
(2019) 02 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No. 105358 Of 2019 (Gm-Res)

Lalit Kumar Jain

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 482
Essential Commodities Act, 1955 — Section 3, 7
Police Act Of 1861 — Section 44
Constitution Of India, 1950 — Article 19(1)(g), 226, 227

Citation : (2019) 02 KAR CK 0049

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : V.M. Sheelavant, Anthony R Rodrigues, L.S. Sullad, M.B. Hiremath

Final Decision : Dismissed

Judgement

1. Heard the petitioner's counsel, learned AGA for respondent No.1, learned counsel appearing for respondent Nos.2 to 4 and also learned counsel for respondent No.5.

2. The petitioner by filing this writ petition under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. sought for an order to issue a writ in the nature of certiorari or any other appropriate writ, order or direction to quash the complaint and FIR registered in Tadas Police Station in Crime No.1/2019 registered for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 (for short, 'the Act') and further sought for an order to declare that the proceedings initiated under Sections 3 and 7 of the Act and seizing the rice and truck is illegal and the said provisions are not applicable to the petitioner and further direction may be issued to respondent Nos.2 and 3 to indemnify the petitioner for the loss of the goodwill and registering the false case against the petitioner and also take appropriate action against the respondents for demanding illegal gratification and grant such other relief, as this

Court deems fit in the circumstances of the case.

3. The factual matrix of the case is that the petitioner in the petition has contended that he is a businessman running proprietorship business under the name and style of "Preetam Traders" and said firm is registered under the APMC Act, bearing registration No.KT46883, for transportation of notified agriculture produce and firm is possessing GST certificate bearing registration No.29BGPPJ3608F1Z8. The petitioner's firm is carrying on the business of trading of rice and also stocks rice. The petitioner obtained permit from the APMC and he was transporting the rice in a Truck bearing reg. No.RJ-19/GE-0423 to Sri Balaji Trading Co. Hubballi as per the permit. The PSI, Tadas Police Station, registered the case in Crime No.1/2019 for the offence punishable under Sections 3 and 7 of the Act against the petitioner. On the basis of the complaint filed by 2nd respondent, seized the rice and Truck belonging to the petitioner alleging that the petitioner was transporting the PDS rice illegally.

4. The main contention of the petitioner before this Court is that the 2nd respondent has intercepted the truck and seized the rice belonging to the petitioner at about 1 'o' clock afternoon on 9.1.2019 and he has sent Whatsapp message to the 5th respondent to verify about the correctness of bill and permit at about 10.19 p.m. when the 5th respondent informed about correctness of the bill and permit of APMC, colluding with respondent Nos.3 and 4, he demanded 4 lakhs illegal gratification. When the petitioner refused to comply their demand, respondent Nos.2 to 4 have concocted story and seized the Truck and Rice alleging that it is PDS rice, showing seizure on 10.01.2019 i.e. after 1 day. The Whatsapp photo copy and petrol pump bill clearly reveals about the concoction of the story by respondents No.2 to 4 and filing of the false complaint amounts to abuse of the process.

5. The other contention is that seizure of the rice, registration of the complaint and FIR under Section 3 and 7 of the Act is illegal and arbitrary in view of the fact that the said provisions is applicable only to the persons who are holder of authorization under the KEC(PDS) Control Order, 1992. In the instant case, the petitioner is not a holder of authorization under PDS system, he is an independent Trader having APMC license, therefore, question of contravention of the provisions of Sections 3 and 7 of the Act does not arise, hence, the applicability of Sections 3 and 7 of the Act is unknown to law and the very initiation of the proceedings against the petitioner is illegal, arbitrary, and the same is liable to be dismissed.

