

(2011) 07 AHC CK 0275

Allahabad High Court

Case No: Criminal Revision No. 1724 of 2011

Madan Lal Sahu

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: July 18, 2011**Acts Referred:**

- Copyright Act, 1957 - Section 63
- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Essential Commodities Act, 1955 - Section 3, 6A, 6B, 6C, 7
- Penal Code, 1860 (IPC) - Section 420

Citation: (2011) 3 ACR 3327 : (2011) 7 ADJ 444**Hon'ble Judges:** Vinod Prasad, J**Bench:** Single Bench

Judgement

Vinod Prasad, J.

Confiscation of various essential commodities, food grains and non-food grains, ordered by Collector/ District Magistrate, Jaunpur dated 30.11.2009 in relation to Crime No. 840 of 2008, u/s 420 IPC and Section 63 of the Copyright's Act and Crime No. 841 of 2008, u/s 3/7 E.C. Act, (herein after referred to as the Act) P.S. Shahganj, district Jaunpur, u/s 6-A of the Act and subsequent confirmation order, u/s 6-C, dated 22.2.2011, passed by lower appellate Court, Additional Sessions Judge / Special Judge E.C. Act, Jaunpur in Criminal Appeal No. 81 of 2009, Madan Lal Sahu v. State of U.P. have been called in question by the revisionist Madan Lal Sahu in the instant revision u/s 397/401 of Cr. P.C.

2. Before advertng to the various contentions raised by learned counsel for the revisionist a brief sketch of preceding facts are penned down as follows.

On 25.11.2009, on an information received from SDM, Shahganj, district Jaunpur, Ram Ji Singh, District Agriculture Officer and raiding party consisting of SDM Shahganj Bal Mayank Mishra, Tahsildar Praveen Kumar Singh, Incharge Inspector

Shahganj Poornmasi Ram Kanaujia, S.I. Sri V.N.Singh Rathore, S.I.Ram Milan Pandey, Fertilizer clerk Mohd. Naseem, orderly Tapsi Nath, driver Mohd. Harun, constables Lal Chand Yadav and Bheem Singh raided go-down of the revisionist situated at village Korbaliya, under police circle Sahganj, district Jaunpur because of the reason that it was informed that in the said go-down adulterated and spurious fertilizers were being prepared and stitched in bags. Revisionist alongwith his associates Sujeet Kumar and three others were alleged to have escaped from the go-down towards railway line after locating the raiding party and could not be apprehended. Conducted search of the go-down surfaced stocking of 23 bags of salt, 630 bags of wheat, 135 bags of Ravi Fertilizer Dhagua 12;32;16, 298 bags of NPK 10; 15; 10, 336 bags of Khushhal Fertilizer of PNK 10; 15; 10, 511 bags of Natraj Fertilizer Super phosphate, Malathion power 38 bags, PPL Fertilizer 258 bags, two bundles empty new bags, DAP 203 bags, Ramban 65 bags and many new and old empty bags, packing machine, plastic threads and some old fertilizers. In the estimation of the raiding party, revisionist alongwith his associates and helpers were engaged in preparation and stitching in bags spurious and substandard fertilizers. Since these activities fell within the mischief of Section 420 IPC, section 63 Copyrights Act and 3/7 E.C. Act, that the entire stored stocks were seized and sealed. Collected local individuals refused to be witness of the said seizer. After drawing samples of fertilizers and after segregating packing machine and threads, rest of the stored article were sealed in the same go-down by the raiding party. Radhey Mohan s/o Moti Lal, partner of Firm Abhay Ram Gopi Nath, meanwhile arrived at the scene and hence was made receiver of the seized articles. Segregated articles including packing machine and threads were given in the custody of Inspector P.S. Shahganj. Seizer memo was scribed by Ram Milan Pandey and signatures of the members of the raiding party were obtained on it.

