

**IN THE COURT OF THE PRL. JUDICIAL MAGISTRATE OF FIRST
CLASS, KHAMMAM**

Dated this the 06th day of December, 2022

Present: **Ms. N.V. Hyma Pujitha,**
Prl. Judicial Magistrate of First Class,
Khammam

C.C.No.1135 of 2019

Between:

State Police through
Sub-Inspector of Police, P.S. Thirumalayapalem

...Complainant

And

Bommatalata Obulesh, S/o. Anjaiah, Age 38 years, R/o. Gorentla Village,
Hindupuram Mandal, Ananthapuram District.

...Accused

This case coming before me for hearing in the presence of learned Additional Public Prosecutor for the State and Sri M. Ravi Prasad, Advocate for Accused upon perusing the evidence and material on record and having heard and stood over for consideration till this day, this Court delivered the following:

:: J U D G M E N T ::

1. The Sub Inspector of Police, Thirumalapayalem police station laid charge sheet against the accused for the offences under Section 420 of IPC and Sec.7 and 8 of EC Act.

2. Brief averments of the complaint: On 07.10.2018 at 05.30 hrs the defacto complainant by name, V. Venkateswarlu HC 622 came to police station along with confession cum recovery panchanama stating that on 07.10.2018 at 04.00 hrs on reliable information the SI of police along with his

staff conducted raid and caught Bollero Truck bearing No. AP 31 TB 1801 with PDS rice on enquiry the accused No.1 confessed his guilt and stated that he purchased the PDS rice from neighbouring villages and stored in his truck and proceeded on the same day to sell the PDS rice and the 11 bags of PDS is about 5 quintals worth Rs.2750/-.

3. On receipt of the above complaint, LW5 registered a case in Cr.No.229/2018 U/s.420 of IPC and Sec.7 and 8 of EC Act and took up the investigation. During the course of investigation, LW5 examined and recorded the statement of LW3 and LW4 and later visited the scene of offence and drawn rough sketch in presence of LW1 and 2 and on 10.08.2018 LW5 issued Sec.41A Cr.P.C notice to the accused and received analysis report and after completion of entire investigation filed the charge sheet.

4. The court has taken cognizance U/s.420 of IPC and Sec. 7 and 8 of EC Act against accused and issued summons to the accused.

5. On appearance of accused, the accused were served with copies U/s.207 Cr.P.C. The accused were examined under 239 Cr.P.C wherein the charges were levelled against the accused were explained in Telugu for which the accused pleaded not guilty and claimed to be tried.

6. During the course of trial, on behalf of prosecution PW1 to PW4 were examined and Ex.P1 to P5 were marked. After closure of prosecution evidence accused were examined U/s.313 Cr.P.C wherein the incriminating material levelled against accused is explained in Telugu for which the accused pleaded not guilty.

7. Heard arguments of learned APP and learned counsel for the accused.
8. Now the point for determination is **"Whether the prosecution has to establish the offences U/s. 420 of IPC and Sec.7 and 8 of EC Act beyond all reasonable doubt or not?"**
9. During course of trial on behalf of prosecution, PW1, by name, Md. Hameed Akbar deposed that on 07.10.2018 on reliable information he along with LW4 and LW5 went to Pindiprolu village and seized one Bollero vehicle bearing No.AP 31 TB 1801 and seized 11 bags of PDS rice each bag consists of 50 kgs ie., 50 quintals of rice and conducted confession cum seizure panchanama in presence of LW1 and 2.

During the course of cross-examination, PW1 admitted that they had got reliable information and proceeded to the scene of offence at 4.00 AM and there is no house at Pindiprolu village and at the time of alleged incident the accused is holding PDS rice in said vehicle and he used to do in Circus and belongs to Ananthapur and in the report PW1 mentioned that due to financial crisis the accused has committed the act and denied all the material suggestions.
10. PW2, by name, D. Tirumala Rao turned hostile and did not supported the prosecution case. Ex.P1 is signature on Confession cum seizure panchanama.
11. PW3, by name, P. Srinivasa Rao turned hostile and did not support the prosecution case. Ex.P2 is signature on confession cum seizure panchanama.