6. The other contention is that the seizure of rice and Truck conducted by the respondents No.2 and 3 is illegal and arbitrary and there is no iota of evidence to show that the rice belongs to the Public Distribution System. On the other hand, the petitioner is an independent trader who purchases rice from various traders including FCI and selling the same by paying necessary taxes to the concerned authority. In that view of the matter, the whole proceedings initiated by the respondent is without authority of law and liable to be quashed. Further

contention is that in the complaint, the complainant has not stated from which PDS unit, the rice was purchased, hence, the proceedings against the petitioner is illegal and it amounts to abuse of process of the Court and is liable to be quashed by exercising the inherent powers and further contended that the petitioner has purchased the said rice as per Annexure-F and G and after obtaining valid permit from the APMC, he was transporting the same to Sri Balaji Trading Co. and moreover the 2nd and 3rd respondents have not produced any material to show that the said rice is PDS rice belonging to a particular PDS shop. It is further contended that the complainant without verifying the Cash bill, permit and inventory register of the petitioner, arbitrarily seized the rice bags just for the bribe. The cash bill permit clearly shows the source from where the very initiation of the proceedings against the petitioner is illegal and arbitrary. The rice is not PDS rice and the respondents have no material to show that the PDS rice is being transported. Thus, confiscating the rice on the basis of the presumption is nothing but violation of the fundamental right under Article 19(1) (g) of the Constitution of India. The petitioner further contends that the seizure was made at 8.30 to 10.30 a.m. on 10.01.2019 but the diary entry is made at 12 noon on 10.01.2019, as such the entire proceedings is hit by Section 154 of Cr.P.C. as laid down in the case of Lalita Kumari Vs. State of UP reported in (2014) 2 SCC 1, hence, prayed to quash the proceedings by issuing a writ of certiorari.

7. The petitioner's counsel in support of his contention, he vehemently contends that the offence invoked against the petitioner is cognizable offence and there is violation of provisions as per the judgment of the Apex Court in the case of Lalita Kumari (supra) and the very initiation of the proceedings is hit by Section 154 of Cr.P.C. and further contended that the petitioner has placed material before the Court for having purchased the rice in the APMC yard and transporting the same under the valid permit. It is also contended that no material is produced before the Court with regard to the seizure of the rice is PDS rice and hence, the very registration of the case is liable to be quashed.

8. Per contra, learned counsel appearing for respondents No.2 to 4 contended that the vehicle seized is belonged to one Ranjith Singh and the application is made before the competent authority for the release of the vehicle by the owner of the lorry and he brought to my notice that the documents which allegedly produced before the Court is at Annexure-D, wherein name of lorry driver is mentioned as Amita and owner name is mentioned as Manju and the driver who has been arrested name is Raju Ram. Further, he contends that in terms of Annexure -F, KT number is mentioned as 46883 i.e. Abhijit Traders and he purchased the broken rice on 31.10.2018 and other documents which the petitioner is relied upon is Annexure-G and the same receipt also bears KT number as 46883 and the same is issued by different firm i.e. M/s. Veerabhadreshwara Rice Mill on 31.10.2018 and further contended that in the very document, it is mentioned as Best Quality Sortex Rice and brought to notice of this Court that the document issued by APMC on 31.10.2018 is in respect of

broken rice. Further, he contends that the permit for transportation of notified agricultural produce in respect of Preetam Traders License number is KT 139874. All these documents does not tally with each other and these documents are not genuine documents and contends that in the guise of these documents, the petitioner was transporting the PDS rice and not broken rice and seized rice is the PDS rice and taking advantage of the agricultural produce which were purchased earlier, he was transporting the PDS rice on the date of the alleged incident and the very genuineness of these documents is doubtful and same has to be enquired into during the course of the investigation and the very initiation of the case against the petitioner cannot be quashed by invoking Section 482 of Cr.P.C. and hence, prayed this Court to dismiss the petition.

9. The counsel appearing for respondent Nos. 2 to 4 relied upon the judgment of the Apex Court in the case of State by Lokayuktha Police Vs.H.Srinivas passed in Crl.A.No.775/2018 arising out of SLP(CRL)No.5391/2017 brought to my notice para 17 of the judgment and contended that para 120.8 of the Lalitha Kumari's case referred to supra justified the conclusion reached by the High Court by placing a skewed and literal reading of the conclusions reached by the Bench therein. It is observed that it is well settled that judgments are not legislations, they have to be read in the context and background discussions referring the case of Smt. Kesar Devi Vs. Union of India & Others reported in (2003) 7 SCC 427. He also brought to my notice para 18 of the judgment as the concept of maintaining General Diary has its origin under the Section 44 of Police Act of 1861 as applicable to States, which makes it an obligation for the concerned Police Officer to maintain a General diary, but such non maintenance per se may not be rendering the whole prosecution illegal. However, on the other hand, we are aware of the fact that such non maintenance of General Diary may have consequences on the merits of case, which is matter of trial. Moreover, we are also aware of the fact that the explanation of the genesis of a criminal case, in some cases, plays an important role in establishing the prosecution's case. With this background discussion we must observe that that the binding conclusions reach in the paragraph 128.8 of Laliktha Kumari case is an obligation of best efforts for the concerned officer to record 16 all events concerning an enquiry. If the Officer has not recorded, then it is for the trial Court to weigh the effect of the same for reasons provided therein. A Court under a writ jurisdiction or under the inherent jurisdiction of the High Court is ill equipped to answer such questions of facts. The treatment provided by the High court in converting a mixed question of law and fact concerning the merits of the case, into a pure question of law may not be proper in light of settled jurisprudence.

