

(2017) 11 BOM CK 0069
In the Bombay High Court
Case No : 1200 of 2017

Satish s/o. Bansilal Soman

APPELLANT

Vs

The State of Maharashtra & Anr.

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court

[Essential Commodities Act, 1955](#), [Section 6-C](#)

Citation : (2017) 11 BOM CK 0069

Hon'ble Judges : A.M. Dhawale

Bench : SINGLE BENCH

Advocate : S.Y. Patil, M.B. Kolpe, S.D. Ghayal

Judgement

1. Rule, rule made returnable forthwith. Learned Additional Public Prosecutor waives notice. By consent of the parties, the matter is taken up for final hearing at admission stage.

2. As 300 bags containing 50 kilograms of wheat each of the applicant were seized on 26-7-2005 while in transit, tempo driver and truck cleaner were enquired about the source of the grains and as they could not explain the source, S.C.C. No.4554 of 2005 was filed against the applicant and 2 others before the 3rd Judicial Magistrate, First Class, Latur under Essential Commodities Act. On merits all the accused were acquitted. Since the goods seized were essential commodity it was held that the concerned Collector shall pass necessary orders regarding the seized goods.

3. Earlier the Collector Latur had passed order of confiscation of the wheat. This order was not challenged. Based on the order of the learned Judicial Magistrate dated 30 July 2014 the applicant again approached the Collector and the Collector confirmed the earlier order dated 15-12-2005 and rejected the application. The said order was challenged by way of revision before the

Additional Sessions Judge Latur along with application for condonation of delay. The learned Additional Sessions Judge considered the provisions of section 6-C of the Essential Commodities Act, 1955 as existing prior to the amendment and held that only the State Government has the power to conduct the appeal. Hence the revision was dismissed. Hence this application under section 482 of the Code of Criminal Procedure.

4. Section 6-C of the Essential commodities Act, 1955 provides for appeal against order of confiscation under section 6(A). It was amended long back by Act 34 of 1993 and the words "the State Government concerned and the State Government" were substituted by "any judicial authority appointed by the State Government and the judicial authority". This amendment was not considered by the learned Additional Sessions Judge even in the year 2015.

5. The applicant has produced copy of notification issued by the Law and Judiciary Department dated 15 September 2009 whereby all judicial officers presiding over Court of Session in the State of Maharashtra are appointed as judicial authority for the purpose of section 6-C. The notification reads as under : "LAW AND JUDICIARY DEPARTMENT Mantralaya, Mumbai 400032 dated 15th September 2009 NOTIFICATION ESSENTIAL COMMODITIES ACT, 1955 No.CRC 1009/CR-82/IX - In exercise of the powers conferred by sub-section (1) of section 6C of the Essential commodities act, 1955 (10 of 1955) and of all other powers enabling it in this behalf and in supersession of the Government Notification, Law and Judiciary Department No.PMS 2869/380-H(1) dated the 19th January 1970, the Government of Maharashtra hereby appoints all judicial officers presiding over the Court of Session in the State of Maharashtra to be the Judicial Authorities for the purposes of said section 6C, within the limits of their respective jurisdiction.

By order and in the name of Governor of Maharashtra. V.R. PATIL Joint Secretary to Government." In view of this legal position it is not disputed that the learned Additional Session Judge had jurisdiction to entertain the appeal (and not revision). If there is some delay in preferring appeal it should have been considered on its own merits but the learned Additional Sessions Judge has wrongly held that he had no jurisdiction. Therefore, the application for condonation of delay wrongly came to be rejected. Hence the impugned order deserves to be set aside.

6. It appears that the order of confiscation was passed in 2005 and the same was not challenged upto 2015. It is for the learned Appellate Court to consider the factual aspects while deciding appeal.

7. Hence the application is allowed. the impugned order dated 1-7-2017 passed by the Additional Sessions Judge Latur in Criminal Misc. Application No.31/2015 is set aside and the matter is remanded back for fresh consideration. Rule is partly made absolute in above terms.