

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

SINGLE BENCH

RAJEEV KUMAR SHRIVASTAVA, J

CRR 2082 of 2021

Primary Agriculture Cooperative Society

vs.

State of MP

Shri Sanjay Bahirani, Counsel for the revisionist.
Shri Nirmal Sharma, Public Prosecutor for the respondent/
State.

Reserved on : 30/09/2021
Whether approved for reporting: Yes

ORDER
(Passed on 29/10/2021)

Per Rajeev Kumar Shrivastava, J.:

The revisionist has preferred the present Criminal Revision under Section 397 read with Section 401 of CrPC being aggrieved by judgment dated 18th Day of August, 2021 passed by Sessions Judge, Gwalior in CRA No.15/2021 confirming the order of confiscation dated 30/12/2020 passed by Collector, District Gwalior in Case No.0159/B-121/2020-21 whereby paddy loaded on Vehicle No.UP75-AT-3899 has been confiscated under Section 6A of Essential Commodities Act, 1955 [in short " EC Act"].

(2) Facts giving rise to this revision, in brief, are that the revisionist is a Cooperative Society and registered under Section

9 of MP Cooperative Societies Act. Shri Madan Tiwari is the President of the Society, who has been duly appointed as per the resolution dated 21/08/2021 vide Annexure P1. The Society was running a purchasing centre of paddy under the policy of State Government, namely, Rabi Marketing Year 2020-21, which is framed year to year. As per the policy, the State Government establishes the purchasing centres by issuing allotment orders in favour of various Cooperative Societies and in view of aforesaid provisions, the revisionist/ Society was also granted permission to run a purchasing centre at Gohinda, Bhitwar, District Gwalior. The main work of the Society was to purchase food-grains like paddy, wheat, rice etc. from the farmers and deposit the same in the warehouse of MP State Federation and the State Government, thereafter, should release the amount of food-grains directly in bank accounts of farmers. It is submitted that present revisionist/Society purchased paddy from the farmers, namely, Akhtar Khan, Sushil Kushwah, Devendra Singh, Chameli Dain and Ganeshram Kushwah through their respective registered IDs issued by Food Supplies and Consumer Protection Department for the year 2020-21. After purchasing, while the Society was transporting the foodgrains, the same was seized by police on 21/12/2020 and an FIR bearing Crime No.754/2020 was registered under Section 3/7 of EC Act at

Police Station Morar, Distt.Gwalior. Thereafter, on the basis of FIR lodged against the revisionist/Society, an order of confiscation dated 30/12/2020 was passed by the Collector, Gwalior. Being aggrieved by the order of the Collector, the revisionist preferred an appeal before the Sessions Judge and the same has been dismissed by learned Sessions Judge, vide impugned judgment dated 18th Day of August, 2021. Hence, this revision.

(3) Challenging the impugned judgment as well as the order of confiscation passed by the Collector, it is submitted by learned Counsel for the revisionist that the respondent-authority had not given any show cause notice or any opportunity of hearing to the revisionist/Society and had not followed the relevant provisions of the EC Act. It is further submitted that under the provisions of Section 6B of the EC Act, unless the essential commodity is for breach of Control Order, the seized commodity cannot be confiscated. The authority remained failed to satisfy that the revisionist/Society has violated any terms and conditions mentioned in the EC Act. Therefore, the order passed by Collector is illegal and contrary to law and liable to be set aside. It is further submitted that the seized paddy does not fall within the definition of the EC Act. Hence, the impugned order passed by Collector deserves to be set aside.

(4) On the other hand, it is submitted by learned Counsel for the State that on the basis of documents available on record and the statements of the witnesses, FIR was lodged against the Society at Police Station, Morar, Distt. Gwalior and on the basis of allegations made in the FIR, the Collector after affording an opportunity of hearing by issuing a show cause notice, has passed impugned order of confiscation of paddy which was loaded on truck in question. It is further submitted that the Society has violated the provisions of the EC Act and the criminal proceedings under Section 3/7 of the EC Act is pending before the competent Court. Therefore, the impugned order of confiscation passed by the Collector is not required to be interfered and prayed for dismissal of this revision.

