

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
FALGUNI DUTTA AND ANOTHER

DATE OF JUDGMENT 05/05/1993

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1993 SCR (3) 570 1993 SCC (3) 288
JT 1993 (3) 288 1993 SCALE (2) 743

ACT:
Essential Commodities Act 1955--Sections 12A, 12AA, 7(1) (a) (ii) read with Sections 167 (5), 262 to 265, Code of Criminal Procedure. 1973--Offences under--Trial--Summary way--Legislative intention.
Essential Commodities Act, 1955--Section 12A--Special Court whether empowered to exercise powers u/s. 167 (5), Code of Criminal Procedure. 1973.
Essential Commodities Act, 1955--Sections 7 (1) (a) (ii), 2A read with Section 167(5), Code of Criminal Procedure--Charge Sheet filed after expiry of six months from the date of arrest of accused--Special Court's power to take cognizance, try and punish--Scope of

HEADNOTE:

On 16.3.1984, the police raided the business premise and godown of the respondents and seized certain essential commodities which were stored there in contravention of certain orders issued under section 3 read with section 5 of the Essential Commodities Act, 1955. On the same day the respondents were arrested for the commission of an offence punishable under section 7(1) (a) (ii) of the Act. But chargesheet was submitted under section 173, Code of Criminal Procedure on 30.9.1986, after expiry of the period of six months. The Special Court constituted under section 12A took cognizance of the offence on 13.3.1987 on the basis of the charge-sheet.

The respondent No. 1 moved an application before the Special Court to quash the proceeding since the case was triable as a summon case in view of section 12AA (1) (f) of the Essential Commodities Act, sub-section (5) of Section 167 of Code of Criminal Procedure was attracted.

Relying on the decision in Kanta Dey v. The State of West Bengal (1986) Calcutta Criminal Law Reporter 158, the Special Court rejected the application holding that the provision of section 167 (5) of the Code had no application to a case initiated for the commission of an offence punishable under section 7(1) (a) (ii) of the Act.

571

Respondents' revision application against the order of Special Court was allowed by single judge of the high Court. The High Court relying on the decision in public Prosecutor,

High Court of Hyderabad v. Anjaneyulu, (1986) Criminal Law Journal 1456, held that sub-section (5) of section 167 of the Code stood attracted. On the High court quashing the prosecution, the respondents were discharged. The present appeal by special leave was filed by the State against the order of the High Court.

On the questions, 1 whether a Special Court constituted under "Section 12A of the Essential Commodities Act, 1955 is empowered to exercise powers under section 167 (5) of the Code of Criminal Procedure, 1973 in relation to an accused person forwarded to it under section 12AA (1) (b) of the Act and (ii) whether a Special Court can take cognizance of the offence and proceed to try and punish the accused person, notwithstanding the fact that the charge-sheet is filed after expiry of the period of six months from the date of arrest of the accused person?", partly allowing the appeal, this Court,

HELD: 1.1. From the plain language of the provisions, introduced by Act 18 of 1981 the legislature desired to ensure that all offences under the Act were tried by the Special Court constituted under section 12A in a summary manner applying the provisions of sections 262 to 265 of the Code and further provided that in case of conviction the sentence shall not exceed two years, bringing the offence within the definition of a summons-case under the Code. But for the insertion of section 12A in its present form and section 12AA, the offence under section 7 (1) (a) (ii) of the Act would have attracted the definition of a warrant-case. (578-D)

1.2. The avowed object of these legislative changes was expeditious disposal of offences under the Act by Special Courts employing summary procedure and applying the provisions of the Code to such trials save as otherwise provided. This enabled the special Courts to take cognizance of the offences under the Act without a formal order of commitment. (578-C)

1.3. After the constitution of Special Courts all offences under the Act have to be tried by that court in a summary way by applying the provision, % of section-. 262 to 265 (both inclusive) of the Code. The proviso places a fetter on the power of the Court in the matter of passing a sentence on conviction, namely, notwithstanding the fact that section 7(1) (a) (ii) prescribes a punishment extending upto seven years and fine, Special Court shall not pass a sentence of imprisonment for a term exceeding two years-. It is this proviso which attracts the definition of a summons case, the trial whereof must be

572

undertaken in accordance with the procedure outlined in Chapter XX of the Code. (579-A-B)

1.4. Section 167 (5) says that if in any case triable as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused came to be arrested, the Magistrate shall make an order stopping further investigation into the offence unless the Magistrate for special reasons and in the interest of justice considers it necessary to permit continuation of the investigation. (579-C)

