

P.Pannerselvam Vs. State

P.Pannerselvam Vs. State

SooperKanoon Citation : sooperkanoon.com/964945

Court : Chennai

Decided On : Jan-11-2013

Judge : B.Rajendran

Appellant : P.Pannerselvam

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:11.01.2013 CORAM THE HONOURABLE MR.JUSTICE B.RAJENDRAN CrI.R.C.No.1429 of 2012 P.Pannerselvam ...Petitioner Versus State by Inspector of Police Sathangadu Police Station Crime No.1547 of 2012 Transfer to Civil Supply CID Chennai Crime Nio.182/2012 Chennai ...Respondent PRAYER: Criminal Revision Petition filed under Section 397 and 401 of the Criminal Procedure Code to call for the records of the learned Judicial Magistrate-I Thiruvallur in CrI.M.P.No.2387 of 2012, set aside the said order passed by the learned Magistrate in CrI.M.P.No.2387 of 2012 dated 15.09.2012 and order return of the vehicle TATA ACE HT bearing Regn not TN-76-U-8233 to the custody of the petitioner herein in Cr.No.182 of 2012 on the file of the Respondent, namely Civil Supplies CID Chennai. For Petitioner :M/s.S.P.Meenakshisundaram For Respondent :Mr.R.Prathap Kumar Government Advocate (CrI. Side) ORDER This revision petition is filed to call for the records of the learned Judicial Magistrate-I Thiruvallur in connection with the order dated 15.09.2012 in CrI.M.P.No.2387 of 2012, and to direct the respondent to return the vehicle TATA ACE HT bearing Registration not TN-76-U-8233 to the custody of

the petitioner herein. 2.The revision has been filed challenging the order of dismissal dated 15.09.2012 refusing to release the vehicle TATA ACE HT bearing Registration not TN-76-U-8233 to the petitioner. 3.The learned counsel for the revision petitioner would submit that the confiscation proceedings, though stated to have been proceeded, has neither been proceeded nor the revision petitioner served with any notice. Therefore, the order refusing to the release of the vehicle is not correct. 4.The learned Government Advocate (Crl. Side) relying on the counter would contend that already necessary proceedings have been initiated under Section 6(A) of the Essential Commodities Act. Any order passed to release the vehicle pending confiscation proceedings is against the provision of 6 (E) of the Essential Commodities Act, 1955 and the legal right of the appellate authority is taken away by the Court. He would also contend that the vehicle has been handed over to the Deputy Commissioner (North), Food Supplies Chepauk, Chennai for confiscation proceedings. Similarly, the four barrel of 700 litres of diesel transported without any proper documents is also confiscated. Therefore, any order passed now pending the confiscation proceedings is in violation of Section 6(C) of the Essential Commodities Act. 5.In this connection, the learned Government Advocate (Crl. Side) also relied upon an un-reported judgment of the Hon'ble Supreme Court dated 23rd July 2012 passed in Criminal Appeal Nos.1075-76 of 2012 (State of Bihar and another versus Arvind Kumar and another), wherein, the Hon'ble Supreme Court extracting the decision passed in (2008) 5 SCC 50.(Oma Ram v. State of Rajasthan and others), has held that any order passed under Section 6(A) of the Essential Commodities Act is appealable under Section 6(C) of the Essential Commodities Act. Therefore, to consider an application for the release of the goods is totally un-warranted atleast at that stage. 6.The Hon'ble Supreme Court in the decision made in Criminal Appeal Nos.1075-76 of 2012 (State of Bihar and another versus Arvind Kumar and another) dated 23rd July 2012 in paragraph nos. 9 and 12 has held as follows: "9.This Court while dealing with a similar issue in Shambhu Dayal Agarwala v. State of West Bengal & Anr., (1990) 3 SCC 549.held that whenever any essential commodity is seized, pending confiscation under Section 6-A, the Collector has no power to order release of the commodity in favour of the owner. Having regard to the scheme of the Act, the object and purpose of the stature and the mischief it seeks to guard, it