3. Two FIRs regarding said seizer were got recorded at 5.45 p.m. the same day against the revisionist, Sujeet Kumar and others as Crime Nos. 840/08(for offences u/s 420 IPC, Section 63 Copyright's Act) and Crime No. 841 of 2008 (for offence u/s 3/7 of the Act) at P.S. Shahganj, district Jaunpur Search and seizer were reported to the Collector/ District Magistrate, Jaunpur who, initiating action u/s 6-A of the Act issued show-cause notices to the revisionist for confiscation u/s 6-B of the Act vide Annexure 5, on 18.12.2008 fixing 5.1.2009 for his appearance before him to explain why the aforesaid seized articles be not confiscated. Revisionist appeared and filed his objection vide Annexure 5. Separately, on 29.12.2008, vide Annexure No. 6, revisionist had also filed an application for release of 630 bags of wheat seeds, malathion power, Gypsum and whole salt.

4. Collector/ District Magistrate, Jaunpur, after hearing both the sides, concluded that the revisionist had committed offences under U.P. Scheduled Commodities Dealer's(Licensing and Restrictions on Hoarding) order 1989 as amended from time to time, U.P. Scheduled Commodities Distribution Order 2004 and Fertilizer Control Order 1985, and resultantly she ordered confiscation of entire seized stock u/s 6-A

of the Act, vide order dated 30.11.2009. Collector further directed public auction of 630 bags of wheat and sale proceeds to be deposited with the State exchequer. She also directed the sub standard fertilizers to be destroyed in accordance with the Rules and the standard fertilizers to be sold at the fixed price and sale proceeds to be deposited with the State exchequer. She further directed sale by public auction of other articles and sale proceeds thereof to be deposited with the State exchequer.

5. Aggrieved by Collector's confiscation order revisionist preferred Criminal Appeal No. 81/09, Madan Lal Sahu v. State of U.P., u/s 6- C, E.C. Act, vide Annexure 7, which was heard and dismissed by Additional Sessions Judge/ Special Judge, E.C. Act, Jaunpur vide impugned order 22.2.2011. Hence this revision by the revisionist.

6. I have heard Km. Satya Srivastava, learned counsel for the revisionist and Sri K.N. Bajpai, learned AGA for the State.

Castigating and criticising both the impugned orders it was contended that no violation of any provision of U.P. Scheduled Commodities Dealer's(Licensing and Restrictions on Hoarding) order 1989 as amended from time to time, U.P. Scheduled Commodities Distribution Order 2004 and Fertilizer Control Order 1985 has been committed by the revisionist, who is a buffer stockist of Indo gulf Fertilizers and therefore was authorized to protect the fertilizers received by him by stitching the bags for prevention of moisture etc. Relying upon various stipulations contained in letter of appointment as stockist, vide Annexure 4, mainly pointing out to stipulations E(vi) (vii), F(i)(iii)(vi), G, Stock Management, learned counsel buttressed her submissions and added that stitching machines and the threads alongwith empty new and old bags found inside the go-down were permitted by the Company to be used in stitching torned off bags of fertilizers and consequently same were used for the purposes of fulfilling terms and conditions of the contract and appointment as buffer stockist and therefore, no exception can be taken to that. She contended that District Magistrate and the lower Appellate Court acted in excess and beyond their jurisdiction, as offences under 420 IPC and 63 Copy Right's Act fell outside the purview of Section 6-A of the Act. Ancillary argument was that only those essential commodities can be confiscated in respect of which an offence has been committed and therefore in colourable exercise of power in the garb of some offence being committed in respect of some of the commodities, entire stock found inside go-down could not have been seized and confiscated. It was next contended that the impugned order itself indicates that but for two N.P.Ks. rest entire stock of fertilizers found in the go-down were neither sub standard nor adulterated and therefore, could not have been confiscated. Haranguing her submissions she submitted that no adulterated fertilizer was found inside go-down and therefore, conclusion that the revisionist was engaged in preparation of spurious fertilizer was based on pure speculations, conjectures and surmises, without any ex-facie material for such an opinion. It was further contended that salt, Malathion power, Gypsum, wheat seeds were illegally and wrongly confiscated as in respect of these

