
Before Binod Kumar Roy, C.J., H.S. Bedi & Nirmal Singh, JJ.

ANIL KUMAR,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CrI. M. 21659/M of 2003

18th December, 2003

Essential Commodities Act, 1955—Ss. 7 & 12—Essential Commodities (Special Provisions) Act, 1981—Ss. 3(1) and 12—Code of Criminal Procedure, 1973—Ss. 167(5), 260 to 265—General Clauses Act, 1897—Ss. 6 & 6-A—Registration of a case against petitioner for storage of wheat without licence—Quashing of—Constitution of a Special Court under 1981 Act—S. 12AA lays down that all offences under the 1955 Act shall be tried only by the Special Court in a summary way—S. 167 (5) Cr.P.C. provides that when offence is to be tried summarily the investigation is to be concluded within a period of six months—S. 7 of the 1955 Act empowers the Special Court to impose imprisonment up to seven years—S. 12-A (2) of 1981 Act provides that the offences under the 1955 Act are to be tried by the Sessions Judge—Merely because all offences u/s 12-A are to be tried summarily it does not mean that the Special Court cannot impose sentence exceeding two years—Proceedings are not to be vitiated on the ground that the investigation u/s 167 (5) Cr.P.C. not completed within six months—The provisions of Section 12AA of the Special Court do not override the provisions of Section 7 of the 1955 Act.

(State of Haryana v. Rajinder Singh, 1991(2) P.L.R. 541 and Bhim Sain versus State of Haryana, 2001 R.C.R. (CrI.) 596, over-ruled)

Held, that sub -section (5) of Section 167 of the Code of Criminal Procedure provides that if in any case triable by the Magistrate as a summon case, the investigation is not concluded within the period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfied the

Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary, but under Section 12-A of the "Special Act", the offence under the Special Act is to be tried by a Special Court. The Special Courts are to be constituted under Section 12A of the "Special Act". Sub-section (2) of Section 12A of the Special Act provides that the offences under the Special Act are not to be tried by the Magistrate, rather these offences are to be tried under the "Special Act" by the Special Courts or by the Sessions Judge and the Special Court means under Section 9 of the Code of Criminal Procedure "The Court of Session". The mere fact that under Section 12A of the Special Act all the offences are to be tried summarily, it does not mean that the Special Court cannot impose sentence exceeding two years. So, on the ground that the investigation under sub-section (5) of Section 167 of the Code of Criminal Procedure has not been completed within six months, the proceedings are not to be vitiated and the provisions of Section 12AA of the "Special Act" do not override the provisions of Section 7 of the Act.

(Paras 18 to 20)

D.S. Bali, Senior Advocate Salil Bali, Advocate, *for the petitioner.*

Charu Tuli, Senior Deputy Advocate General, Punjab, *for the respondent.*

ORDER

NIRMAL SINGH, J.

(1) The Petitioner Anil Kumar, a food grain dealer of Talwandi Bhai, is being prosecuted in Case FIR No. 14, dated 26th February, 1997, Police Station Ghall Khurd, District Ferozepur, registered under Section 7 of the Essential Commodities Act, 1955 (for short "the Act) read with Section 120B of the Indian Penal Code on the allegation that on 31st October, 1996 he had stored 36732 quintals of wheat without licence and thereby had contravened Clause 7 of the Punjab Trade Articles (Licensing Order) 1992 framed under Section 3 of the Act.

(2) The Petitioner has moved this Court under Section 482 of the Code of Criminal Procedure for quashing the aforesaid F.I.R. and the subsequent proceedings pending in the Court of Special Court, Ferozepur. His case is that the offences under the Act shall be tried by the Special Court in summary way as laid down under Section 12AA(1) of the Act and provisions of Section 262 and 265 (both inclusive) shall be applicable to such trial and that when the offence is to be tried summarily the investigation is to be concluded as per the provisions of Section 167(5) of the Code of Criminal Procedure. Investigation in his case was not completed within six months and report under Section 173 (2) of the Code of Criminal procedure was presented after the expiry of six months and thus as per the provisions of Section 167(5) of the Code of Criminal Procedure the proceedings are vitiated on the ground of limitation.