was further held that the word "release" in Section 6-E is used in the limited sense of release for sale etc. so that the same becomes available to the consumer public. The court held as under: "...No unqualified and unrestricted power has been conferred on the Collector of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render Clause (b) of Section &(1) totally nugatory and would completely defeat the purpose and object of the Act. The view that the Act itself contemplates a situation which would render Section 7(1)(b) otiose where the essential commodity is disposed of by the Collector under Section 6-A(2) is misconceived. Section 6-A does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by Section 6-A(2) is granted. The power conferred by Section 6-A(2) to sell the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity." The said judgment was followed and approved by this Court after explaining the scope of the statutory provisions in *Oma Ram v. State of Rajasthan & Ors.*, (2008) 5 SCC 502.¹² The High Court has totally ignored the fact that any order passed under Section 6-A is appealable under Section 6-C of the EC Act. Therefore, to consider such an application for release of the goods was totally unwarranted at least at that stage." 7. The Hon'ble Supreme Court in the decision reported in (2008) 5 Supreme Court Cases 502 (*Oma Ram Versus State of Rajasthan and Others*) in paragraph nos.13, 17 and 18 has held as follows: "13. So far as the Amendment Act, 2000 is concerned it received assent of the Governor on 3-4-2000 by which Section 54-A was inserted and amendments were made in Section 69 of the existing provisions and sub-sections (4) to (9) were inserted and earlier some amendments were made in Section 9-B which has been quoted above. 17. Certain provisions of the Essential Commodities Act, 1955 have relevance. Section 6-A deals with confiscation of food grains, edible oil seeds and edible oils. Section 6-B deals with issue of show-cause notice before

confiscation of food grains, etc. Section 6-E deals with issue of show-cause notice before confiscation of food grains, etc. Section 6-E deals with bar of jurisdiction in certain cases. Section 6-E has been substituted to provide that except the Collector or the State Government, all other authorities, judicial or otherwise, would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity, seized in pursuance of an order made under Section 3. Thus a Magistrate has no jurisdiction to grant relief against seizure under Section 457 Cr PC. 18. Section 6-A provides for confiscation of essential commodities seized in pursuance of an order made under Section 3. Collector of the district of the Presidency Town, in which such commodity is seized, may order confiscation, if he is satisfied that there has been a contravention of such an order. But, no order of confiscation shall be made under this section, if the seized essential commodity has been produced by the producer, without prejudice to any action, which may be taken under any other provision of this Act. Section 6-B of the Act provides the procedure to be adopted by the Collector before passing an order for confiscation, which provides that after issuing of notice an opportunity has to be given to the aggrieved party for contesting the same. The Collector, after giving him a hearing, has to decide the objection and pass an order either confiscating the property or refusing to confiscate the property." 8. The learned Government Advocate (Crl. Side) also relied upon the decision of the Hon'ble Supreme Court reported in (1990) 3 Supreme Court Cases 549 (Shambhu Dayal Agarwala Versus State of West Bengal and Another), for the proposition to the meaning of the word release under the Act. 9. The Hon'ble Supreme Court reported in (1990) 3 Supreme Court Cases 549 (Shambhu Dayal Agarwala Versus State of West Bengal and Another) in paragraph nos. 7 and 8 has held as follows: "7..... But if the prosecution ends in a conviction, Section 7(1)(b) enjoins that the property in respect of which the order was contravened 'shall be forfeited' to the government. The language of this clause is clearly mandatory and leaves no option to the court but to order forfeiture. This becomes clear if we read this clause in juxtaposition with clause (c) which confers a discretion on the court to order forfeiture of any packing, covering or receptacle in which the essential commodity was found or any animal, vehicle, vessel or any other conveyance which was used to carry to same. If the property is returned to

the owner of the person from whom it was seized in exercise of power under Section 6-E, it is difficult to understand how the court would implement the mandate of clause (b) of sub-section (1) of Section 7 of the Act. But the learned counsel for the appellant argued that even in cases where the Collector sells the essential commodity under sub-section (2) of Section 6-A and retains the price thereof, the essential commodity ceases to be available for forfeiture under clause (b) of Section 7(1) of the Act. He, therefore, submitted that the Act itself contemplates a situation which renders clause (b) of Section 7(1) otiose where the essential commodity is disposed of by the Collector under sub-section (2) of Section 6-A of the Act. He, therefore, saw no harm in releasing the commodity to the owner or the person from whose possession it was seized on condition that such person deposits the market price of the commodity on the date of seizure or gives a bank guarantee for the said sum. In this connection reference was also made to the provision in sub-section (5) of Section 452 of the code which inter alia provides that the term 'property' shall include, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise'. This definition can be invoked in view of Section 2(f) of the Act which is not inconsistent with any provision of the Act. But this submission overlooks the fact that the power conferred by sub-section (2) of Section 6-A to sell the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity. If the essential commodity is returned to the person from whom it was seized or to the owner thereof, the very objective of the Act would be defeated and the purpose of seizure would be frustrated. The seizure has to be effected not for the sake of earning revenue, i.e. the market price of the commodity at the date of seizure, which may be ultimately forfeited, but to prevent hoarding of essential commodities, avoid artificial shortages, maintain a steady supply to the community and ensure equitable distribution at fair and reasonable prices. If the seized commodity is returned by merely securing its value, this objective of the Act will be wholly defeated. That is why Section 6-A does not empower the Collector to give an