commodities no offence was committed. It was further submitted that no allegation was made in respect of wheat seeds, salt, Malathion Powder, Gypsum in the F.I.R. For carrying on business in wheat seeds, provisions of above referred two Scheduled Commodities control orders do not apply. Since the Firm of the revisionists possessed a valid license under Seed Control Order 1983, wheat seeds kept in stitched 630 bags could not have been confiscated by the authorities. It was further submitted that Malathion Powder is a pesticides and Gypsum is a commodity for enhancing soil quality and it both are outside the purview of various control orders alleged to have been offended by the revisionist. Attour, revisionist Firm possessed a valid license for doing business in the pesticides. For the aforesaid reasons revisionist had filed a separate application for release of aforesaid commodities, which has been wrongly rejected by both the Courts below contended revisionist counsel. In respect of wheat seeds and the pesticides, cash memos and purchase invoices were filed but both the Courts below made no discussion on them albeit those documentary proofs convincingly established that those commodities were purchased from open market. Both the Courts below made no discussion on the purchase vouchers nor they disputed its authenticity and therefore, both the Courts below erred in law and fact in concluding that the revisionist had committed offence under the above referred Control Orders Act and the entire goods are liable for confiscation.

7. Next it was argued that revisionist was not present at the spot at the time of the raid and therefore search and seizure memo contains false recitals and baseless allegations against the revisionist which are absolutely false. In support of said contention, revisionist counsel pointed out to that portion of the impugned appellate order where it was recorded that revisionists had filed a marriage invitation card vide paper No. 12/24 and to and fro railway tickets to show that he had gone to attend the marriage of Poonam at Rajgangpur, Orissa by Nilanchal express on 18/19.11.2008 and had returned from there on 25th of November and hence was absent from the spot at the time of the raid.

8. It was further submitted that in a very slip shod manner without entering into the merits of the harangued submissions on behalf of the revisionist, Collector/ District Magistrate, Jaunpur rejected his contentions that too without recording any reasons. Lower Appellate Court also committed per-se legal error in not making any critical analysis of various contentions raised on behalf of the revisionist nor has conducted any discussion and had decided the appeal sans reasons. There is no discussion regarding the conclusions arrived at by both the Courts below while holding the revisionist guilty of the offences for the alleged crimes. It was submitted that there was a report by District Agriculture Officer, which clearly indicated that the wheat seed seized by the raiding party were not wheat nor were adulterated and that report has also been conveniently overlooked by both the lower Courts therefore, confiscation of 630 bags of wheat seeds was totally illegal. It was further submitted that u/s 6-A, of the Act only that commodity is liable for confiscation and

sale in respect of which offence has been committed. Directions for public auction of the stitching machines and the threads coupled with empty old and new bags were illegal exercise of power under the Act. Lower Appellate Court also ignored the submission of the revisionist that scope of the Act cannot be stretched to such an extent as to include within its purview even those articles, which do not fall within the ambit and scope of various Control Orders alleged to have been breached by the revisionist by any stretch of imagination and consequently both the impugned orders suffers from non-application of mind and are unsustainable. Defence of the revisionist is plausible and equally compatible and therefore seized commodities could not have been ordered to be confiscated nor put to sale by public auction.

9. Further contention of revisionist counsel is that Gypsum is a free trade commodity and business in that can be conducted without any license. It is also submitted that there was no evidence of any manufacture of any sub standard or adulterated fertilizers nor any such commodity was found and seized. No open bag was found by the raiding party at the time of the raid and only stitched bags were seized therefore, allegation that revisionist was indulging into manufacture and packing in bags adulterated fertilizers is purely conjectural.

