

(1975) 09 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 6340 of 1978

K. Kunnimalayan Chettiar, Proprietor, Sivaram Rice Mills

APPELLANT

Vs

The District Supply Officer, Nagarcoil and others

RESPONDENT

Date of Decision : 02-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 103

Citation : (1975) 09 MAD CK 0003

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Advocate : Sanjoy Mohan, for the Appellant; S. Ramalingam, Assistant Govt. Pleader, for the Respondent

Judgement

V. Ramaswami, J.—This Writ petition is to quash the order of the 2nd respondent, dated 23rd November 1973 by which he had directed

the petitioner and his brother to surrender 91 bags of paddy within seven days from the date of receipt of the said notice. On 19th May, 1973 by a

surprise inspection the Taluk Supply Officer with a Vigilance party seized 91 bags of paddy from the petitioner, but the Taluk Supply Officer did

not lift the stock, but allowed physical possession with the petitioner after obtaining an undertaking that he would surrender the said 91 bags to the

Taluk Supply Officer on demand. The petitioner in his affidavit contended that though the purchase of these 91 bags by him was supported by

valid bills, it was not entered in the account books by the part-time Accountant as the purchase was made on the previous day late in the evening.

He also contended that the seizure itself was contrary to Ss. 102 and 103 of the CrI. P.C. in that two or more independent witnesses of the locality

were not present at the time of inspection, nor they have attested any mabazar

and that therefore the seizure itself was contrary to law and illegal.

2. R.14(3) of the Tamilnadu Paddy and Rice Dealers (Licensing and Regulation) Order 1968 provides that the provisions of Ss. 102 and 103 of

the Cr. P.C., relating to search and seizure shall, to far as may be apply to searches and seizures under the rule. There is no dispute that the search

and seizure effected by the Taluk Supply Officer was under R. 14. There is also no dispute that the provisions of Ss. 102 and 103, Crl. P.C. had

not been complied with. On these facts, therefore, the decisions of the court in Mangudi v. State of Tamilnadu 1971-2 M.L.J. 27; 1970 L.W. Crl.

278 Abdul Latif v. Collector of Tiruchirapalli 1971 L.W. Cr. 39 W.P. 2443/74 would clearly apply. The ratio of these judgments is to the effect

that the seizure effected contrary to Ss. 102 and 103, Crl. P.C. was illegal.

3. But the learned Government Pleader contended that Ss. 102 and 103, Crl. P.C. are not mandatory and in a case where there is no dispute

about the quantity of paddy seized or the factum of leaving that with the person from whom they were seized, the seizure itself could not be

invalidated on the ground of mere non-compliance of Ss. 102 and 103, Crl. P.C. The learned Government Pleader also submitted that on these

grounds the Government have also preferred an appeal W.A. 163/76 against the decision in W.P. 2443/74. However, the decisions of this court

already referred to, clearly hold that contravention of the provisions of S.102 and 103 Crl. P.C. would invalidate seizure itself. I am bound by

these decisions until they are reversed or set aside by a Division Bench or any higher court. In the result, I allow the writ petition and quash the

impugned order. The rule nisi is made absolute. No costs.