

(2016) 01 KAR CK 0211

In the Karnataka High Court

Case No : Writ Petition No. 27688 of 2015 (GM-RES)

Lakshmi Devi Agro Rice Industries

APPELLANT

Vs

The Deputy Commissioner, Mysuru and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, Section 457
Essential Commodities Act, 1955 — Section 6-A, Section 6-A(2)

Citation : (2016) 161 AIC 330 : (2016) 2 Crimes 274 : (2016) 2 KantLJ 57 :
(2016) 2 RCRRent 66

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : M.V. Hiremath, Advocate, for the Appellant; R.B. Sathyanarayana Singh, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ashok B. Hinchigeri, J.—1. The petitioner is seeking the quashing of the order dated 9-6-2015 (Annexure-K) issued by the respondent 1 directing the distribution of rice to the backward class hostels being run by the Government. The said petitioner claims to be the owner of the said rice seized by the Police suspecting that it was being diverted for being sold in the black market, though it was meant for the public distribution system. Sri M.V. Hiremath, the learned Counsel for the petitioner submits that the petitioner runs the rice mill and that on 23-1-2015 it was transporting the rice to the neighbouring States in the lorry bearing No. KL11AE6399 belonging to the petitioner. He submits that the respondent 1 has already made the order for the release and restoration of the lorry in favour of the petitioner on certain conditions. He submits that the respondent 1 ought to have ordered the release of the rice imposing any reasonable conditions.

2. Sri R.B. Sathyanarayana Singh, the learned Additional Government Advocate appearing for the respondents submits that the petitioner's lorry was carrying

320 rice bags belonging to the Government. The rice was meant for distribution to the fair shops. He submits that the petitioner's address furnished to the Police and furnished in the cause title of the writ petition are entirely different. He submits that the address furnished to the respondent 1 is M/s. Lakshmi Devi Rice Industries, Mandya, whereas the address shown in the cause title of the writ petition is M/s. Lakshmi Devi Agro Rice Industries, Kirugavalu.

3. He submits that as prescribed by the Packaging Commodity Rules, the rice bags have to necessarily contain the following particulars: (a) Manufacturer's name and address; (b) Year of manufacture; and (c) Price of the rice. None of these particulars are found on the rice bags. What was stated on the rice bag is "superfine raw/par boiled rice".

4. He submits that under Section 6-A(2) of the Essential Commodities Act, 1955 the seized articles are to be auctioned and that they cannot be released to the party from whom it is seized.

5. He submits that the seized articles cannot be released to the petitioner just because it is in a position to furnish the adequate security. In support of his submissions, he relies on the Apex Court's judgment in the case of Shambhu Dayal Agarwala v. State of West Bengal and Another , (1990) 3 SCC 549 : 1990 SCC (Cri.) 489. The relevant portions of the said decision read out by him are as follows:

"7.If the essential commodity is returned to the person from whom it was seized or to the owner thereof, the very objective of the Act would be defeated and the purpose of seizure would be frustrated. The seizure has to be effected not for the sake of earning revenue, i.e. the market price of the commodity at the date of seizure, which may be ultimately forfeited, but to prevent hoarding of essential commodities, avoid artificial shortages, maintain a steady supply to the community and ensure equitable distribution at fair and reasonable prices. If the seized commodity is returned by merely securing its value, this objective of the Act will be wholly defeated. That is why Section 6-A does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by sub-section (2) of Section 6-A is granted. This shows that the Legislature did not intend to confer a power on the Collector to return the essential commodity to the owner or the person from whose possession it was seized. That is for the obvious reason that it would run counter to the very object and purpose of the enactment."