10. Another criticism is that under Fertilizer Control Order, 1985, Clause 23 provides for disposal of sub-standard and adulterated fertilizers and therefore, mere stocking of the same cannot form the basis for confiscation and auction. Learned counsel relied upon Order 23 Fertilizer (Control) Order, 1985 for the said submission and contended that it does make any distinction between adulterated and substandard fertilizers. On the aforesaid premises concluding the argument it was submitted that both the impugned orders suffers from illegal exercise of power, non-application of mind and are recorded against the statutory provisions and therefore, cannot be sustained and therefore, the seized stocks be ordered to be released in favour of the revisionist.

11. Besides above contention it was also submitted that the articles were seized from the go-down of the Firm M/S Baijnath Prasad Madan Lal, which is a registered Firm under Sales Tax Act and it also possessed valid licences under Pesticide Control Order, Seeds Control Order, and Fertilizer Control Order and hence has not committed any offence specially when no notice was given to the other partner Govinda Devi by the authorities at any point of time.

12. Learned AGA per contra argued that in the estimation of the raiding party, the revisionist and its firm were indulging in preparation of adulterated fertilizers and therefore, both the impugned orders are infallible and be upheld. Two NPK fertilizers were found below prescribed standard and therefore confiscation order and affirmation thereof is just and proper.

13. I have considered the arguments raised by both the sides and have perused the entire material on record. The question, which crops up for consideration is as to

whether both the impugned orders have been passed in contravention of various provisions of Fertilizer Control order and the Act and above referred Control Orders made thereunder or they are based on conjectures and surmises in colourable exercise of power? On this respect, when the order passed by the Collector is scanned, it is revealed that up to internal page 4 of the impugned judgment of the certified copy filed alongwith this revision, which is a photocopy of the original order, Collector had discussed the prosecution case, stand of the revisionist and various pleas taken from either side. From page 4 second paragraph the discussion had started and in that discussion, none of the contentions raised by the revisionist have been critically appreciated and scanned. Only by writing a single sentence that the contentions of the revisionist accused cannot be accepted for the premise that if the bags were torned off and if the revisionist had received dilapidated fertilizer bags he should have returned it to the manufacturing Firm and therefore, there was no justification for the revisionist to keep the stitching machines and the threads, no other discussion has been made. The premature conclusion that installing machines and threads is indicative of preparation of sub standard and spurious fertilizers is based on pure conjuncture and surmises and is hypothetical. No bags filled with such adulterated fertilizer prepared by the revisionist was found. Contrary to the allegations levelled in the two FIRs it has been held by the Collector that the revisionist has failed to establish that he was storing the fertilizers at a place permitted by the company. In this respect no explanation was called for from the revisionist and therefore such a finding, without affording any opportunity to explain is in the teeth of principle of natural justice and cannot be sustained. Other conclusions by the Collector that the revisionist has not explained keeping of empty bags, 23 bags of whole salt is also based on pure surmises as the revisionist had specifically pleaded and had argued his defence case that empty bags were used to protect the fertilizers from being destroyed and from loosing its hygroscopic nature and salt belonged to some other trader. Stipulation E(vii) in conjunction with 6 and F (iii), (iv) and stipulation G(i) are of utmost importance in this respect. It is the case of the revisionist that the empty bags were kept by him to protect the fertilizers from moisturising and protect the qualities and water solubility. Observations by the Collector in this respect is contrary to the material on record and therefore, cannot be upheld. What is most bizarre is that no where it is stated either in the seizure memo or in the impugned order that adulterated manufactured fertilizers were found inside the go-down of the revisionist stitched in bags prepared by the revisionist. On what basis District Magistrate/Collector concluded and recorded such a finding that the revisionist was indulging into manufacture of spurious and sub standard fertilizer is not known. Another finding by the District Magistrate that even if 630 bags are not wheat and are wheat seeds, revisionist should have explained why he had stored it alongwith the fertilizers and salt is also beyond comprehension. Storing of wheat alongwith the fertilizer and salt kept in separate sealed and stitched bags cannot be a reason to draw adverse conclusions that the revisionist was indulging in manufacturer of adulterated fertilizers. Other recorded