(5) Heard the learned Counsel for the revisionist.

(6) It is an undisputed fact that paddy in question was seized and the truck on which paddy was loaded, has been released vide order dated 04/02/2021 passed in Criminal Appeal No.07/2021. It is the case of the revisionist that the Collector, has confiscated the paddy loaded on the truck in question vide order dated 30/12/2020. The revisionist is the Primary Agriculture Cooperative Society running at Gohinda, Bhitwar, District Gwalior being a purchasing centre No.54004048 provided by MP Mark Federation. The Society purchased paddy

from various farmers who sold their paddy to the Society through their registered IDs issued by Food Civil Supplies and Consumer Protection Department for the year 2020-21. The Society had purchased 2250 bags of paddy each of which is of 40 kg and these bags were sealed with the Society tag and the same were transported on three trucks, but they were seized by police under some misconception as they were brought from some other places. The registered number of said trucks is UP. Thereafter, FIR bearing Crime No.754/2020 was lodged under Section 3/7 of the EC Act against the revisionist/ Society and thereafter, the Collector passed an order of confiscation without affording any opportunity of hearing to the revisionist as provided under Section 6B of the EC Act.

(7) Perused the impugned orders as well as documents available on record.

(8) The main objection has been raised by the learned Counsel for the revisionist regarding non-granting of opportunity of hearing to the revisionist/ Society which is the mandatory provision under the EC Act. While passing the order of confiscation, the Collector has neither considered the document nor opportunity of hearing has been provided to the revisionist. In support of his contention, learned Counsel for the revisionist has relied upon the judgment passed by this Court in the case of

Dharmchand Shaitanmal Jain vs. State of MP reported in **2002 (2) MPLJ 225**. Further, it is contended that prior to passing the order of confiscation, no evidence of witness was recorded. In support of his contention, he has relied on the judgment passed by this Court in the case of **M/s. Vijay Kumar Kamlesh Kumar and Others vs. State of MP**, reported in **1997 (2) EFR 94**.

(9) From the impugned order passed by the learned Sessions Judge, it is clear that the learned Sessions Judge in paragraph 10 of its judgment, has specifically observed that an opportunity of hearing to the revisionist/ Society was given by issuing a show cause notice, to give its explanation with a direction to produce concerning certificate before the authorities concerned. Copies of bulity of Om Sairam Transport Company and bill of supply of Jai Rice Industries were seized by the police and thereafter, statements of driver Jangbahadur Kori and Cleaner of the truck\, namely, Devesh Kumar were also recorded. In paragraph 11, the learned Sessions Judge has also observed that the Collector, had issued a proper show cause notice to revisionist as per the provisions of Section 6B of the EC Act before passing the order of confiscation, therefore, the contention of the revisionist/ Society regarding non-issuance of notice u/S 6B of the EC Act is found to be unsustainable in the eyes of law.

(10) So far as the contention of the revisionist that there is non-compliance of the provisions regarding issuance of show cause notice under Section 6B of the EC Act is concerned, it is evident that the Collector had issued a show-cause notice vide letter dated 22/12/2020 to the revisionist to give its explanation regarding involvement of illegal transportation of paddy with a direction to produce the relevant documents till 23/12/2020 and further, to explain as to why recovery proceedings be not initiated against it and why the revisionist be not blacklisted. Another notice dated 22/12/2020 was also issued to the revisionist mentioning the fact that the revisionist has violated directions of the Government and is involved in illegal activities, therefore, the revisionist was directed to give its explanation along with necessary certificates/documents otherwise, legal proceedings and recovery proceedings under penal provisions should be initiated against it.