option to pay, in lieu of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by sub-section (2) of Section 6-A is granted. This shows that the legislature did not intend to confer a power on the Collector to return the essential commodity to the owner or the person from whose possession it was seized. That is for the obvious reason that it would run counter to the very object and purpose of the enactment. 8. And now to the structural setting and context in which the word 'release' is used in Section 6-E. While debarring courts, tribunals and other authorities from exercising power in relation to the seized commodity, power is conferred on the Collector or the State Government concerned under Section 6-C, to make orders with regard to the possession, delivery, disposal, release or distribution of such commodity, etc. This power can be exercised pending confiscation. The power conferred by this section is unqualified. The word 'release' is preceded by the words 'possession, delivery and disposal' and followed by the word 'distribution'. The setting and context in which the word 'release' is used makes it clear that it is not used in the sense of 'return'. In the first place as pointed out earlier it would completely defeat the purpose and object of the Act if the essential commodity seized for suspected contravention of the order made under Section 3 is returned to the owner or person from whom it was seized even before the confiscation proceedings were completed. Such an intention cannot be ascribed to the legislature. Secondly, it is not possible to believe that the legislature would confer unqualified and unrestricted power to return the essential commodity to the owner or the person from whose possession it was seized before a decision whether or not to confiscate the same is taken. As the section stands, if the interpretation put by the learned counsel for the appellant is accepted, it would be permissible to the Collector to return or restore the commodity without imposing any condition, pending confiscation proceedings. We are unable to persuade ourselves to accept the interpretation placed by Mr Rao on the word 'release'. The scheme of Sections 6-A, 6-B and 6-C makes it clear that after the essential commodity is seized and the same is inspected by the concerned Collector, the latter has to decide, after complying with the procedure

set out in Section 6-B, whether or not to confiscate the essential commodity. Since the procedure delineated in Section 6-B is time consuming, the Collector has been given special power to sell the essential commodity as stated in sub-section (2) of Section 6-A if it is subject to speedy and natural decay or it is expedient in public interest so to do. If the Collector decides not to confiscate the commodity and if no prosecution is launched or contemplated the commodity has to be returned to the owner or person from whom it was seized. If in the meantime it is sold in exercise of power under sub-section (2) of Section 6-A, the price of the commodity has to be paid as provided by sub-section (3) of Section 6-A. If the Collector has ordered confiscation but the order is reversed in appeal under Section 6-C and no prosecution is pending, sub-section (2) of Section 6-C enjoins that the essential commodity should be 'returned' and if that is not possible its price together with reasonable interest. It is pertinent to note that sub-section (2) of Section 6-C uses the words 'return the essential commodity seized' and not the words 'release the essential commodity seized.' It seems to us that having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard against the word 'release' is used in the limited sense of release for sale, etc., so that the same becomes available to the consumer public. There could be no question of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render clause (b) of Section 7(1) totally nugatory. It seems to us that Section 6-E is intended to serve a dual purpose, namely (i) to prevent interference by courts, etc., and (ii) to effectuate the sale of the essential commodity under sub-section (2) and the return of the animal, vehicle, etc., under the second proviso to sub-section (1) of Section 6-A. In that sense Section 6-E is complementary in nature. We are, therefore, of the opinion that the High Court was right in the ultimate conclusion it reached." 10. Following the decision of the Hon'ble Supreme Court dated 23rd July 2012 passed in Criminal Appeal Nos.1075-76 of 2012 (State of Bihar and another versus Arvind Kumar and another), and also following the decision of the Hon'ble Supreme Court reported in (2008) 5 SCC 50. (Oma Ram v. State of Rajasthan and others), as in this case the confiscation proceedings has already been initiated and the vehicle and the

material are now placed in the custody of the Deputy Commissioner (North), Food Supplies Chepauk, Chennai, the petitioner is always at liberty to move the appropriate Authority under Section 6(C) of the Essential Commodities Act. 11. Further, as per the decision of the Hon'ble Supreme Court reported in (1990) 3 Supreme Court Cases 549 (Shambhu Dayal Agarwala Versus State of West Bengal and Another), the use of the word release is used only to define the seized vehicle to be sold for public consumption and not for return to the owner. 12. Therefore, by reserving the right of the revision petitioner to move the appropriate Authority, and taking note of the pendency of the confiscation proceedings, no further order is necessary in the revision and this revision is closed. 11.01.2013 Index: Yes/No Internet: Yes/No pri To 1. The Judicial Magistrate-I Thiruvallur. 2. Inspector of Police Sathangadu Police Station Crime No.1547 of 2012 Transfer to Civil Supply CID Chennai Crime No.182/2012 Chennai. B.RAJENDRAN,J., pri Crl.R.C.No.1429 o

11. 01.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com