1.5. The object of sub-section clearly (5) of Section 167 is to ensure prompt investigation into all offence triable as summons-case to avoid hardship and harassment to the accused person. (646-C)

1.6. The prosecution in question being a summons-case triable in a summary manner as per procedure outlined in sections 262 to 265 of the Code which in turn attracts the

procedure meant for summons-case, it is obvious that the power conferred by sub-section (5) of section 167 can be invoked by the Special Court by virtue of clause (c) of section 12AA (1) of the Act which in terms states that the Special Court may exercise the same powers which a Magistrate may exercise under section 167 of the Code. Thus a special Court is expressly empowered by clause (c) of section 12AA (1) to exercise the same powers which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person who has been forwarded to him under that provision. (579-1))

1.7. The High Court was right in concluding that section 167(5) of the Code was attracted in the present case and the Special Court was entitled to exercise the power conferred by that sub-section. (579-F)

1.8. In the case of an offence punishable under section 7(i) (a) (ii) of the Act which is tried by a Special Court constituted under section 12A, the provision (of sub-section (5) of section 167 of the Code) get attracted if the investigation has not been completed within the period allowed by that sub-section. (582-F)

1.9. The Special Court was competent to entertain the police report restricted to six months investigation and take cognizance on the basis thereof. Therefore the Special Court is directed to proceed with the trial from that stage onwards and complete the same as early as possible in accordance

573

with law. (582-G)

Kanta Dev v. The State of West Bengal, (1986) Calcutta Criminal Law Reporter 158--(1986) 1 CHN 267 and Babulal Agarwal v. State, (1987) 1 CHN 218, overruled. (639-B-C)

Jnan Prakesh Agarwala v. State of West Bengal, (1992)-1 CHN 218 and Public Prosecution High Court of Hyderabad & etc. v. Ajnaneyulu and etc., (1986) Criminal Law Journal 1456, approved.

Hussainara Khatoon & Ors. v. Home Secretary State of Bihar, Patna, (1979) 3 SCR 760, referred to. (639-H, 647-F)

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.397 of 1993.

From the Judgment and Order dated 11.7.90 of the Calcutta High Court in CrL. Revision No. 1453 of 1987.

D.N. Mukherjee, D. Sinha and J.R. Das for the Appellant.

Sukumar Guha and A.K. Sengupta for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Special leave granted.

In this appeal by special leave two questions arise for our consideration, namely, (i) whether a Special Court constituted under Section 12A of the Essential Commodities Act, 1955 (hereinafter called 'the Act') is empowered to exercise powers under sub-section (5) of Section 167 of Code of Criminal Procedure, 1973 ('the Code' for short) in relation to an accused person forwarded to it under clause (b) of sub-section (1) of section 12AA of the Act? and (ii) whether a Special Court can, notwithstanding the fact that the charge-sheet has been filed after the expiry of the period of six months from the date of arrest of the accused person or the extended period, take cognizance of the offence and proceed to try and punish the accused person? These two questions arise in the backdrop of the following

facts.

A police party headed by an Inspector of Police raided the business premise

574

and godown of the respondents on March 16, 1984 and in the presence of respondent Faguni Dutta seized certain essential commodities stored in contravention of certain orders issued under section 3 read with section 5 of the Act. The accused Falguni Dutta was arrested on the same day for the commission of an offence punishable under section 7(1) (a) (ii) of the Act but the charge-sheet was submitted after the expiry of the period of six months from the date of arrest on September 30, 1986. The learned Judge presiding over the Special Court constituted under section 12A of the Act took cognizance of the offence on March 13, 1987 on the basis of the charge-sheet submitted under section 173 of the Code. Thereupon the accused persons moved an application before the learned Special Judge for quashing the proceedings on the ground that since the case was triable as a summons-case in view of section 12AA(1) (f) of the Act, clause (5) of section 167 of the Code was attracted which enjoined that the proceedings be dropped. The learned Special Judge relying on a decision of a learned Single Judge of the High Court in Kanta Dev v. The State of West Bengal (1986) Calcutta Criminal Law Reporter 158 = (1986) 1 CHN 267 rejected the application on July 24, 1987 holding that the provision of section 167 (5) of the Code had no application to a case initiated for the commission of an offence punishable under section 7 (1) (a) (ii) of the Act. We may incidentally point out that the same view was expressed in Babulal Agarwal v. State (1987) 1 CHN 218. Being aggrieved by the rejection of the application the accused preferred a Revision Application to the High Court challenging the legality of the said order. A learned single Judge of the High Court placing reliance on a Division Bench decision of the High Court of Andhra Pradesh in the case of Public Prosecutor, High Court of Hyderabad & etc. v. Anjaneyulu and etc. (1986) Criminal Law Journal 1456] held that sub-section (5) of section 167 of the Code stood attracted and the learned Special Judge ought to have stopped the further investigation on the expiry of six months and ought to have discharged the accused. He, therefore, set aside the order of the learned Special Judge and also quashed the prosecution and discharged the accused. It is against this order of the High Court that the present appeal is preferred.

