

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 550 OF 2024

M/s. J.A. Trading

.. Applicant

Versus

The Controller of Rationing and Director of Civil
Supplied, Mumbai and Anr.

.. Respondents

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- Ms. Sejal Jain a/w. Mr. Mohd. Taha, Advocates i/by Ms. Misbaah Solkar for Applicant.
- Ms. Sangita E. Phad, APP for the State.
- Mr. Nilesh Yewale, API Turbhe Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 03, 2024

P.C.:

1. Heard Ms. Jain, learned Advocate for Applicant and Ms. Phad, learned APP for the State.

2. At the outset, Ms. Jain would submit that Advocate on record for Applicant is in personal difficulty and the matter be adjourned.

3. Confiscation in the present case has taken place on 20.07.2023. After hearing Ms. Jain on the previous occasion i.e. on 11.10.2024, the following order was passed:-

“1. Heard Mr. Jain, learned Advocate for Applicant and Ms. Phad, learned APP for State.

2. Present Revision Application is directed against the judgment dated 02.09.2024 passed by learned Additional Sessions Judge at Belapur, Dist. Thane in Criminal Appeal No. 56/2024 filed under Section 6(c) of the Essential Commodities

Act, 1955 against the order dated 25.01.2024 passed by Respondent No. 1 i.e. the Controller of Rationing and Director of Civil Supplies, Mumbai.

3. A container truck containing hydrocarbon oil belonging to Revision Applicant has been confiscated pursuant to the raid effected by API i.e. Asst. Police Inspector of Turbhe Police Station on 20.07.2023. Proceedings before the Controller of Rationing culminated into the order of confiscation dated 25.01.2024 pursuant to which Appeal has been culminated into the impugned judgment dated 02.09.2024. Since July 2023, goods and the container truck remained seized.

4. Ms. Jain would draw my attention to the impugned judgment and would persuade me to consider the issue of jurisdiction and power of the concerned API to confiscate the goods since according to Revision Applicant, Asst. Police Inspector falls in the category of 'Class B'. She would submit that as per the order issued by Ministry of Petroleum and Natural Gas, New Delhi dated 19.12.2005, the power of search and seizure in respect of motor spirit and high speed diesel are given to any gazetted officer of the Central Government or State Government or any police officer not below the rank of Deputy Superintendent of Police duly authorized by general or special order of Central Government or State Government, as the case may be. She would submit that the timeline in the present case is prejudicial to the interest of the Appellant who is into trade and business. She would specifically draw my attention to the findings returned in the impugned judgment and would submit that despite the Appellant having produced the appropriate and necessary tax invoices with respect to the high speed diesel contained in the container truck before the Authorities, it is presumed that the seized high speed diesel oil was being carried out by the Appellant for the purpose of theft or smuggling.

5. I have perused the impugned judgment dated 02.09.2024. Undoubtedly, Appellant is severally prejudiced as for the past 15 months, its goods have been detained. In that view of the matter, present Revision Application deserves immediate interference and hearing by this Court. Hence, issue notice to Respondents returnable on 23.10.2024. Humdast permitted. In addition thereto, learned Advocate for Applicant is directed to serve Respondents along with copy of this order by any permissible mode of service and file affidavit of service to that effect. After due service, Respondents are directed to put their appearance on the next adjourned date failing which this Appeal shall be heard and decided in accordance with law. It is made clear that present Revision Application shall be decided at the time of admission itself. Hence, I expect and direct Respondents to file their reply to the Application which shall be done on or before 23.10.2024.

*6. Stand over to **23rd October, 2024.**"*

4. Today, at the outset, Ms. Jain, in furtherance of her arguments would submit that case of Applicant is based on the specific contention that provisions of Clauses 7 and 8 of the Government Order/Notification dated 19.12.2005 are not complied with by the concerned Officer who has confiscated the subject goods. She would draw my attention to the provisions of Clauses 7 and 8 in juxtaposition with the FIR which is appended at Page No. 50 of the Revision Application and would contend that apart from the issue of jurisdiction raised by Revision Applicant of the authority of the Assistant Police Inspector to confiscate the subject goods viz, High Speed Diesel, there is large scale discrepancy in drawing of samples for subjugating the seized goods for forensic analysis/chemical analysis. She would submit that the prescribed procedure envisaged under Clause 8 is not followed while drawing the samples, which is clearly evident from the FIR contents itself. She would request the Court for immediate disposal of the matter since Applicant Company is required to bear substantial financial constraints for the seized goods and the detained Trailer/Truck on daily basis.

5. With the able assistance of Ms. Jain, I have read Clause 7 and 8 and *prima facie* agree with her submissions, when the FIR is perused. Drawing of samples is not as per Clause 8.

6. *PER CONTRA*, Ms. Phad, learned APP in response would

draw my attention to paragraph Nos.15 to 17 of the impugned order and would submit that reliance placed by the learned Judge while dismissing the Statutory Appeal under Section 6C of the Essential Commodities Act, 1955 on State Government Resolution dated 26.02.2004 needs to be accepted by the Court as the State Government has designated the Officer of the rank of Assistant Police Inspector as Gazetted Officer. I have impressed upon the learned APP that the said GR of the State Government is issued prior to coming into force of the Motor Spirit and High Speed Diesel (Regulation of Supply and Prevention of Malpractices) Order, 2005 which is passed by the Central Government in supersession of the earlier order of 1998 and the said submission of the learned APP cannot be considered by the court in view of the provisions of Clause 7 of the 2005 Order which is explicitly clear.

7. Consideration by the learned Trial Court in the impugned order of the State Government Resolution dated 26.02.2004 as also the Rules and Regulations of the Essential Commodities Act, *inter alia*, pertaining to Sections 3, 7 and 8 of the Lubricant Oil and Greases (processing, supply and distribution and regulation) order, 1987 are directly in the teeth of the Ministry of Petroleum Notification/Government Order issued under Section 3 of the Essential Commodities Act, 1955 dated 19.12.2005. The subject goods in question viz. Motor Spirit means Hydrocarbon oil which under its

definition itself is required to meet the requirement of Bureau of Indian Standards Specification No. IS 2796.

8. Perusal of Clause 7 and 8 of the said Notification dated 19.12.2005 is in consonance with the aforementioned BIS Specification No. IS 2796. The procedure prescribed for stoppage, search, drawing of samples of the seized product for sending it for forensic analysis, seizure of stock of the product and for taking all measures necessary for securing the product are explicitly delineated in the said Government Notification dated 19.12.2005 and they are required to be followed scrupulously without any deviation. When a question is raised on the issue of jurisdiction of the Officer, who has seized the subject goods, it needs to be answered in the present case. Question is also raised on the method of drawing the samples which is also required to be answered by the prosecution. On both counts, I am not convinced with the reply of prosecution.

9. Ms. Phad, learned APP makes a request to consider the above issues and accordingly address the Court after taking appropriate instructions on the next adjourned date.

10. It is clarified that, since this Revision Application is heard by this Court, it shall be disposed of on the next adjourned date primarily because the subject goods in question have been seized for almost 17 months.

11. I am informed by the learned Advocate for Applicant across the bar that Respondent may take steps to dispose of the subject goods. If any steps are to be taken by the prosecution to dispose of the subject goods, they shall do so only with the leave of this Court.

12. Stand over to **14th January 2025**.

P.R. Rajput

[MILIND N. JADHAV, J.]