(11) The further contention of the counsel for the revisionist is that the seized paddy does not fall within the definition of the EC Act, therefore, the impugned order passed by the Collector is contrary to law. Further, it is contended that since there is no violation of the Control Order, therefore, no order of confiscation can be passed as per the provisions of Section 6A of EC Act. In support of contention, he has relied on the

judgment passed by the Apex Court in the case of **Kailash Prasad Yadav vs. State of MP**, reported in **2007(5) SCC 769** and the judgment passed by High Court of MP in the case of **Ramesh Chand Garg vs. State of MP**, reported in **2002 (2) EPR 352**.

(12) As per the provisions of Section 2A of the EC Act, "commodity" means a commodity specified in the Schedule. Subject to the provisions of sub-section(4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule, in consultation with the State Governments.

(3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification: Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.

(4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 List III in the Seventh Schedule to the Constitution.

(5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.

(13) Definition of "food-crops" including crops of sugarcane has been mentioned in sub-section(b) of Section 2 of EC Act.

(14) It is clear that paddy is a food-grains or foodstuff which comes under the definition of "food-crops".

(15) Section 6A of the EC Act reads as under:-

6A. Confiscation of essential commodity.— Where any essential commodity is seized in pursuance of an order made under section 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.

(16) Section 6B of the EC Act reads as under:-

6B. Issue of show cause notice before confiscation of food grains, etc.—

(1) No order confiscating essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be made under section 6A unless the owner of such essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance) or the person from whom it is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the ground of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(17) On bare reading of provisions of Section 6A of the EC Act, it makes clear that where any article related to the EC Act is seized and the report has been sent to Collector, the Collector may, if he thinks fit, direct for the production of same commodity for inspection and subsequent thereto, if he is

satisfied that there is contravention of Order is found, he may direct to confiscate the said commodities, including the vehicle. Further, Section 6B of the EC Act prescribes the procedure for confiscation and it is provided in this Section that confiscation of vehicle etc. can not be made unless the owner is given a notice and he is heard by the authorities concerned.

(18) In the present case, show cause notice was issued to the revisionist/Society to give its explanation along with a direction to produce the relevant certificates/ documents with the authorities concerned. But, the revisionist/ Society has neither given its explanation/reply nor produce any relevant documents/ certificates before the concerned authorities. Therefore, the Collector has rightly passed the order of confiscation whereby the paddy loaded on the vehicle in question was confiscated as per the provisions of Section 6A of the EC Act and the learned Sessions Judge has rightly affirmed the order of confiscation passed by the Collector.

(19) Accordingly, this Court is of the considered opinion that the Courts/Tribunals below have not committed any order in considering the food-crops/food-grains/foodstuff i.e. paddy as an essential commodity and has rightly passed orders impugned.

(20) Further, it is would not be appropriate for this Court to re-appreciate the evidence and come to its own conclusion on the

same when the evidence has already been appreciated by the Collector as well as the learned Sessions Judge in appeal. The Hon'ble Supreme Court in the case of **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri, 1999 (2) SCC 452**, has held as under:-

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

Similarly, the Hon'ble Supreme Court in the case of **Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and ors., 2015 (3) SCC 123**, has held as under:-

“14.Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate Court. The whole purpose of the revisional jurisdiction is to preserve the power in

the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 of CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

In view of the judgments passed by the Supreme Court in the cases of **Puttumana (supra)** and **Sanjaysinh Ramrao Chavan (supra)** as well as the facts and circumstances of the present case, this Court does not find it appropriate to interfere with the impugned judgments passed by both Courts/Tribunals below. Therefore, the judgment dated 18th Day of August, 2021 passed by the learned Sessions Judge, Gwalior in CRA No.15/2021 confirming the order of confiscation dated 30/12/2020 passed by the Collector, District Gwalior in Case No.0159/B-121/2020-21 is hereby **affirmed**.

(21) Accordingly, the present revision being devoid of merits and is hereby **dismissed**.

(Rajeev Kumar Shrivastava)
Judge