

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**SINGLE BENCH**

**BEFORE JUSTICE S.K.AWASTHI**

**Criminal Revision No 08/2014**

M/s Keshar Filling Station

**Versus**

State of Madhya Pradesh

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Shri Sanjay Bahirani, Advocate for the applicant.  
Shri R.D.Agarwal, Panel Lawyer for the respondent/  
State.

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**O R D E R**  
**(30.06.2017)**

This revision application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 (for short, the 'CrPC') takes exception to the judgment dated 23.10.2013, passed in Criminal Appeal No.209/2013 by VII Additional Sessions Judge, Gwalior, whereby the Court below has allowed the appeal preferred by the present applicant against the order passed by the Collector, Gwalior under Section 6-A of Essential Commodities Act, 1955 (for short, the 'EC Act') and has remanded the matter to the Collector to afford opportunity of cross-examination to the present applicant and take fresh decision.

2. The facts leading to filing of instant revision application are that on 28.10.2010 the Collector Gwalior as well as the Officers of Weight and Measurement Department carried out inspection at the petrol pump run by the applicant and found non-

compliance of certain mandatory rules and, therefore, as per memo of seizure all the articles including diesel and petrol were seized. Thereafter, the respondent instituted the proceeding under Section 6-A of the EC Act, served a show cause notice for inviting the objection to the proposed action and confiscation. The applicant filed its response to the show cause notice and categorically submitted that the allegations against the present applicant are technical in nature and there is no accusation that the applicant was involved in black marketing or any adulteration of the petroleum goods, therefore, the proposed action of confiscation deserves to be recalled. The Collector concerned pronounced the order dated 30.4.2013 and directed confiscation of the articles seized on the date of inspection.

**3.** The EC Act prescribes remedy of filing of appeal against the order passed under Section 6-A before the Sessions Court. Consequently, an appeal was preferred under Section 6-C of the EC Act and the same came up for consideration before the Sessions Court in which the impugned order dated 23.10.2013 was passed and the appeal was allowed on the solitary ground that the Collector did not afford opportunity of cross-examining the present applicant. The applicant is before this Court against the order of remand.

**4.** Learned counsel for the applicant submits that the order passed by the Appellate Court is perverse

because the perusal of Section 6-C of the EC Act clearly indicates that the Appellate Court can only modify, annul or confirm the order appealed whereas, in the instant case, the Appellate Court has remanded the matter for fresh consideration by the Collector, which is without jurisdiction and on this ground the instant revision application deserves to be allowed. Apart from it, learned counsel for the applicant addressed the Court on the issue that the order passed by the Collector is perverse because the contingency for confiscation will only arise if the allegation against the present applicant is in relation to black-marketing or adulteration of essential commodities, therefore, on this count the order of the Collector also deserves to be quashed and the articles seized by the Collector deserves to be released in favour of the present applicant.

5. Per Contra, learned counsel appearing on behalf of the respondent invited attention of this Court to the fact that the show cause notice clearly stipulated the violation committed by the applicant. He further submitted that if such an interpretation is given by the Court that only in the case of black-marketing or adulteration of essential commodities the power of confiscation can be exercised then the rules and orders issued from time to time by the Government with respect to maintenance of inventory and the quantity of the essential commodities will become redundant and will only be worth of piece of paper, therefore, he submitted that

the stand taken by the applicant deserves to be repealed on this ground. It is further contended that in the light of the judgment pronounced by this Court in case of **Khemraj Jugraj Khairagarh vs. State of MP, 1981 MPLJ 638**, this Court has no jurisdiction to entertain the revision application against the order passed under Section 6-C of the EC Act.