We may incidentally mention that when the learned Single Judge was disinclined to follow the earlier two decisions of other learned single Judges of the High Court the proper course was to refer the matter to a Division Bench for decision. That, however, has now lost significance in view of the subsequent decision of the Division Bench in Jnan Prakash Agarwala v. State of West Bengal (1992) 1 CHN 213 taking a contrary view. In the said case the Division Bench has taken the view which the learned Single Judge has taken in the present case. We will deal with these decisions in some detail hereafter.

At the outset we deem it appropriate to notice the relevant provisions of the

575

concerned statutes. The Act was enacted to provide, in the interest of the general public for the control of production, supply and distribution of, and trade and commerce in, certain commodities. Section 3, inter alia, lays down that if the Central Government is of opinion that

it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating and prohibiting the production, supply and distribution thereof and trade and commerce therein. By section 4 it is provided that an order made under section 3, may, confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government and may contain directions any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties. The Central Government is empowered by section 5 to direct that the power to make orders or issue notifications under section 3, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable, inter alia, by such State Government, as may be specified in the direction. In exercise of the power so conferred certain orders were issued by the State Government in regard to certain essential commodities from time to time. Section 7 prescribes the penalties for the contravention of any order made under section 3. The relevant portion of section 7 with which we are concerned reads as under:

"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 (i) of subsection (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.

In the present case the accused came to be charged under section 7 (1) (a) (ii) of the Act. Having regard to the fact that the punishment prescribed for the said offence extends to seven years and fine, the case would fall within the definition of warrant-case under section 2(x) of the Code. This becomes evident if we read the definitions of 'summons-case' and 'warrant-case' together. They are as under:

576

2 (w) Summons-case means a case relating to an offence, and not being a warrant-case.

2(x)- Warrant-case means a case relating to an offence, punishable with death, imprisonment for life or imprisonment for a term exceeding two years."

However, by Amending Act 18 of 1981 the Legislature, for dealing more effectively with persons indulging in antisocial activities like hoarding and blackmarketing and for combating the evil of inflationary prices, considered it necessary to make special provisions for a temporary period of five years (extended by another five years), namely, to provide:

(i) for the control, in a summary way of all offences under the Act; and

(ii) for the constitution, for the purposes of such trial, of Special Courts, consisting of a Single Judge.

To achieve this objective section 12A was amended with a view to empowering the State Government for the purpose of providing speedy trial of the offences under the Act to

constitute as many Special Courts as may be necessary for such area or areas to be specified in the notification. Section 12AA which too was inserted by the said Amending Act begins with a non-obstacle clause and provides that all offences under the Act shall be triable only by the Special Court constituted for the area in which the offence was committed or where there are more Special Courts than one in such area by one of them as may be specified in this behalf by the High Court. Clause (b) of sub-section (1) of section 12AA next provides that 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 subsection (2A) of Section 167 of the Code, such Magistrate may authorise the detention of such person such custody as he thinks fit for a period not exceeding 15 days in the whole where such Magistrate is a Judicial Magistrate and 7 days in the whole where such Magistrate is an Executive Magistrate unless his detention for such period is unnecessary. Clause (c) of that sub-section is relevant for our purpose and may be extracted:

"(c) The Special Court, may, subject to the provisions of clause (d) of this Section, exercise, in relation to person forwarded to it under clause (b), the said power which a Magistrate having jurisdic-

577

tion to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under this section."

Sub-clause (d) provides that no court other than the Special Court or the High Court shall release an accused on bail. Sub-clause (f) of this sub-section is also relevant and reads as under:

"(f) All offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial;
Provided that in the case of any conviction in a summary trial under this section it shall be lawful for the Special Court to pass such sentence of imprisonment for a term not exceeding two years."