(3) The respondent has raised preliminary objection asserting that Challan was already filed in Court in 9th September, 2002 and charge has also been framed against the petitioner and, therefore, he has an alternative remedy to file a revision against the order of framing of charge.

(4) Mr. D.S. Bali, learned counsel for the Petitioner submitted that as per Section 12-A of the Essential Commodities (Special Provisions) Act, 1981 (for short the "Special Act") Special Court was constituted with effect from 1st September, 1982 which was enforced initially for a period of five years but was extended from time to time up to 31st August, 1997 and thereafter, the Essential Commodities Special Provisions Ordinance, 1997 was promulgated which lapsed and therefore, the Special Court ceased to exist thus, all cases registered under the Act are to be tried by a Magistrate having jurisdiction over the subject-matter as it was being done prior to the Special Act. According to the learned Senior Counsel this proposition stands well settled in **State of Tamil Nadu versus Paramasiva Pandian (1)**.

(4.1) Reliance was also placed on a Division Bench Judgment of our Court in **State of Haryana versus Rajinder Singh (2)**, and **Bhim Sain versus State of Haryana (3)**.

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- (1) 2002 C.A.R. 360
(2) 1991 (2) P.L.R. 541
(3) 2001 R.C.R. (CrI.) 596

(5) In *Bhim Sain, supra*, it was held by a learned Single Judge as under :—

“Section 12AA(1)(a) of the Essential Commodities (Special Provisions) Act, 1981, clearly lays down that all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed. Section 12AA (1) (f) further provides that all offences under this Act shall be tried in a summary way.

In this view of the matter, it was incumbent upon the Investigating Officer to seek Special permission of the Court for extension of time for investigating as envisaged under Section 167(5) of the Code of Criminal Procedure. Admittedly, no application was filed by the Investigating Officer making out a case for extension of time for investigation beyond the period of six months. Thus, finding no infirmity in the impugned order of the learned Sessions Judge, Narnaul dated October 15, 1984, we dismiss the appeal being without any merit.”

(6) A lurking doubt cropped up about the correctness of the view expressed in **Rajinder Singh (supra)** and **Bhim Sain's case (supra)** and thus this Full Bench was constituted in which following questions arise for adjudication :—

- (1) Whether the provisions of Section 12AA of the Act override the provisions of Section 7 of the Act ?
- (2) Whether the proceedings under the Act vitiates if the investigation is not completed within six months as per sub-clause (5) of Section 167 of the Code of Criminal Procedure ?

(7) Section 167(5) Cr.P.C. reads as under :—

“If any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested,

the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.”

(8) The Essential Commodities (Social Provisions) Act, 1981 was enforced with effect from 1st September, 1982 in all the States and Union Territories except in the Union Territories of the Andaman and Nicobar Islands, Arunachal Pradesh, Dadra And Nagar Haveli, Lakshadweep and Mizoram published on 31st August, 1982 in the Gazette of India, Extra., 1982 for a temporary period for 15 years dealing more effectively with persons indulging in hoarding and black marketing of, and profiteering in essential commodities and with the evil of vicious inflationary prices and for matters connected therewith or incidental thereto. The Special Courts were constituted under section 12-A of the “Special Act”, which reads as under :—

- (1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.
- (2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word “appoint” shall have the meaning given to it in the explanation to Section 9 of the Code.

- (3) A person shall not be qualified for appointment as a Judge of a Special Court unless :
 - (a) he is qualified for appointment as a Judge of a High Court, or
 - (b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

(9) The procedure to try the offences is laid down under Section 12AA, which is reproduced as under :—

(1) Notwithstanding anything contained in the Code.—

- (a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court ;
- (b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of Section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate..”