10. Counsel for respondent No.5 in his arguments, he contends that the Secretary of APMC has filed an affidavit only in respect of the documents which sough to be cross-verified and in that regard, he has filed report stating that those bills are genuine bills and not with regard to the transportation of the PDS rice and bills are having purchased in the APMC yard and hence, he contends that only upon limited purpose, the affidavit is filed confirming the purchase of

rice in the APMC.

11. In reply to the arguments of the respondents counsel, the petitioner's counsel contends that there is mistake in mentioning the K.T. Number in the synopsis and the documents at Annexure-E bearing KT No.139874 and hence, documents cannot be doubted. He further contends that normally 25% of the rice would be broken rice and hence, it is mentioned as broken rice in the documents at Annexures- F and also G in the permit.

12. Having considered the principles laid down in the judgment and also contentions raised by both the counsels, this Court has to examine whether this Court can exercise the powers under Section 482 of Cr.P.C. to quash the very registration of case against the petitioner as contended by issuing writ of certiorari and declare the proceedings initiated under Sections 3 and 7 of the Act, is illegal and take appropriate action against the respondents.

13. Having heard contentions urged by both the petitioner's counsel and also respondent's counsel and on perusal of the material on record, it discloses that the petitioner who has approached this Court invoking the jurisdiction no doubt he is doing the business of proprietorship under the name and Style "Preetham Traders" in terms of Annexure-A. The Food Inspector, Shiggaon has given the complaint vide Annexure -B to the Station Officer of Tadas Police Station, Tadas, Shiggaon, regarding transporting of the PDS rice in the lorry and the complaint was given on 10/1/2019 at 12.00 noon and the same was registered for the offences punishable under Sections 3 and 7 of the Act and there is an endorsement to that effect on Annexure-B. FIR was sent to the concerned judicial Magistrate on the same day at 7.30.p.m. The column No.3 of the FIR shows that occurrence of offence at 10/1/2019 at 8.30 a.m. and information received on 10/1/2019 at 12.00 noon and a general diary reference was made on the same day at 12.00 noon. The main contention of the petitioner's counsel that the offences invoked against the petitioner is cognizable offence and hence, principles laid down in the Lalitha Kumari's case is aptly applicable to the case on hand. After the information, went and seized the rice and drawn the Mahazar and thereafter, FIR was registered and in this regard, in the recent judgment of the Apex Court as discussed above, the Apex Court considering the judgment of the Lalitha Kumari's case also comes to the conclusion that at the outset, they are in agreement with the principles of Lalitha Kumari's case. However, it is held as the concept of maintaining General Diary has its origin under Section 44 of Police Act of 1861 as applicable to States, which makes it an obligation for the concerned Police Officer to maintain a General diary, but such non maintenance per se may not be rendering the whole prosecution illegal. It is further observed that, however, on the other hand, we are aware of the fact that such non maintenance of General Diary may have consequences on the merits of case, which is matter of trial. Moreover, we are also aware of the fact that the explanation of the genesis of a criminal case, in some cases, plays an important role in establishing the prosecution's case. Further referring the judgment of the Lalitha Kumari's

case, with this background discussion it is held that the binding conclusions reach in the paragraph 128.8 of Lalitha Kumari case is an obligation of best efforts for the concerned officer to record all events concerning an enquiry. If the Officer has not recorded, then it is for the trial Court to weigh the effect of the same for reasons provided therein. It is further observed that a Court under a writ jurisdiction or under the inherent jurisdiction of the High Court is ill equipped to answer such questions of facts.

