

Before A. P. Chowdhri and N. K. Kapoor, JJ.

STATE OF HARYANA,—Petitioner.

versus

RAJINDER SINGH,—Respondent.

Criminal Appeal No. 961-DBA of 1985.

23rd July, 1991.

Code of Criminal Procedure, 1973 (II of 1974)—S. 167(5)—Essential Commodities (Special Provisions) Act, 1981—S. 12-AA (1) (a) & (f)—Haryana Foodgrains Dealers Licencing and Price Control Order, 1978—S. 3—Accused arrested for violating provisions of S. 3—Investigation not completed within six months—No permission sought from the Court for extension of time for investigation—Challan put up after such period—No cognizable u/s 167(5)—Accused liable to be discharged—Offence is triable in a summary way.

Held, that it was incumbent upon the Investigating Officer to seek special permission of the Court for extension of time for investigation as envisaged under S. 167(5) of the Code of Criminal Procedure. The investigation in this case continued beyond the period of six months and challan was put in the Court after this period without obtaining special permission of the Court as required under S. 167(5). Hence, the same cannot be taken cognizance by the Court.

(Paras 2 & 3)

Held, that S. 12-AA (a) (a) of the Essential Commodities (Special Provisions) Act, 1981 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. S. 12AA (1) (f) further provides that all offences under this Act shall be tried in a summary way. The case is, thus, triable as a summons case under the provisions of S. 167(5) of the Code of Criminal Procedure.

(Para 4)

Appeal from the order of the Court of Shri N. K. Jain, Sessions Judge, Narula, dated 15th October, 1984, discharging the accused.

Charge Under Section 7/10/55 Essential Commodities Act.

ORDER :—Discharged.

E.C. Case No. 4 of 1984.

It has been proved in the grounds of appeal, that, the appeal be accepted and the order of the discharge be set aside and the accused may be directed to face trial U/s s of the Essential Commodities Act.

R. S. Rai, Advocate, for A.G. Haryana.

Hari Mittal, Advocate & Parbodh Mittal, Advocate, for the Respondent.

State of Haryana v. Rajinder Singh (N. K. Kapoor, J.)

JUDGMENT

N. K. Kapoor, J.

(1) The order discharging the accused in respect of the alleged offence under Section 3 of the Haryana Foodgrains Dealers Licencing and Price Control Order, 1978, on account of non-compliance of the provisions of Section 167(5) of the Code of Criminal Procedure is subject-matter of consideration in this appeal.

(2) Briefly put, the challan was put up by the S.H.O. Police Station Nangal Chowdhri, to the effect that the accused had 23 quintals 50 Kilograms of rice for sale and had been taking the same from Haryana to Rajasthan in violation of the provisions of Section 3 of the Haryana Foodgrains Dealers Licencing and Price Control Order, 1978. The accused was arrested on January 21, 1984. The investigation in this case continued beyond the period of six months and challan was put in the Court on July 27, 1984 without obtaining special permission of the Court as required under Section 167(5) of the Code of Criminal Procedure.

(3) An objection was taken by the counsel for the accused to the effect that the challan having been put in the Court after the expiry of the period of six months, the same could not be taken cognizance by the Court in view of the mandatory provisions of Section 167(5) of the Code of Criminal Procedure. The counsel placed reliance on judicial pronouncements reported as *Raj Singh v. The State (Delhi Administration)* (1), and *Ram Briksh Jadab v. State of West Bengal and others* (2). This objection of the accused was accepted by the trial Court: thereby discharging the accused.

(4) Now, before us also almost identical plea has been raised by the counsel appearing for the State, namely, that the case is not triable as a summons case and, thus, the provisions of Section 167(5) of the Code of Criminal Procedure are not attracted to the facts of the present case. This argument is wholly without any merit. 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

(1) 1984 Chandigarh Criminal Cases 274.

(2) 1983 CrI. Law Journal 39.

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.

(5) 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 investigation 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.

R.N.R.

(FULL BENCH)

Before A. L. Bahri, A. P. Chowdhri and J. B. Garg, JJ.

STATE OF PUNJAB,—Appellant.

versus

RAMESH KUMAR,—Respondent.

Criminal Appeal No. 44-DBA of 1986.

22nd January, 1992.

Prevention of Food Adulteration Act, 1954—Ss. 2(1) (a), 7, 16—Code of Criminal Procedure, 1973—Ss. 2(d), 190—Complaint made against accused for selling adulterated milk—No allegation in the complaint that milk was stirred before sample was taken for analysis—Omission to state—Complaint not liable to be dismissed—Facts in the complaint show commission of offence—Trial Court can take cognizance of such a complaint.

Held, that if the facts alleged in the complaint show that the sample was purchased from the accused, which was found on analysis to be not in accordance with the prescribed standard and a prayer for taking action against the accused for commission of the offence i.e., for sale of adulterated milk, under S. 7 read with S. 16 of the Prevention of Food Adulteration Act, 1954, the Court could take cognizance of such a complaint even though the fact that “milk was stirred before sample was taken” is not mentioned in the complaint. (Para 12)

(This case was referred to Full Bench by Hon'ble Mr. Justice J. B. Garg and Hon'ble Mr. Justice A. P. Chowdhri on 9th August, 1991, for decision of an important question whether a mere omission