It will thus be seen that while the penalty provided for an offence under section 7(1) (a) (ii) extends to seven years and fine, by virtue of clause (f) of subsection (1) of section 12AA if the offence is tried in a summary way applying the provisions of sections 262 to 265 of the Code the penalty would be restricted by the proviso to a maximum of two years, which would, it is argued, bring the case within the meaning of a 'summons-case' as defined in section 2(w) of the Code, thereby attracting sub-section (5) of section 167 of the Code. It would be advantageous to reproduce sub-section (5) of section 167 of the Code. It reads as under:

"If in 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."

To complete reference to the provisions of the Act we may also state that section 10A posits that notwithstanding anything contained in the Code, every offence punishable under the Act shall be cognizable and non-bailable. Section 11 provides that cognizance of an offence under the Act shall be taken only on a written report. Section 12AC makes the provisions of the Code applicable to proceedings before a Special Court unless otherwise provided. These, in brief are

578

the relevant provisions of the Act and the Code with which we are concerned.

It may here be mentioned that section 12A was first inserted by Amendment Act of 1964. It then empowered the Central Government to specify any order under section 3 to be a special order the contravention whereof may be tried summarily to which the provisions of sections 262 to 265 of the Code were made applicable. The proviso stipulated that in the case of conviction in a summary trial it shall be lawful for the Magistrate to pass a sentence of imprisonment not exceeding one year. Subsequently by Amendment Act 18 of 1981 section 12A was substituted by the present provisions and new sections 12AA to 12AC were inserted. The avowed object of these legislative changes was expeditious disposal of offences under the Act by Special Courts employing summary procedure and applying the provisions of the Code to such trials save as otherwise provided. This enabled the Special Courts to take cognizance of the offences under the Act without a formal order of commitment. It thus becomes clear from the plain language of the provisions introduced by Act 18 of 1981 that the legislature desired to ensure that all offences under the Act were tried by the Special Court constituted under Section 12A in a summary manner applying the provisions of sections 262 to 265 of the Code and further provided that in case of conviction the sentence shall not exceed two years, bringing the offence within the definition of a summons-case under the Code. But for the insertion of section 12A in its present form and section 12AA, the offence under section 7 (1) (a) (ii) of the Act would have attracted the definition of a warrant-case. It is, therefore, obvious that the Amending Act 18 of 1981 has brought about a substantial change.

The position in law as emerging after the amendment of the Act by Act 18 of 1981 is crystal clear, namely, that on the constitution of special Courts all offences under the Act are triable only by the Special Court for the Area in which the offence has been committed. Section 12AA (1) (b) provides that where a person accused of an offence under the Act is forwarded to a Magistrate under subsection (2) or sub-section (2A) of section 167 of the Code, such Magistrate is empowered to authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15 days in the whole where such Magistrate is a Judicial Magistrate and 7 days in the whole where he is Executive Magistrate. Clause (c) of that sub-section provides that the Special Court may exercise in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section. Section 12AC says that the provisions of the Code shall apply to proceedings before a Special Court save as otherwise provided in the Act. A conjoint reading of these

provisions makes it clear, that after the constitution of
579

Special Courts all offences under the Act have to be tried by that court in a summary way by applying the provisions of sections 262 to 265 (both inclusive) of the Code. The proviso places a fetter on the power of the Court in the matter of passing a sentence on conviction, namely, that notwithstanding the fact that section 7 (1) (a) (ii) prescribes a punishment extending upto seven years and fine, Special Court shall not pass a sentence of imprisonment for a term exceeding two years. It is this proviso which attracts the definition of a summons-case, the trial whereof must be undertaken in accordance with the procedure outlined in Chapter XX of the Code. Chapter XXI of the Code deals with Summary Trials. Section 262 of the Code which outlines the procedure for summary trials in terms states that the procedure specified in the Code for the trial of summons-case shall be followed, except otherwise provided. Section 167 (5) says that if in any case triable as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused came to be arrested, the Magistrate shall make an order stopping further investigation into the offence unless the Magistrate, for special reasons and in the interests of justice considers it necessary to permit continuation of the investigation. The prosecution in question being a summons-case triable in a summary manner as per procedure outlined in sections 262 to 265 of the Code, which in turn attracts the procedure meant for summons case, it is obvious that the power conferred by sub-section (5) of section 167 can be invoked by the Special Court by virtue of clause (c) of section 12AA (1) of the Act which in terms states that the Special Court may exercise the same powers which a Magistrate may exercise under section 167 of the Code. Thus a special Court is expressly empowered by clause (c) of section 12AA (1) to exercise the same powers which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person who has been forwarded to him under that provision. We have, therefore, no manner of doubt that the High Court was right in concluding that section 167 (5) of the Code was attracted in the present case and the Special Court was entitled to exercise the power conferred by that sub-section. That being so the view taken by the Division Bench of the Calcutta High Court in the case of Jnan Prakash (supra) insofar as it relates to the application of section 167 (5) to an offence under section 7 (1) (a) (ii) of the Act triable by the Special Court constituted under section 12A of the Act cannot be doubted. That is also the view of the High Court of Andhra Pradesh in the case of Public Prosecutor, High Court of Hyderabad (supra). Therefore, the Special Court can stop further investigation into the offence if the investigation is not concluded within a period of six month from the day of arrest of the accused person unless for special reasons and in the interest of justice the continuation of the investigation beyond that period is necessary. In the present case the officer making the investigation had not sought the permission of the Special Court to continue with the investigation even after the expiry of six months. The object of

580

this sub-section clearly is to ensure prompt investigation into an offence triable as summons-case to avoid hardship and harassment to the accused person. Both the High Courts of Calcutta and Andhra Pradesh have taken the view that

after the amendment of the Act by Act 18 of 1981 and the introduction of section 12AA the power conferred on the Magistrate under section 167 (5) of the code is exercisable by the Special Court constituted under section 12A of the Act. We also concur with the High Court of Calcutta that the two decisions rendered by the learned Single Judges of that Court earlier in point of time did not lay down the correct law. Similarly the Division Bench of the High Court of Andhra Pradesh was also right in holding that sub-section (5) of section 167 of the Code would be applicable to prosecutions under the Act triable by the Special Court.

The taxes us to the question whether the Special Court can, beside directing stoppage of investigation, entertain and act on a charge-sheet or a police report submitted under section 173 (2) of the Code in such cases. The expression 'police report' has been defined under the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173 [section 21. Section 173 lays down that every investigation under Chapter XII shall be completed without unnecessary delay and as soon as it is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. It will thus be seen that the police report under section 173(2) has to be submitted as soon as the investigation is completed. Now, if the investigation has been stopped on the expiry of six months or the extended period, if any by the Magistrate in exercise of power conferred by sub-section (5) of section 167 of the Code, the investigation comes to an end and, therefore, on the completion of the investigation section 173(2) enjoins upon the officer-in-charge of the police station to forward a report in the prescribed form. There is nothing in sub-section (5) of section 167 to suggest that if the investigation has not been completed within the period allowed by that sub-section, the officer-in-charge of the police station will be absolved from the responsibility of filing the police report under section 173(2) of the Code on the stoppage of the investigation, The High Court of Andhra Pradesh rightly observed in paragraph 13 of the Judgment as under:

"Under the new Code in addition to definition for investigation' in section 2(h), a separate definition for 'police report' is given by section 2(r). This coupled with the newly introduced sub-section (5) of section 167 brings out the distinction between investigation by the police and the police report on which a court is to take cognizance. The report cannot now be said to be an integral part of

581

investigation. The introduction of section 167 (5) in the Code, cannot have the effect of invalidating the investigation done within the period of six months or enabling the court to stopping the filing of police report under section 173 (2). If the investigation done during the period of six months discloses an offence, a police report may be founded on it and the court can take cognizance of the same."

in Hussainara Khantoon & Ors. v. Home Secretary State of Bihar, Patna 1 9791 3 SCR 760 this Court held that the investigation done within the period of six months is not

rendered invalid merely because the investigation is not completed and further investigation is stopped. The exact words used are:

"..... in such a case the Magistrate is bound to make an order stopping further

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investigation in that event, only two courses would be open: either the police must immediately proceed to file a chargesheet, if the investigation conducted till then warrants such a course, or if no case for proceeding against the under trial prisoner is disclosed by the investigation, the undertrial must be released forthwith from detention."

We, therefore, concur with the view taken by the Andhra Pradesh High Court in this regard.

In the result we partly allow this appeal. While we agree with the view taken by the High Court of Calcutta that in the case of an offence punishable under section 7(1) (a) (ii) of the Act which is tried by a Special Court constituted under section 12A, the provision of sub-section (5) of section 167 of the Code gets attracted if the investigation has not been completed within the period allowed by that sub-section but we find it difficult to sustain that part of the order of the High Court by which the order of the Special Court taking cognizance of the offence on the police report, i.e., charge-sheet submitted under section 173 (2) of the Code came to be quashed. We set aside that latter part of the order and hold that the Special Court was competent to entertain the police report restricted to six months investigation and take cognizance on the basis thereof. We, therefore, direct that the Special Court will proceed with the trial from that stage onwards and complete the same as early as possible in accordance with law.

VPR.

Appeal partly allowed.

583