NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 357 of 2005

Order reserved on 12.11.2018

Order pronounced on 19.02.2019

1. Shantilal Gangwal Proprietor Gangwal Enterprises Purana Bus Stand, Durg, CG.
2. Nilesh Gangwal, S/o Shantilal Gangwal Owner Gangwal Enterprises Purana Bus Stand, Durg, CG.

---- Applicants

Versus

State of Chhattisgarh, through Food Controller, Collector Durg, CG.

---- Respondent

For Applicant : Shri Bishnu Muni, Advocate with Shri D.N. Prajapati, Advocate

For State/ Respondent : Shri Sanjeev Pandey, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

This revision has been filed against the order dated 21.07.2005 passed by Sessions Judge, Durg in Criminal Appeal No. 205/2002 arising out of the order dated 28.03.2002 passed by The District Collector Durg in Food Khadyan Case No. 69/2000-01.

2. Facts of the case, in brief, are that on 16.02.2001 Assistant Food Inspector, Durg along with Inspector, Food and Civil Supplies inspected the truck bearing Registration No. MP-23 E/0937 parked near M/s. Gangwal Enterprises in the presence of the applicant No. 2 herein, the driver of the said truck namely Sheikh Hussain and also the independent witnesses. On inspection, 150 quintals of sugar loaded in the said truck which according to the driver was transported by M/s. Samarth SMK Ltd. District Jalna

(Maharastra) to be delivered to M/s. Gangwal Enterprises Durg. However, the driver of the truck could not hand over the bill to the Food Inspector for 150 quintals of sugar. Undoubtedly, invoice dated 13.02.2001 of M/s. Samarth SMK Ltd., one even dated loading slip of Rahul Trading Company Akola and Bilti No. 4559 dated 13.02.2001 of Prince Road Lines were presented to the Food Inspector. Applicant No. 2 though admitted to have purchased the 150 quintals of sugar yet he could not submit any bill for the said transaction. During inspection, he also disclosed that the bill would be sent to him by the party little later. It was thus found that M/s. Gangwal Enterprises had illegally procured 150 qunitals of sugar for selling out the same without making an entry thereof in the relevant record and thereby the applicants have violated clause 8 (1) of Madhya Pradesh Anusuchit Vastu Vaypari (Anugyapan Tatha Jamakhori Par Nirbandhan) Order 1991 (for convenience to be referred as “Order 1991”) and the condition Nos. 8, 14 and 15 of the license and thus committed the offence punishable under Section 6 (K) of the Essential Commodities Act. After completing requisite formalities, the matter was forwarded to Collector Durg, who after issuing the show cause notice to the applicants and thereafter affording due opportunity of hearing to them found them guilty for contravention of the Order 1991 and the conditions of the licence detailed above. The Collector thus confiscated Rs. 64,100/- as the value of 50 qunitals of sugar out of the one loaded in the truck i.e. 150 qunitals. He also forfeited Rs. 10,000/- out of the cost of the truck from its owner and driver. The order passed by the Collector as regards contravention of the clause of Order 1991 and conditions of the licence narrated above was affirmed by the

Lower Appellate Court but the amount confiscated was reduced to |Rs. 30,000/- from that of 64,100/-. Hence this revision.

3. Counsel for the applicants submit that both the Courts below have wrongly appreciated the document on record while holding the applicants guilty of contravening the clause of Order 1991 and the conditions of the licence referred to above. He further submits that no complaint whatsoever was made against the applicants regarding hoarding of sugar so confiscated but yet both the Courts below have passed the order impugned which is perverse and contrary to the provisions of law.

4. State counsel however, supports the order impugned and submits that since the applicants failed to produce any bill for purchase of sugar so confiscated, the Collector has rightly passed the order which in turn has been confirmed by the Lower Appellate Court. He submits that no illegality or irregularity therein has been pointed out by the applicants and therefore, there is no occasion to make any interference by this Court.

5. After going through the record it remains undisputed that the applicants herein had failed to produce the bill at the time of inspection to show that 150 quintals of sugar was purchased by them. Though, subsequently photocopy of a bill of M/s. Samir Corporation was produced by them, they did not bother to examine any witness from M/s. Samir Corporation in support of their case. In such a situation, the possibility of a back dated bill being fabricated after the inspection proceedings were drawn, cannot be ruled out. Findings recorded by both the Courts below that had the officers of Food Department not pounced on the truck stationary near the firm of the applicants by way of inspection and seizure of 150 quintals of sugar with the truck in

which it was loaded, the applicants would have disposed of the same in an illegal manner without making entry in the relevant record. Contravention of the clause of Order 1991 and the conditions of the licence referred to above is thus writ large on the part of the applicants. Therefore, the finding to this effect recorded by the Collector, Durg which subsequently has been confirmed by the lower Appellate court are absolutely justified and no interference therewith is required by this court. At the same time, Collector Durg confiscated an amount of Rs. 64,100/- as cost of 50 quintals of sugar out of 150 quintals seized from the driver of the applicant No.1 but the lower Appellate Court found it excessive and thus reduced the same to Rs 30,000/-. This Court also affirms this view taken by the lower Appellate Court.

6. In sum and substance, the order dated 21.07.2005 passed by the lower Appellate Court in Criminal Appeal No. 205 of 2002 is hereby maintained resulting in dismissal of this revision. Order accordingly.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan