

(2016) 01 GUJ CK 0143
In the Gujarat High Court

Case No : Criminal Revision Application Nos. 351, 352, 353, 354, 355, 356, 357 and 358 of 2009

State of Gujarat

APPELLANT

Vs

Rajnikant Maganbhai Raiyani

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401, Section 439
Essential Commodities Act, 1955 — Section 3, Section 6A

Citation : (2016) 01 GUJ CK 0143

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : N.J. Shah, APP, for the Appellant; Chetan K. Pandya and R.B. Davda, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Pancholi, J.—1. By all these revision applications filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the applicants-State Authorities have challenged the orders passed by learned Presiding Officer and Additional Sessions Judge, Fast Track Court No. 8, Rajkot, by which, learned Sessions Court has modified the order of Collector and thereby reduced the penalty of confiscation of the goods.

2. As the issue involved in these applications is common, all these applications are being taken up for hearing together. However, facts of Criminal Revision Application No. 351 of 2009 are recorded for the sake of convenience.

3. The factual matrix of the present case is that the respondent is dealing in sale and purchase of edible oil. Shop of the respondent was inspected by team of District Supply Officer, Rajkot. During the course of inspection, it was revealed that the respondent has committed violation of Gujarat Essential Articles Dealers (Regulation) Order, 1977 (hereinafter referred to as "Order of 1977" for the sake of brevity and convenience). Initially stock of edible oil amounting to Rs.

4,49,615/- was seized by the District Supply Officer, Rajkot, after preparing the Panchnama. Statement of the owner and occupier of the shop was also recorded. It is alleged that in the said statement, the respondent has admitted the irregularities. Thereafter, the District Supply Officer informed the District Collector, Rajkot, about the irregularities committed by the respondent and after verifying the record, the Collector issued the show cause notice on 02.03.2006 to the respondent. In the said show cause notice, the Collector has pointed out about the irregularities committed by the respondent and about breach of provision of Order of 1977. The respondent was asked to show cause why the stock for an amount of Rs. 4,49,615/- should not be confiscated. The respondent submitted his reply to the said show cause notice on 16.03.2006 and pointed out that Order of 1977 is not applicable to edible oil and therefore the show cause notice issued by the Collector is without jurisdiction. He has also denied the allegations levelled against him in the show cause notice. The Collector on the basis of the material placed on record, passed an order on 17.05.2006 and thereby held that respondent has committed the alleged irregularities and therefore, while exercising powers under Section 6A of Essential Commodities Act of 1955 (hereinafter referred to as "the Act" for the sake of brevity) confiscated the goods in question amounting to Rs. 4,49,615/-. Respondent challenged the said order by filing Criminal Appeal No. 5 of 2006 before the learned Sessions Court, Rajkot, and by an impugned order dated 07.03.2009, the appeal preferred by the present respondent was partly allowed and the Sessions Court has reduced the penalty imposed by the Collector and thereby, ordered confiscation of 25% of goods seized by the authority. State has therefore challenged the said order by preferring this Revision Application to the extent the penalty has been reduced by the Sessions Court. It has to be noted at this stage that respondent has not challenged order passed by the Sessions Court by preferring Revision Application and thereby accepted the findings given by the Sessions Court.

4. In the aforesaid facts and circumstances of the present case, learned APP Mr. N.J. Shah appearing for the applicants mainly contended that though Sessions Court has observed that Order of 1977 is applicable to the edible oils, it has wrongly reduced the penalty imposed by the Collector on the ground that penalty imposed by the Collector is harsh. Thus, the Sessions Court has wrongly exercised the discretion without giving cogent reasons. At this stage, he contended that when the Collector has after verifying the record available with him, exercised the powers under Section 6A of the Act, it was not proper on the part of the Sessions Court to interfere with the said discretion and therefore the impugned order be quashed and set aside.

5. Learned APP submitted that respondent has accepted that he has committed certain irregularities while giving his statement before the concerned authority. It is not in dispute that the respondent has violated certain provisions of the Act and the Order of 1977. Thus, when the respondent has committed irregularities, Collector was justified in imposing penalty of confiscation of 100% of the goods.

