

**Naveenkumar Vs. The State of Karnataka represented by its Kunigal Police, Kunigal and Another**

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**Court :** Karnataka

**Decided On :** Apr-18-2017

**Judge :** Anand Byrareddy

**Appeal No. :** Criminal Petition No. 9757 of 2016

**Appellant :** Naveenkumar

**Respondent :** The State of Karnataka represented by its Kunigal Police, Kunigal and Another

**Judgement :**

(Prayer: This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, praying to quash complaint dated 11.12.2016 and FIR in No.445/2016 registered by the respondent by Kunigal P.S., Kunigal District, Tumkur within the jurisdiction of the Prl.Civil Judge and JMFC, Kunigal being Arbitrary and opposed to Law, Equity and Justice apart from being abuse of process of Court.)

1. Heard Shri S.P. Kulkarni, learned counsel appearing for the petitioner.

2. It is stated that the second respondent, a stranger to the subject matter in question has filed a complaint at 12.30 midnight on 10.12.2016 alleging offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955,

alleging that 200 plastic bags of food-grains containing rice in a mini lorry were being transported, contrary to law and it was suspected that the food-grains were brought from public distribution ration shop. On those allegations of the second respondent who is said to be the President of one Rakshana Vedike, a case has been registered and the vehicle carrying the food-grains has been seized. It is this which is under challenge in the present petitions.

3. The learned counsel for the petitioner would submit that Paragraph 19 of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 provides as follows:

"19. Powers of Entry, Search, Seizure, etc.: (1) The Director of Food and Civil Supplies, the Joint Directors of Food and Civil Supplies, or the Tahsildar of a taluk, and Authorized Authority or any other officer of the Department of Food and Civil Supplies not below the rank of a Food Inspector within their jurisdiction may with such assistance, if any, as he thinks fit and if he has reason to believe that there is or has been any contravention of the provisions of this order or with a view to securing compliance with this order or to satisfying himself that there is or has been any contravention of the order:

(a) require the owner, occupier or any other person in charge of any place, premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this order or of the conditions of any authorization issued there under has been, is being or is about to be committed, to produce any books, accounts or other documents showing transactions relating to such contraventions:

(b) enter, inspect or break open and search any place or premises, vehicle or vessel in which he has reason to believe that any contravention of the provisions of this order or of the conditions of any authorization issued there under has been, is being or is about to be committed;

(c) take or cause to be taken extracts from or copies of any documents showing transactions relating to such contraventions which are produced before him;

(d) search, seize and remove books, accounts and other documents and stocks of essential commodity and the animals vehicles, vessels or other conveyance used in carrying the said essential commodities in contravention of the provisions of this order, or of the conditions of the authorization issued there under and thereafter take or authorize the taking of all measures necessary for securing the production of stocks, of essential commodity and the animals, vehicles, vessels or other conveyance so seized, in a Court for their safe custody pending such production.

(2) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to search and seizure shall so far may be, apply to searches and seizures under this clause."

This read with Sections 3 and 5 of the Essential Commodities Act, would require that action can be taken in respect of any violation of the provisions of the Essential Commodities Act, only at the instance of an authorized officer and not by anybody else.

In the present case on hand, the said complainant was not even a public servant and the question of proceedings having been initiated of violation of the provisions as alleged at the instance of a person who is no way authorized to institute any such complaint, is in violation of law. Incidentally, the food- grains that were being transported were legitimately being transported, since there were documents to establish that the same had been purchased from an authorized dealer and was evidenced by necessary documentation, in spite of which the material has been seized at the instance of an alleged public spirited citizen. It is this which is under challenge in the present petition.

4. Though the learned Additional State Public Prosecutor would seek to justify the action of the police that they are not precluded from taking action at the instance of anyone when there is a criminal case alleged and also seeks to draw sustenance from reference to Section 11 of the Essential Commodities Act.

However, it is found that the scheme of the Act and the Control Order referred to hereinabove in no plain terms require a particular mechanism to be followed in respect of any violation of the provisions of the Essential Commodities Act as is

evident from a reading of Paragraph 19 as extracted above. In fact, on an earlier occasion in Crl.P.No.4233/2016, in the case of Shaik Markhum Ahmed and another vs. The State of Karnataka disposed of on 18.08.2016, the State Public Prosecutor had conceded the position that the Regulation, namely the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992, does prescribe the authority of the officer who would carry out search and seizure of the food-grains to which the provisions would apply and that the seizure by the police was without authority and that petition had been summarily allowed.

5. Consequently, the present petition is also allowed in the light of the admitted circumstance that the proceedings have been initiated for violation of the provisions of the Essential Commodities Act at the instance of a rank stranger who was not an authorized person as required under the Act and the search and seizure conducted by the police is also irregular and cannot be sustained. The complaint dated 11.12.2016 and the FIR in Crime No.445/2016 on the file of the Principal Civil Judge and JMFC, Kunigal, stands quashed.

The seized material shall therefore be released in favour of the petitioner, forthwith. I.A.1/2017 is disposed of as a consequence.

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