**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 678 OF 2018

1. The Supply Inspector,
Ahmednagar Tahsil,
Ahmednagar.

2. The Food Distribution Officer,
Parag Building near Collector
Office Ahmednagar.

3. The Assistant Police Inspector,
Bhingar Camp Police Station,
Ahmednagar. ... **Petitioners**.

VERSUS

1. Shri. Suryakant Baburao Gade,
Age 55 years, Occ. Semi wholesale
Kerosene Dealer, r/o. Govindpura,
Tq. Nagar, Dist. Ahmednagar.

2. Shri. Rohidas Baburao Shinde,
Age 55 years, Occp. Service,
R/o. Hatwalan, Tq. Nagar,
Dist. Ahmednagar.

3. Ayubkhan Sher Afzalkhan,
Age 50 years, Occ. Driver,
r/o. Fakirwadi Tq. & Dist.
Ahmednagar. ..**Abated**.

4. Shri. Satish Balasaheb Nikrad,
Age 26 years, Occ. Driver,
R/o. Mandave, Tq. Nagar,
Dist. Ahmednagar. ... **<u>Respondents</u>**.

...

APP for the petitioners : Mr. P. K. Lakhotiya.
Advocate for the respondents No. 1, 2 & 4 : Mr. D.A. Mane, h/f
Mr. Bharat Pankaj A.

CORAM : MANGESH S. PATIL, J.
DATE : 20/09/2019

ORAL JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. The State has preferred this Writ Petition being aggrieved and dissatisfied with the judgment and order passed by the learned Additional Sessions Judge in appeal preferred by the respondent under section 6C of the Essential Commodities Act, 1955, whereby he had impugned the order passed by the Sub Divisional Officer under section 6A of the Essential Commodities Act inter alia directing 7580 liters of kerosene to be sold through Public Distribution System and to deposit the proceeds of Rs. 5,28,450/- to the Government. By the impugned order the learned Additional Sessions Judge while allowing the appeal directed the officers of the Government concerned to refund the amount of Rs. 5,28,450/- to the respondent-accused.

3. The learned A.P.P. submits that in the order of confiscation passed under section 6A the Sub Divisional Officer had specifically directed the seized kerosene to be sold through Public Distribution System and to deposit the sale proceeds in the Criminal Deposit Account. However, while passing such order he assumed that 7580

litres of kerosene was wroth Rs. 5,28,480/-, apparently under a mistake in reading the panchnama. The seizure panchnama only assessed the worth of kerosene based on its rate if it were sold in the black market at the rate of Rs. 30/- per litre. Such mistake has further perpetuated in passing the impugned order whereby after acquittal of the respondent, the learned Additional Sessions Judge under section 6C of the Essential Commodities Act has directed the amount of Rs. 5,28,450/- to be refunded to him.

4. The learned APP further submits that pursuant to the order of confiscation passed by Sub Divisional Officer, the kerosene was sold through Public Distribution System and going by the rate prevalent at the relevant time, only an amount of Rs. 1,12,116/- could be fetched after selling 7580 litres of kerosene. The State is ready to refund that much amount together with appropriate interest as provided for under section 6C of the Essential Commodities Act. The learned Additional Sessions Judge has not taken into account all these aspects. The impugned order be quashed and set aside and may be modified.

5. The learned advocate for the respondent submits that in fact, the State has suffered the order passed by the Sub Divisional Officer. It could have exercised the right to prefer appeal under section 6C of the Essential Commodities Act as was done by the respondent. Since no

such appeal was ever preferred, the writ petition itself is not maintainable.

6. The learned advocate would further submit that when once the order passed by the Sub Divisional Officer mentioning the worth of the kerosene seized and confiscated, there was no question of going back. Since the respondent has subsequently been acquitted of a charge under section 3 and 7 of the Essential Commodities Act and the Order passed thereunder, he was entitled to claim a refund as of right together with interest. The impugned order merely seeks to approve such right. There is no apparent illegality.

7. I have carefully gone through the papers. It is quite clear that while passing the order of confiscation under section 6A of the Essential Commodities Act the Sub Divisional Officer had directed the seized kerosene to be sold through the Public Distribution System. Though he assessed its worth to be Rs. 5,28,450/-, it was clearly a mistake in assessing its worth. In the earlier part of the order he has referred to and given the particulars of the Muddemal seized in connection with Crime No. II-06/2011. It is quite apparent that he has merely reproduced the particulars as they appeared in the seizure panchnama. The learned APP has pointed out from the seizure panchnama that in fact the valuation of the kerosene seized has been

made not only in respect of the kerosene but the vehicle and the receptacle in which the kerosene was stored. The description of Articles 1 and 2 make it abundantly clear that the valuation mentioned in third column is not only of the kerosene but of the tanker as well as the barrels in which it was found to be stored. It is therefore quite clear that the valuation mentioned by the Sub Divisional Officer in the order passed under section 6A as the valuation of 7580 litres of kerosene was not in fact the value of the kerosene. Besides, it is also apparent that the seizure panchnama mentioned the rate of kerosene to be Rs. 30/- per litre in the black market. Taking that rate to be true even the Sub Divisional Officer has apparently mentioned the rate and has assessed the worth of 7580 litres of kerosene to be Rs. 5,28,450/-.

8. It is pertinent to note that the Sub Divisional Officer had directed the kerosene to be sold through Public Distribution System. Taking note of the fact that the rate of kerosene to be sold through such Public Distribution System is prescribed from time to time, there is no room to resort to any guess work. The learned APP submits that at the relevant time when the seized kerosene was sold, the rate of kerosene to be sold through Public Distribution System was Rs.15.05 Ps. Accordingly, by selling the seized kerosene only an amount of Rs. 1,12,116/- was recovered.

9. As far as maintainability of the Writ Petition is concerned, it need only to be noted that the State is not seeking to challenge the Order of the Sub Divisional Officer but only seeking to point out an error committed by the Sessions Court in the impugned order in correctly appreciating the Order of the Sub Divisional officer in the facts and circumstances discussed herein above. Therefore submission of the learned advocate for the petitioner in this regard is not tenable.

10. It is in view of such state of affairs, the impugned order passed by the learned Additional Sessions Judge sans any discussion and scrutiny of the aforementioned aspects is liable to be modified as prayed for by the State.

11. The impugned order is quashed and set aside and stands replaced by the following order.

> "The amount of Rs. 1,12,116/- be refunded to the respondent-accused together with interest at the rate of 9 % per annum from the date of seizure i.e. 01.02.2011 till payment of the entire amount with interest."

12 The Criminal Writ Petition is allowed. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd