letter bearing No.Hyd/2010-11-969, dated 14/12/2010 and it is also very clear in the notice dated 23/12/2010 that the seized stock of 496 MTs of Ammonium Sulphate stands in the name of GSFC Company and rent paid to godown by the GSFC Company. <u>The question of any contravention does not arise</u>. A show cause notice was sent to the respondent/appellant with regard to the same, but there is no clarity on the role of the respondent in informing the particulars though they are on record with regard to the un-lifted stock. Mere absence of some clarify, it cannot be said that it is an unauthorized business or contravention of any provisions or black-marketing, unless it is inferred or shown that he kept the stock in GSFC godown un-authorisedly and doing unauthorized business. The charge is different from the findings given by the*

> *Collector and District Magistrate, Prakasam District, Ongole, for which, the respondent/appellant is entitled for the relief. There is a lacuna on the part of the respondent/appellant in giving clarify, which cannot be said that he is doing un-authorised business, when he failed to give clarify, the complainant launched the proceedings against him. However, under the circumstances mentioned above, I find that it is not an un-authorized business and there is no contravention of Clause 7 of FCO, 1985 read with section 7 of Essential Commodities Act, 1955. Therefore, I am inclined to allow this appeal*."

5. The learned Public Prosecutor does not submit anything which is contrary to the observations made by the learned Sessions Judge in the above Criminal Appeal No.102 of 2011, dated 10/10/2012. Hence, in view of the above, this Court opines that further proceedings C.C.No.141 of 2011 on the file of the Court of III-Additional Judicial Magistrate of First Class, Ongole, Prakasam district would only result in abuse of process of law.

6. In the result, the Criminal Petition is allowed and all further proceedings in C.C.No.141 of 2011 on the file of the Court of III-Additional Judicial Magistrate of First Class, Ongole, Prakasam district, registered for the offence punishable under section 406 of I.P.C., be and are hereby quashed.

7. As a sequel, miscellaneous petitions if any, pending in this Criminal Petition shall stand disposed of.

*JUSTICE T. RAJANI*

14-08-2018
I s L

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[ RESULT :: A L L O W E D ]

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