findings are also purely conjectural. Further the District Magistrate/Collector has not at all addressed herself to the question that the stitching machines and the threads alongwith empty bags found on the spot, which all do not fall within the purview of Control Orders alleged to have been offended by the accused and hence it all could not have been ordered to be confiscated and auctioned through a public auction. Such an order passed by the Collector is beyond the scope of these Control Orders and consequently of the Act. Provisions of the Act cannot be stretched to absurdity. The order passed by the Collector therefore, is liable to be interfered with as the same cannot be sustained. Section 6-A of the Act does not permit such a confiscation order. Only those bags and wrapping materials can be confiscated in which essential commodity are kept or sealed and not empty bags, threads and stitching machines. It is also pointed out that according to the case of the revisionist entire seized stock was kept in stitched bags and no open bags were found and hence collector should have analysed the contentions of the revisionist from that angle as well.

14. Turning towards lower appellate Court's order, Special Judge E.C. Act also erred in concurring with the conclusions arrived at by the Collector/ District Magistrate. His impugned order in deciding revisionist appeal also suffers from the same vices, which has been pointed out above in respect of Collector's order as appellate order is also bereft of any discussion, reasons and critical appreciation. Till page 5 of the impugned judgment, which is concluded on page 8, Special Judge has mentioned the prosecution case, stands of the revisionist and the various pleas taken by him. While discussing, he had noted that in respect of the wheat seed and the pesticides purchase cash memo and invoice clearly indicate that the same was purchased by the revisionist from open market. He has also noted that the charge against the revisionist is that at the time of raid he had escaped from his go-down but the pleas of the revisionist and the documentary evidences produced by him in support of those pleas indicating his absence from the spot and participation in marriage ceremony at Orissa all have been completely ignored by it. Revisionist defence is that he had gone to attend the marriage of her niece Nootan to Orrisa and in that respect he had filed the marriage card and two to and fro tickets, which are papers 12/11 till 12/17, but both the Courts below did not at all addressed themselves on these evidences although, if accepted, it would have indicated that prosecution allegations contained in the FIR consisted of false recitals. Lower appellate Court had not at all appreciated the arguments and contentions of the revisionist and without any application of mind has dismissed his appeal. In spite of taking note of above facts, lower Appellate Court committed manifest error of law in believing the seizure memo, without disbelieving theses documentary evidences which had diminished the authenticity of the entire allegations against the revisionist levelled by the raiding party. Lower Appellate Court should have bestowed due thoughts and importance to such a blatant and false allegations against the revisionist and should have critically appreciated the facts dispassionately in the light of such fact scenario.

Opinion of the lower appellate Court that defence of the accused in respect of keeping of stitching machines and the threads supplied by the company, is false, is also a conclusion drawn without any discussion and appreciation of facts. In fact, to say the least, the contention of the revisionist has been brushed aside by the lower appellate Court and without critically appreciating them he has decided a statutory appeal and hence it's order is also vulnerable to castigation and cannot be upheld. Further the opinion of the lower appellate Court that the revisionist has offended various provisions of the Essential Commodities Act and the Control Orders is also based on conjunctures and surmises. In a single line order lower appellate Court has opined that the explanation by the revisionist to the notice u/s 6-B of the Act is not correct is also based on no reason. In fact, page 6 and 7 of the lower appellate Court's order in respect of the presence of the revisionist are self contradictory. So far as mentioning of Section 6(e) of the Act is concerned, lower appellate Court has totally misplaced itself in referring to the aforesaid provision as Section 6(e) does not have any application on the facts of the present case. It only lays down that while proceedings of confiscation u/s 6-A is in the offing and continuing then only the Collector and the State Government concerned u/s 6-C shall have the power to entertain the dispute and no Court, tribunal or authority will interfere at that stage. It nowhere lays down that while proceeding of confiscation and appeal against that order is pending, the Appellate Court or the Collector shall not have the power. Lower Appellate Court also committed an error in not discussing and appreciating various arguments raised by the revisionist appellant in his memo of appeal vide Annexure No. 7 to the affidavit annexed alongwith this revision.