12. PW4, by name, V. Venkateswarlu deposed that on 07.10.2018 at 5.30 hrs himself along with PC 93 and PC 1884 lodged a report along with confession cum seizure panchanam and the same was registered as Cr.No.229/2018 U/s.420 of IPC and Sec.7 and 8 of EC Act and during the course of investigation PW5 has recorded the statements of PW1 to PW3 and drawn rough sketch in presence of mediators ie., PW1 and PW2 and issued Sec.41A Cr.P.C notice to accused and after completion of entire investigation filed the charge sheet. Ex.P3 is FIR, Ex.P4 is confession cum seizure panchanam, Ex.P5 is CDF, Ex.P6 is letter addressed to DM civil supplies along with analysis report.

During the course of cross-examination, nothing material was elicited.

13. In order to establish the offence U/s. 420 of IPC, the following ingredients must be established by the prosecution that "It deals with the cases of cheating whereby the deceived person is dishonestly induced to deliver any property to any person or to make, alter or destroy a) the whole or any part of a valuable security or b) anything which is signed or sealed and which is capable of being converted into a valuable security.

14. In order to establish the offence U/s.7 and 8 of Essential Commodities Act the prosecution must have prove that the accused has contravened the order or Gazatte notification or any circular or proceedings issued by the Central Government with respect to the Essential commodities and further the accused is having an intention of committing the act of selling, distributing or production of essential commodities in contravention or order or rules or regulations issued by the government or provided under the Act.

15. Upon perusing the entire evidences on record, as per Essential Commodities Act, Sec. 6A, it is mandatory that only any person who was authorized by the District Manager, Civil Supplies was authorized to conduct search and seizure of PDS rice in the said locality and there must be written instructions for the same. Further, apart from the revenue department the police had conducted any duty of seizing PDS rice and further no where they were mentioned that PW1 after seizing PDS rice intimated the same to District Manager, Civil Supplies so that the District Manager, Civil Supplies came into play and conduct all necessary formalities U/s.6 of Essential Commodities Act. Further, the same was absent in this case and it is irregularity and violation of Sec.6 of E.C Act. It is clear cut violation occurred in this case where the authorized person is only Civil Supplies Department. Further no where mentioned what was happened to the seized PDS rice and no receipt was produced before this court after seized PDS rice and whether it was placed in safe custody or not. Further the mediators for confession cum seizure panchanama turned hostile and did not support the prosecution case and did not support the very seizure of PDS rice. Therefore, the guilt of the accused under the cover of panchanama and the very crime was registered under cover of panchanama was not supported by any of the witnesses. Further, the police did not explained how they got reliable information and in such busy area. Therefore, the police did not followed any procedure established in the due course of law as per Sec. 6 and 7 of E.C Act. Furthermore, since the very purpose of the filing the present case was not established therefore, the criminal intention or dishonest intention for commission of offence was also not proved either in the circumstances of the case or in the facts of the case. Due to lack of procedure and lack of direct witnesses or circumstantial

witnesses the prosecution could not be able to prove the case U/s.420 of IPC and Sec.7 and 8 of E.C. Act.

16. In the result, the accused is not found guilty for the offences U/s. 420 of IPC and Sec.7 and 8 of EC Act and hence the accused are entitled for acquittal U/s.248(1) of Cr.P.C and the bail bonds if any are stands cancelled.

Typed my dictation by Stenographer G-III, after transcription, corrected and pronounced by me in the open court on this the 06th day of December, 2022.

Prl.Judl.Magistrate of First, Class,
Khammam

APPENDIX OF EVIDENCE
WITNESS EXAMINED FOR

Prosecution:-

PW1 : Md. Hameed Akbar
PW.2: D. Tirumala Rao
PW 3: P. Srinivasa Rao
PW4: V. Venkateswarlu

Defense:-

-None-

EXHIBITS MARKED FOR

Prosecution:-

Ex.P1: signature on confession cum seizure panchanama by PW2
Ex.P2: signature on confession cum seizure panchanama by PW3
Ex.P3: FIR
Ex.P4: confession cum seizure panchanama
Ex.P5: CDF.

Material objects marked:

-Nil -

Prl. Judl. Magistrate of I Class,
Khammam