6. He has also relied on the Apex Court's judgment in the case of State of Bihar and Another v. Arvind Kumar and Another , AIR 2012 SC (Supp.) 8 : 2012 Cri. L.J. 3756 (SC) : (2013) 2 SCC (Cri.) 764 : (2012) 12 SCC 395. Paragraph 14 of the said decision read out by him is as follows:

"14. In the subsequent order dealing with the ownership of the wheat the High Court has only taken note of the fact that as the respondents herein were prepared to furnish adequate/sufficient security to the satisfaction of the Court below for release of the wheat in question, the wheat could have been released by the CJM. In case the learned CJM came to the conclusion after appreciating the evidence on record that the respondent-applicants were not in a position to show any document which may show their ownership to the wheat, there was no justification for the High Court to issue directions for release of such material merely because the applicant could furnish the security. If it is so, any stranger or third party may give sufficient security and get the seized goods release in his favour. Such a course is not permissible even while deciding the application under Section 451/457 of the Code of Criminal Procedure, 1973. A person having no title/ownership over the seized material may get the same released on furnishing security and sell it in black market and earn profit several times more than the amount of security furnished by him. We fail to understand as how such an order of release which defeats the very purpose for which the EC Act was enacted, could be passed."

7. In the course of rejoinder, Sri Hiremath submits that M/s. Lakshmi Devi Rice Industries and M/s. Lakshmi Devi Agro Rice Industries are one and the same. He submits that at both Mandya and Kirugavalu the petitioner has its place of business.

8. The submissions of the learned Counsel have received my thoughtful consideration. It is not in dispute that 320 rice bags (each bag consists of 50 kilos of rice) were seized from the petitioner on the ground that the said rice belongs to the Government. It also cannot be disputed that the seized article (rice) is subject to natural decay and deterioration.

9. The lorry in which the rice was being transported is released in favour of the petitioner on certain conditions. Neither the respondent 1 nor any authority under the Essential Commodities Act has delivered a categorical finding that the rice belongs to the Government. The criminal proceedings lodged are yet to be concluded. No authority has arrived at any conclusion to the effect that the petitioner has contravened the provisions of Essential Commodities Act or the Rules framed thereunder.

10. I see considerable force in the submission of Sri Sathyanarayana Singh, the learned Additional Government Advocate appearing for the respondents that just because the petitioner is in a position to furnish the adequate security, the seized articles cannot be released to the petitioner without verifying as to whether it belongs to the petitioner or to the Government. The Deputy Commissioner has passed the interim order on 9-6-2015 (Annexure-K). The said order contains the direction to the Police Sub-Inspector, South Taluk Police Station, Mysuru District and the Tahsildar, Mysuru Taluk to hold the enquiry and submit a report thereon. But they have not submitted any report to the Deputy Commissioner. The Deputy Commissioner has not passed the final order delivering a finding as to whether

the seized rice belongs to the Government or to the petitioner.

11. This Court on 3-7-2015 has granted an interim order of status quo to the effect that the respondents shall not distribute the rice to the backward class hostel being run by the Government.

12. Considering all these circumstances and the Apex Court's judgment in the case of Arvind Kumar, I form the view that the ends of justice would be met by my directing the petitioner to make an application under Sections 451 and 457 of the Cr.P.C. or under any other applicable provisions of law for the release of the seized rice. It is for the learned C.J.M. to prima facie satisfy himself as to whether the rice bags in question belong to the petitioner or to the Government (P.D.S.) and even if he prima facie finds that it belongs to the petitioner, then also the learned C.J.M. shall consider releasing the seized rice by taking appropriate security like bank guarantee from the petitioner.

13. The petitioner shall make the necessary application for the release of rice before the learned C.J.M. within one week from the date of the issuance of the certified copy of today's order. If one such application is filed, the learned C.J.M. shall dispose it of in accordance with law and as expeditiously as possible and in any case within an outer limit of three weeks from the date of the filing of the anticipated application.

14. To safeguard the interests of the petitioner during the period of interregnum, that is, between today the date of disposal of this petition and the date of disposal of the petitioner's anticipated I.A. for the release of rice, I deem it necessary to continue the effect of the interim order of status quo granted by this Court on 3-7-2015 for a period of five weeks or until the disposal of the petitioner's application for the release, whichever is earlier. Needless to observe that the learned C.J.M. would give full opportunity to the respondents to produce the documents in support of their claim that the seized rice belongs to the Government (P.D.S.). No order as to costs.