15. Turning towards another important aspect of the matter, order 23 of Fertilizer Control Order, 1985 provides for disposal of non-standard fertilizers. For the sake of convince, the same is reproduced hereinunder.

23. Disposal of non-standard fertilisers.--(1) Notwithstanding anything contained in this Order, a person may sell, offer for sale, stock or exhibit for sale or distribute any fertiliser which, not being an adulterated fertiliser, does not conform to the prescribed standard (hereinafter in this Order referred to as non-standard fertiliser) subject to the conditions that,--

(a) the container of such non-standard fertiliser is conspicuously super scribed in red colour with the words "non-standard" and also with the sign "X"; and

(b) an application for the disposal of non-standard fertilisers in Form H is submitted to the registering authority to grant a certificate of authorisation for sale of such fertilizers and a certificate of authorisation with regard to their disposal and price is obtained in Form I:

(c) such non-standard fertiliser shall be sold only to the manufacturers of mixtures of fertilisers or special mixtures of fertilisers or research farms of Government or universities or such bodies.

(2) The price per unit of the non-standard fertiliser shall be fixed by the registering authority after satisfying itself that the sample taken is a representative one, and after considering the nutrient contents in the sample determined on the basis of a chemical analysis of the non-standard fertiliser.

(3) The Central Government may, by notification in the official Gazette and subject to the conditions, if any, laid down in that notification, and subject to guide lines issued in this regard by the Central Government exempt such pool handling agencies, as it deems fit, from complying with conditions laid down in paragraphs (a) and (b) of the sub-clause (1).

16. Perusal of the aforesaid clause unerringly indicate that it has an over riding effect as it starts with a non-obstant clause "notwithstanding any thing contained in this order". Therefore all other clauses of Fertilizer Control Order are subject to this clause. Order 23 provides for disposal of non-standard fertilizer and in such an eventuality, mere storage of the same is no offence. Anon-standard fertilizer can again be put to recycling to standardise it and then can be used there after. Further there is no receipt nor there is any allegation from anybody that the revisionist had sold him non-standard or adulterated fertilizer. In total absence of any allegations from any independent source in that respect mere recital of a bald allegations without any input material cannot be a ground to confiscate and auction the commodity purchased and received by the revisionist in due contract of business. The District Magistrate would have done well in invoking Section 23 instead of resorting to the provisions of auction and sale.

17. Turning towards another aspect that only those commodities can be confiscated and auctioned regarding which offence has been committed it is too settled a proposition of law to be doubted and ignored that but for the commodity in respect of which offence under the Act has been committed no other commodity can be confiscated. On this aspect reliance can be had on the Apex Court decision in [Kailash Prasad Yadav and Another Vs. State of Jharkhand and Another](#), wherein it has been held as under:

5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made u/s 3 of the Essential Commodities Act, 1955 (for short "the Act") are violated.

In view of above, the inescapable conclusion is that both the impugned orders cannot be sustained and are liable to be rectified.

This revision is allowed. Both the impugned orders dated 30.11.2009 and 22.2.2011 in relation to Crime Nos. 840 of 2008, and 841 of 2008, relating to offences under Sections u/s 420 IPC, Section 63 Copyright's Act and 3/7 E.C. Act P.S. Shahganj, district Jaunpur, under Sections 6-A and 6-C of the Act passed by Collector Jaunpur and lower appellate Court, Additional Sessions Judge/ Special Judge E.C. Act, Jaunpur

are hereby set aside. Revisionist be handed over to the commodities, which has been seized from him forthwith. He is directed to deal with those commodities strictly in accordance with the provisions of law and the Act.