(10) The Act remained in force till 31st August, 1997. Thereafter, the Essential Commodities (Special Provisions) Ordinance, 1997 was promulgated but the said Ordinance has lapsed with effect from 27th August, 1998. The question which arises for consideration is as to what is the effect on the cases which were registered before the repealed act and the cases in which the Court has taken cognizance ?

(11) It will be appropriate to notice the relevant provisions of the “Special Act” and the General Clauses Act, 1897.

(11.1) Sub-section (3) of Section 1 of the “Special Act, reads as under :

- (3) It shall cease to have effect on the expiry of [fifteen years] from the date of commencement of this Act except as respects things done or omitted to be done before such cesser of operation of this Act, and Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.”

(12) Section 6 of the General Clauses Act, 1897 read as under :

6. Effect of repeal—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—
- (a) revive anything not in force or existing at the time at which the repeal takes effect ; or
 - (b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder ; or
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

(12.1) Section 6-A of the General Clauses Act read as under :—

“6-A Repeal of the Act making textual amendment in Act or Regulation.—Where any (Central Act) or Regulation made after the commencement of this Act repeals any enactment by which the text of any (Central Act) or

Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.”

(13) A conjoint reading of sub-section (1) of Section 3 of the “Special Act” and Section 6, 6-A of the General Clauses Act, 1897 makes it manifestly clear that after the cesser of the “Special Act” it will tantamount repealing of the Special Act as it had been repealed by the Central Act, but anything done or omitted to be done before such cesser of operation of the “Special Act”, then Section 6 of the General Clauses Act will come into operation.

(13.1) Section 6(e) of the General Clauses Act further provides that where any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

(13.2) In *Hasan Nurani Malak versus S.M. Ismail, Assistant Charity Commissioner, Nagpur and others* (4), the Apex Court had held as follows :—

“.....The words “anything duly done” in sub-clause (a) are very often used by the legislature in saving clauses such as we have in Section 86(3). Section 6 of the General Clauses Act, 1897 also provides that unless a different intention appears the real of an Act would not affect anything duly done or suffered thereunder. The object of such a saving clause is to save what has been previously done under the statute repealed. The result of such as saving clause is that the pre-existing law continuous to govern the thing done before a particular date from which the repeal of such a pre-existing law takes effect.

In *Universal Imports Agency versus Chief Controller of Imports and Exports*, 1961 (1) SCR 305—(AIR 1961 SC 41) construing the words “things done” used in Para 6 of the *Fresh Establishments (Application of laws) Order, 1954*, this Court held that on a proper interpretation the expression “things done” was comprehensive enough to take in not only the things done but also the effect of the legal consequences flowing therefrom.”

(13.3) In **State of Tamil Nadu versus Paramasiva Pandian** (supra) it has been observed by the Apex Court as under :—

“On a fair reading of the above provisions it is clear that during the period of EC (Special Provisions) Act was in force the Special Court constituted for trial of offences under EC Act had exclusive jurisdiction to try such cases. The Special Court had also the power to pass order of remand under Section 167 but the position changed after the EC (Special Provisions) Act lapsed by efflux of time. Thereafter, the position that used to prevail before the EC (Special Provisions) Act was enforced, stood stored and the judicial magistrates who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. The position is beyond and pale of doubt that the remand order passed by the Special Court at Madurai, long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent.”

(13.4) In the aforesaid case no law has been laid down with regard to the cases which have been registered or in which the Court has taken the cognizance before repealing of the “Special Act”.

(14) We are of the considered view that the cases which were registered and in which the Court has taken cognizance shall continue as if the Special Act has not been repealed by the Central Act.

(15) The next point which remains to be considered is whether the proceedings stand vitiated under the “Special Act” if the investigation is not completed within six months as per sub-section (5) of Section 167 of the Code of Criminal Procedure ?

