

CASE NO.:
Appeal (crl.) 887 of 2004

PETITIONER:
State of A.P.

RESPONDENT:
Farmers Service Coop. Society & Ors.

DATE OF JUDGMENT: 16/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Crl.) No. 900/2004

ARIJIT PASAYAT, J

Leave granted.

The State of Andhra Pradesh has questioned correctness of the judgment rendered by a learned single judge accepting the prayer made under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') and quashing proceedings initiated against the respondents.

Background facts in nutshell are as follows:

On 24th July, 1998 the Fertilizer Inspector inspected the premises of Respondent No. 1 \026 Society, which was dealing in the business of fertilizers. He collected samples of Zinc Sulphate and sent the same for chemical analysis. After analysis of the samples, the report of the concerned laboratory was that the sample did not accord to the requisite specification. Accordingly investigation was done and on completion thereof the concerned Assistant Director of Agriculture, Medak filed a complaint in the Court of Judicial First Class Magistrate, Jogipet. The same was registered as CC No. 453 of 2000. All the respondents were shown as accused persons in the complaint.

The respondents filed the petition under Section 482 of the Code which was registered by the Andhra Pradesh High Court as Crl. Petition No. 3977 of 2001. The primary stand was that the maximum punishment, provided for an offence punishable under Section 7(1) (a)(ii) of the Essential Commodities Act, 1955 (in short the 'Act'), the violation of which was alleged in the complaint, is one year and, therefore, the charge-sheet which was filed about two years after the date of offence is clearly barred by limitation. The plea was accepted by learned single judge and the proceedings in the CC No. 453/2000 on the file of Judicial Magistrate, First Class were quashed.

According to the learned counsel for the appellant the High Court has fallen into grave error by holding that the maximum punishment for an offence relatable to Section 7(1)(a)(ii) is 1 year while it is, in fact, 7 years. Therefore, on that score alone the High Court's order is liable to set aside.

In response learned senior counsel appearing for the respondents submitted that the offence with which respondents could be charged even if the accusations in the complaint are accepted in toto relates to Section 7(1) (a) (i) and not under Section 7(1)(a)(ii) as contended by the appellants. In fact, before the High Court same was the stand taken by the present respondents. The High Court unfortunately referred to Section 7(1)(a)(ii). According to him the order of the High Court does not suffer from any infirmity to warrant interference.

We find that the High Court has categorically noted the submissions of the present respondents that the maximum sentence for an offence punishable under Section 7(1) (a) (ii) is 1 year. What is presently being contended by the present respondents is at variance with what appears to have been contended before the High Court.

Section 7(1) of the Act reads as follows :

"7(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;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government."

It cannot be disputed and is not disputed by learned counsel for the respondent that the maximum sentence for an offence relatable to Section 7(1)(b)(ii) is not one year. That being so the High Court's order necessarily has to be set aside. Learned counsel for the respondents submitted that the arguments before the High Court revolved around Section 7(1)(b)(i) of the Act, and a fresh petition shall be filed. If it is filed, it goes without saying, the same shall be dealt with and disposed of in accordance with law.

Appeal is allowed.