**6.** I have given my anxious consideration to the rival contentions of the parties and perused the record. In the considered opinion of this Court, the question which deserves to be considered before venturing into the merits of the case is fundamental in nature, whether the revision under Section 397 read with Section 401 of CrPC is maintainable against the order passed by the Appellate Authority under Section 6-C of the EC Act. The basis of formulating this question is Section 6-C of the EC Act and its interpretation by this Court in the case of **Khemraj Jugraj Khairagarh (supra)**. This Court has examined the legal position in this regard and a Coordinate Bench of this Court in case of **Jethalal Nemichand & Sons vs. State of MP, 1984 MPLJ 223**, has already answered this question in which the Court has observed that the decision taken in the case of **Khemraj Jugraj Khairagarh (supra)** has already been overruled by the Division Bench of this Court in the case of **Kanhaiyalal Kasturchand vs. State of MP**, decided on 13.10.1981 in Misc. Petition No.

636/1981. Apart from it, the perusal of Section 6-E of the EC Act indicates that the power with respect to the order of release, distribution or disposal of essential commodity, before any other court than the judicial authority under Section 6-C pending confiscation proceeding under Section 6-A of the EC Act, is before the Collector. However, once the decision is taken and the judicial authority has decided the appeal under Section 6-C of the EC Act, the revision application under Section 397 read with Section 401 of CrPC is maintainable.

7. Now adverting to the merits of the case, the only contention which has been pressed into service against the impugned order passed by the judicial authority, is that the Appellate Authority does not have power to remand the matter to the authority under Section 6-A of the EC Act for filling up the lacunae in the case. This contention by the learned counsel for the applicant deserves to be examined by taking into consideration Section 6 of the EC Act, which is reproduced as under:-

**“6A- Confiscation of essential commodity-** *Where any essential Commodity is seized in pursuance of an order made under Sec. 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency-town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for*

*inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of, -*

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity :

**Provided** that without prejudice to any action which may be taken under any other provision of this Act, no food grains or edible oilseeds in pursuance of an order made under Sec. 3 in relation thereto from a producer shall, if the seized food grains or edible oilseeds have been produced by him, be confiscated under this section :

**Provided** further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may, -

- (i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

- (ii) where no such price is fixed order the same to be sold by public auction :

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall, -

- (a) where no order of confiscation is ultimately passed by the Collector,
- (b) where an order passed on appeal under sub-section (1) of Sec. 6-C so requires, or
- (c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner or the person from whom it is seized.

**6C. Appeal.** (1) Any person aggrieved by an order of confiscation under Sec. 6-A may, within one month from the date of the communication to him of such order, appeal to the State Government concerned and the State Government shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit. confirming, modifying or annulling the order appealed against.

(2) Where an order under Sec. 6-A 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 under Sec. 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 Sec. 6-A, be paid the price therefor 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 oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;
- (ii) in the case of sugar, in accordance with the provisions of sub-section (3C) 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."

**8.** It is clear from sub-section (2) of Section 6-C of the EC Act that the power conferred on judicial authority is confined to affirmation, modification or annulment of the order appealed against whereas the judicial authority lacks the power to remand the case to the authority to take fresh decision under Section 6-A of the EC Act. In the context of this interpretation, if the facts of the present case are examined, it is clear that the judicial authority under Section 6-C of the EC Act has remanded the matter to the Collector concerned to afford opportunity of cross-examination to the applicant and thereafter take fresh decision in the matter. This order of



remand is clearly without jurisdiction in the light of the discussion made herein above.

**9.** Therefore, the instant revision application deserves to be and is hereby allowed. The impugned order dated 23.10.2013 passed by the Court below is hereby set aside with direction to the judicial authority under Section 6-C of the EC Act to take decision on merits of the case within a period of three months from the date of appearance of the present applicant before the Court. The applicant will appear for further proceeding before the Court below on **17<sup>th</sup> July, 2017**.

**10.** However, so far as reliance placed on the judgment dated 1.1.2013 in Criminal Revision No.899/2013 passed in case of **M/s Maa Petroleum & Sons vs. State of MP**, is concerned, this Court is of the opinion that the facts of the said case are clearly distinguishable and, therefore, the decision in the case of **M/s Maa Petroleum (supra)** cannot be applied to the facts of the present case.

The revision application stands disposed of accordingly.

(Yog)

**(S.K.Awasthi)**  
**Judge**