The order of Collector cannot be said to be harsh as observed by the Sessions Court and therefore this Court may quash and set aside the impugned order passed by the Sessions Court to the extent of reduction of the penalty and thereby confirm the order passed by the Collector.

6. On the other hand, learned advocate Mr. Chetan K. Pandya appearing in 6 Revision Applications and learned advocate Mr. Dushyant Bhatt appearing for learned advocate Mr. R.R. Trivedi in Criminal Revision Application No. 354 of 2009, mainly submitted that Order of 1977 is not applicable to the edible oil in view of provision contained in Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Satisfied Foods Stuff Order, 2002 (hereinafter referred to as "Order of 2002" for the sake of convenience). As per Rule 3 of the said Order of 2002, permit or license is not required under any order issued under the Act for edible oil seeds and edible oil. Thus, the alleged irregularity is not covered under Order of 1977 and therefore the initiation of the proceedings by the Collector against the respondent itself was without jurisdiction and therefore, the Sessions Court has rightly reduced the penalty by exercising the discretion. At this stage, learned advocates appearing for the respondents further submitted that even assuming without admitting that Order of 1977 is applicable to edible oils, even then, the alleged irregularity cannot be said to be illegality and it is merely technical breach, therefore, the order passed by the Collector, whereby, he has confiscated 100% goods in question, was harsh. Therefore, the Sessions Court was justified in exercising the discretion by reducing the penalty to the extent of 25% of the seized goods. Learned advocates therefore urged that when the Sessions Court has exercised the discretion, this Court may not interfere with the same while exercising the revisional jurisdiction, the scope of interference in the revision is very limited and therefore all these revision applications be dismissed.

7. Learned advocates appearing for the concerned respondents have placed reliance upon the decision rendered by this Court in the case of M/s. Govind Karsan and Co. v. State & Anr., reported in , 1983 (1) GLR 145. Thereafter, learned advocates have placed reliance upon the decision rendered by the Apex Court in the case of Thakur Das (dead) by Lrs. v. State of Madhya Pradesh and another, reported in , AIR 1978 (SC) 1 and in the case of N. Nagendra Rao & Co. v. State of A.P., reported in , (1994) 6 SCC 205.

8. I have considered the submissions canvassed on behalf of learned advocates for the parties. I have also gone through the material produced on record and the decision relied upon by the learned advocates appearing for the concerned parties. It has emerged from the record that the respondents of each of Revision Applications have not challenged the order passed by the Sessions Court and thereby, they have accepted the penalty of confiscation of 25% of goods in question. Therefore, I am not inclined to go into the submissions canvassed on behalf of learned advocates for the respondents that Order of 1977 would not be applicable to the edible oils. Sessions Court has in fact, discarded the said

submissions. However, Sessions Court has interfered with the order of penalty imposed by the Collector on the ground that the said penalty is very harsh. Therefore, in absence of the challenge by the respondent, this Court is required to consider the only question whether the Sessions Court has rightly exercised the discretion in favour of the respondents or not.

9. From the record, it is further clear that the allegations levelled against the respondents in each of the case is that they have committed certain irregularities by not placing the board with regard to the price and stock of the goods in question. Neither they have given the complete details about the name and address of the purchaser in the bill book, nor they have maintained prescribed register. In the order of seizure dated 04.02.2006, it is not alleged that the respondent has adulterated the edible oil. Thus, the alleged irregularities can be said to be technical irregularities. At this stage, the observation made by the Apex Court in the case of N. Nagendra Rao & Co. (supra) is required to be kept in mind by this Court while deciding these applications. The Apex Court has observed in paragraph No. 5 as under:

"...Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated on a par with technical violations such as failure to put up the price-list etc. or even discrepancies in stock."

Thus, in absence of allegation of black-marketing or selling adulterated goods in the present case, the order of confiscation of 100% of the goods by the Collector can be said to be harsh and therefore learned Sessions Court has rightly exercised the discretion and thereby reduced the penalty of confiscation upto 25% of the goods.

10. In the case of M/s. Govind Karsan and Co. (supra), this Court has observed in paragraph No. 12 as under:

"12. Now the question to be determined in this case is, that even when the contravention proved is substantial and not technical as urged by the learned Counsel for the petitioner was it not necessary for the authorities to exercise their discretion and confiscate lesser quantity of groundnut instead of ordering to confiscate the entire quantity of groundnut found in excess of the permissible prescribed limit? In this connection it may be pertinent to point out that the Essential Commodities Act has been enacted in the year 1955 with the Preamble which reads as under:

"An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities."

Various control orders are being issued by the Central Government and the State Government under the provisions of Section 3 of the Act. The object of the Act as well as that of the orders passed thereunder can be to control the production, supply and distribution of the essential, commodities. Therefore, while exercising the discretion conferred under Section 6A of the Act, the authorities should take into consideration the following factors before ordering to confiscate the commodity in question:

1. Is it a technical breach meaning thereby, is it only a formal contravention?
2. The contravention complained of has any bearing on the stream of supply of the commodity in the market or is it merely an incidental breach?
3. Is the dealer actuated by motives of hoarding and thereby to reap illegitimate profits?
4. Is the dealer found to have been indulging in such activity of hoarding and/or black-marketing in past?
5. Whether the contravention complained of is likely to create an artificial situation of shortage either in the town itself or in the entire market of the commodity in question?
6. Is the dealer a petty businessman managing to make both ends meet with difficulty or is he a big trader whose insatiable hunger for profit is the motivating force behind the contravention in question?"

11. Thus, this Court has laid down the guidelines and thereby held that the authorities while exercising discretion conferred under Section 6A of the Act, have to take into consideration certain aspects while ordering confiscation of the commodity in question.

12. Learned advocates appearing for the respondents are right in submitting that the scope of exercise of revisional jurisdiction by this Court is very limited. Once the discretion is exercised by the Sessions Court, whereby, penalty has been reduced in revision, the High Court should not ordinarily interfere with the same. In the case of *Thakur Das (dead) by Lrs.* (supra), the Apex Court has observed in paragraph No. 16 as under:

"16. In the case before us the Sessions Judge after examining the relevant factors bearing on the, question of confiscation exercising the, appellate jurisdiction held that confiscation in the facts and circumstances of this case was not justified. The High Court was of a different opinion as in the view of the High Court these defaults should not be lightly viewed because the orders regulating the production, supply and distribution of essential commodities are issued in public interest and the regulations are made for proper enforcement of such orders. The High Court was also of the opinion that when there is a breach committed with a view to obtaining monetary profit, the punishment in terms of money should be equivalent of a stiff and deterrent multiple of the improper

profit the offender is likely or intends to make by the breach. Confiscation of property is penal in character. The Session Judge examined the penal character of confiscation order and held that in the circumstances of the case it was not just and proper. The appellate authority had power and jurisdiction to decide. the same. The High Court could not have lightly interfered with the order of the Sessions Judge setting aside the, confiscation especially in exercise of the revisional jurisdiction under s. 439 without making out any of the well recognised grounds for interfering in exercise of its revisional jurisdiction and straightaway proceed to interfere with the order which would not be correct exercise of, its revisional jurisdiction."

13. Keeping in mind the law laid down by the Apex Court, I am of the opinion that in the present case also when the Sessions Court has exercised the discretion, it is not proper for this Court to interfere with the same in absence of cogent material placed by the State for interfering with the said discretion. Even otherwise, I am in complete agreement with the reasoning recorded by the learned Sessions Court while allowing the appeal partly and therefore no interference is required in all these Revision Applications.

14. In view of the aforesaid, all these Revision Applications are dismissed. Rule discharged.

15. At this stage, learned advocate Mr. Chetan Pandya appearing for the concerned respondents submitted that this Court has passed an order by which respondents were directed to furnish bank guarantee. Accordingly, the respondents in each of the cases have furnished the Bank guarantee upto 75% of the confiscation of the goods in question. Learned advocate requested that when these Revision Applications are dismissed by this Court, the Collector be directed to return the Bank guarantee furnished by the concerned respondent.

16. In view of the fact that all these Revision Applications are dismissed, the Collector/concerned authority is hereby directed to return the Bank guarantee furnished by the concerned respondent within three weeks from the date of receipt of this order.