(16) The punishment under the principal Act has been prescribed under Section 7 of the Act which reads as under :—

“(1) If any person contravenes any order made under Section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine ;

(Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months :)

(17) The procedure to try the offence has been laid down in Section 12AA of the “Special Act”. Under Section 12AA all offences shall be tried only by the Special Court and the offences are to be tried in a summary way and the provisions of Sections 260 to 265 Cr.P.C. (both inclusive) may be applied to such trial.

(18) Sub-section (5) of Section 167 of the Code of Criminal Procedure provides that if in any case triable by the Magistrate as a summon case, the investigation is not concluded within the period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary, but under Section 12A of the “Special Act” the offence under the Special Act is to be tried by a Special Court. The Special Courts are to be constituted under Section 12A of the “Special Act”.

(19) Sub-section (2) of Section 12A of the "Special Act" reads as under :—

"A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the explanation to Section 9 of the Code."

(20) So, the offences under the "Special Act" are not to be tried by the Magistrate, rather these offences are to be tried under the "Special Act" by the Special Courts or by the Sessions Judge and the Special Court means under Section 9 of the Code of Criminal Procedure "The Court of Session". The mere fact that under Section 12A of the Special Act all the offences are to be tried summarily, it does not mean that the Special Court cannot impose sentence exceeding two years. So, on the ground that the investigation under sub-section (5) of Section 167 of the Code of Criminal Procedure has not been completed within six months, the proceedings are not to be vitiated and the provisions of Section 12AA of the "Special Act" override the provisions of Section 7 of the Act.

(21) In **Ram Chandra Pansari versus State of Bihar (5)**, Division Bench of Patna High Court has held as under :—

"The Maximum sentence of 7 years as provided under Section 7 of the Act and the proviso to clause (f) to Section 12AA imposing a limit of 2 years imprisonment on the power of the Special Judge has to be harmoniously construed and I do not find any difficulty in the same. The offence continues to attract the maximum sentence of 7 years. But the Special Judge trying the case does not have the jurisdiction to impose a sentence of more than 2 years. It only means that although the offence is punishable by 7 years but the trial Court cannot give a sentence beyond 2 years and if this construction is given then both Section 7 and the proviso to clause (f) to Section 12AA get their full play."

(22) The view taken by the Division Bench of Patna High Court has been approved by the Apex Court in **Nirmal Kanti Roy versus State of West Bengal (6)**.

(5) 1988 Patna Law Journal Reports 623

(6) (1998) 4 S.C.C. 590 (at 597 Paragraph 17)

(23) For the reasons mentioned as above, we are constrained to hold that the view taken in **Rajinder Singh's case** (supra) and in **Bhim Singh's case** (supra) is not correct.

(24) We hold as follows :—

The provisions of Section 12AA of the "Special Act" do not override the provisions of Section 7 of the Act and the proceedings will not vitiate if investigation is not completed within six months as per sub-section (5) of Section 167 of the Code of Criminal Procedure.

(25) Both questions having been answered against the petitioner, the quashing petition fails and is dismissed. With the dismissal of this petition the interim order staying the trial of the petitioner automatically stands vacated.

R.N.R.

Before S.S. Nijjar and S.S. Grewal, JJ.

HARMESH CHAND,—*Petitioner*

versus

THE FOOD CORPORATION OF INDIA AND
OTHERS,—*Respondents*

C.W.P. NO. 6692 OF 2003

18th December, 2003

Constitution of India, 1950—Arts. 14, 19(1)(g) and 226—Acceptance of petitioner's tender for handling & transportation of food-grains by the FCI—Deposit of security by petitioner—An officer of FCI not permitting petitioner to execute the contract—Allegations of mala fide against the Officer—Case of petitioner fully established from the record—No disputed questions of fact—Glaring irregularities committed by the Officer—Action of the Officer wholly arbitrary and violates Arts. 14 & 19(1)(g)—Petition allowed while directing respondents to permit petitioner to continue to work in pursuance to the contract.