(1997) 03 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No. 4070/97

The Modern Mills Limited — APPELLANT

Vs

The Deputy Commissioner Dharwar — RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 6 C (2), 7

Citation : (1998) 1 ALT(Cri) 84 : (1997) ILR (Kar) 1194 : (1997) 4 KarLJ 345

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : V.B. Shivakumar, for the Appellant; N.K. Ramesh, HCGP, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The petitioner is a manufacturer of Vanaspathi having its factory at Hubli. It appears that, in the midnight of 18th and 19th January, 1988, a consignment of 660 tins of Vanaspathi which was being carried in truck bearing No. CAK 1675 belonging to the petitioner, was seized by the Revenue Inspector within the limits of Dharwad District, for the alleged contravention of the Karnataka Edible Oils, Edible Oil Seeds and Oil Cakes (Declaration of Stocks) Order, 1976. On the following day i.e., 19.1.1988, police registered Crime No. 71 88 under Sections 3 and 7 of the Karnataka Essential Commodities Act, 1955 (in short ''the Act) and proceeded with the investigation. In the meantime, on an application filed by the petitioner, the seized tins were released to in his favour by the Collector under his order dated 6.2.1988 subject to furnishing of Bank Guarantee. According to the petitioner, he had furnished the Bank guarantee of Rs. 1,06,130/ - in favour of the Collector, Hubli, which has been kept alive till this date.

2. Pursuant to seizure, the Collector also initiated a confiscation proceeding in terms of Section 6 A of the Act and after issuance of notice and hearing the petitioner, the commodities seized were confiscated by order dated 28.3.1988

(Annexure-''B''). Against the said order, the petitioner went in an appeal before the State Government u/s 6 C of the Act. The same also stood dismissed by an order dated 1.2.1997 (Annexure-''C''). During the pendency of the confiscation proceedings, the police on completion of the investigation, came to the conclusion that the petitioner has not contravened any order made u/s 3 of the Act and as such, filed ''B'' final report before the Special Judge, Hubli. The Special Judge, on consideration of the report and after issuance of notice to the complainant, who happened to be the Police Sub-Inspector, Bendigeri, accepted the said report by holding that in his opinion no case could be made out to warrant issuance of any process against the accused. The certified copy of the order so passed as been placed on record along with the memo.

3. In view of the discharge of the petitioner in the criminal prosecution, it has been contended on behalf of the petitioner that, despite the adverse orders passed against him in confiscation proceedings, in view of Section 6G(2) of the Act, the goods needs to be released in favour of the petitioner unconditionally and as such, the Bank guarantee given by the petitioner in favour of the Collector should be deemed to have been revoked.

4. Section 6C(2) of the Essential Commodities Act reads as under:

"Section 6C(2) : Where an order u/s 6A is modified or annulled by the State Government or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made u/s 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such person shall, except as provided by sub-section (3) of Section 6A, be paid the price therefore as if the essential commodity had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined-

(i) in the case of foodgrains, edible oil seeds or edible oil, in accordance with provisions of sub-section (3-B) of Section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) of Section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of Section 3."

5. In the case of RAM SHARAN SAG v. STATE OF BIHAR 1977 Pat L J 343 : ILR 1976 Pat 930 a division bench of the Patna High Court has held that:

"For the purposes of the Code "acquitted" means an order setting free the accused of accusation after full-dress trail, where as "discharge" means setting free the accused of accusation without a full-dress trial. However, this distinction between the meaning of the two words as used in the Code cannot be relevant for the purposes of construing the meaning of the term "acquitted" in Section 6C(2) of the Act. The expression "acquitted" in Section 6C(2) of the Act should be construed to be comprehensive enough to include any judicial order passed at any stage of the proceeding setting free the accused of the accusation. The word "acquitted" in Section 6C(2) cannot be given a limited meaning as not to include order of discharge. When the Magistrate accept the final report, the order amounts to an order of judicial discharge of the accused form an accusation".

6. I am in respectful agreement with the view taken by the Patna High Court as noticed above. In this view of the matter, Mr. N.K. Ramesh, learned HCGP also concedes that the petitioner is entitled to the relief.

7. Accordingly, the Writ Petition is allowed with a direction to the respondent Collector to return the bank guarantee furnished by the petitioner. Seized 660 tins of Vanaspathi in question will stand unconditionally released in favour of the petitioner.

8. The Writ Petition is thus allowed. No order as to costs.