14. For having considered the principles laid down in the judgment of the Apex Court recently held that it is very clear while invoking jurisdiction under Section 482 of Cr.P.C. the Court must take into the factual aspects of the case that too considering the obligation on the part of the concerned police officer to maintain general diary and it is a matter of trial and the trial court to weigh the material while considering the material on merits. Hence, the very precedent of recent Apex Court is answer to the contention of the petitioner's counsel that it cannot be quashed at the beginning and it is a matter of trial.

15. The very contention of the petitioner's counsel that after seizure, Annexures-D and E sent to the APMC Secretary with regard to the genuineness of the documents and the Secretary who is respondent No.5 also admits and confirms that he has reiterated the documents Annexures-D and E are the genuine documents and hence, the very initiation of proceedings has to be quashed.

16. The other contention is that on perusal of the document Annexure-D- the Bill in respect of the contention of the petitioner that he was transporting the rice in favour of the Balaji Trading Company and permit was given by the APMC as per Annexure-E. I have already pointed out that permission is given in respect of the broken rice and nowhere in the document Annexure-D, it is mentioned as broken rice and also respondent's counsel disputes the lorry driver name and owner name. Under document Annexure-D, driver name is mentioned as Amita and owner name is mentioned as Manju but vehicle which was seized bears the owner name mentioned as Ranjit Sing and the very Ranajit Sing has filed an application for release of the vehicle and in the complaint driver name is mentioned as Rajuram and there is a discrepancy in respect of owner and driver with regard to the ownership of the vehicle and driver. All these aspects has to be looked into and enquired into by the Investigation Officer and at this stage and whether he was transporting PDS rice or transporting the rice purchased on 30/10/2018 has to be verified, this Court at this stage very registration of the case against the petitioner cannot be quashed and the Investigating Officer has to cross verify these documents both in respect of owner as well as the driver of the vehicle since there is discrepancy with regard to the same and also whether PDS rice or broken rice.

17. Other contention that the rice is not a PDS rice and he contends that he had purchased the same from Sri Abhijit Traders and also from Sri Veerebhadreshwara Rice Mill and these documents disclose that same was purchased vide cash credit Bil No.41 and 471 dated 31/10/2018 and in

particulars column, it is mentioned as broken rice as per Annexures-F and G, the particulars, it is only mentioned as best quality sortex rice in Annexure-'G' and further the petitioner's counsel contends that he has obtained permission for transportation of notified agricultural produce and the same is also dated 31/10/2018 and the name of commodities also mentioned as broken rice and the petitioner's counsel in his arguments he contends that normally 25% of the rice would be broken rice and he made an attempt to convince the Court that rice which was transporting is also the broken rice and not the PDS rice and it has to be noted that, crime is registered based on the complaint and the complainant who is making an allegation that rice which was seized is a PDS rice and only case is registered and investigation has not been completed and in order to verify the same, based on these documents whether the rice was PDS rice and transporting the same also has to be cross verified during the course of investigation and whether these documents are genuine documents or not, whether the petitioner is taking the advantage of Annexure-F and Annexure-G, he was transporting the PDS also has to be looked into and investigation is the domain of the Investigating Officer and it is not appropriate to interfere by this Court by exercising the powers under Section 482 of Cr.P.C. The Apex Court also in the judgment referred supra made it clear that if non compliance of any obligation that has to be looked into during the course of the trial and not at this stage. The petitioner has sought for quashing of very initiation of the criminal proceedings against him that too for the offences punishable under Sections 3 and 7 of the Act and during the course of investigation whether the rice which has been seized is PDS rice or the rice which has been purchased under Annexure-F and G also has to be investigated and whether on the basis of the documents Annexures-F and G, the PDS rice was transporting or committed an offence under Sections 3 and 7 of the Act has to be looked into. Hence, at the initial stage mere registration of the case cannot be quashed by this Court and the aspect whether the rice which was seized has to be looked into and the same has to be investigated. By exercising the powers under Section 482 of Cr.P.C. this Court cannot invoke the same and quash the proceedings of very initiation of law set in motion to investigate the matter and I have already pointed out that the investigation is domain of Investigation Officer, this Court cannot interfere in the investigation of the proceedings and cannot invoke the writ jurisdiction to quash the same and the relief as sought in the application.

18. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed.