

(1974) 08 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.M.P. (M) No. 25 of 1973

Amar Nath

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 27-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 516A
Essential Commodities Act, 1955 — Section 6A, 6C

Citation : AIR 1975 HP 40 : (1974) 3 ILR HP 764

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : Ramesh Chand, for the Appellant; B. Sita Ram, General and Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—Amar Nath has filed this writ petition under Article 227, wherein he has called in question the order of confiscation and sale made by the Collector of Una u/s 6-A of the Essential Commodities Act, 1955, in respect of 27 bags of maize and 19 bags of wheat said to be stored at the shop known as "M/s. Hem Raj Rameshwar Datt". The facts giving rise to the petition are, that the petitioner was the owner of the food stuff and the same was stored at the shop not for sale but because he needed some place to stock it. The police moved an application u/s 6-A for the confiscation of the said bags of maize and wheat. Accordingly the Collector ordered for confiscation but in addition thereto also ordered for disposal of the grain in so far as, that he directed the maize to be sold through the Food Corporation of India and the wheat to be sold by auction and the amount was to remain deposited in the Government Treasury. According to petitioner, the order regarding sale was not contemplated u/s 6-A and hence, the Collector acted without jurisdiction." It was further pleaded that no opportunity to show cause was afforded to the petitioner against the order of sale, although the said opportunity was given against order for confiscation. It was also pleaded that the

provisions of the Code of Criminal Procedure, namely Section 516-A, were applicable and unless an enquiry or trial was pending before the Magistrate and the article confiscated was subject to speedy or natural decay, the same could not be sold by the Court. Since the conditions laid down in Section 516-A were not satisfied, the order itself was illegal and could not be passed. According to petitioner, the Collector had no jurisdiction to entertain the case u/s 6-A. He did not record any reasons in his order why the foodgrains were liable to sale in the manner ordered by him. Articles 19, 31 and 31-A were thus impinged and interference should be made by the Court.

2. As against these allegations, the affidavit submitted by the Collector indicated that he acted well within his jurisdiction. The petitioner was closely related to both Hem Raj and Rameshwar Datt and as such the shop really belonged to him. He brought the foodgrains for sale and there was a presumption to that effect in accordance with the provisions of the Himachal Pradesh Foodgrains Dealers Licensing Order, 1968 and the Himachal Pradesh Wheat Dealers Licensing and Price Control Order, 1973. A notice to show cause u/s 6-B was given to the petitioner and in fact he did show cause against the order of confiscation. The decision regarding sale was an essential consequence that followed the order of confiscation. As such the order of sale is very much contemplated u/s 6-A of the Act. While showing cause, the petitioner never stated that the Collector had no jurisdiction or that the sale could not be directed. Rather his plea was that the bags of foodgrains were not meant for sale but were meant for storage at the shop of the respondent No. 2. The petitioner was carrying on the business of a dealer without a licence as laid down in clause 3 of the Order of 1973. Similarly he had stored foodgrains of more than 25 quintals in weight and there was a presumption that he stored them for the purpose of sale. That was also in accordance with the provisions of the Order of 1968.

3. The Collector further contended that the provisions of the Criminal Procedure Code (Section 516-A) were not applicable. Once the Collector assumed jurisdiction u/s 6-A, he had the authority to deal with the confiscated goods and he could proceed with a sale thereof without having recourse to Section 516-A of the Criminal Procedure Code. The order regarding confiscation and sale could be passed even without prosecution being instituted which is clear from Section 6-A and this has been done by the Collector.

4. With these allegations it was pleaded that the petition was misconceived and must be dismissed.

5. The jurisdiction of High Court under Article 227 is essentially meant to keep a subordinate tribunal within the bounds of its authority. If the order is, not manifestly incorrect and the only purpose behind the petition is to set right a wrong decision, jurisdiction of Article 227 will not be invoked. This is what the petitioner has attempted to do in the present petition. I have gone through the order of the Collector, Una (Annexure A) and it is sufficiently exhaustive. The petitioner contravened the terms and conditions of the licence issued under the

provisions of the two Orders of 1968 and 1973. Thus he committed an offence u/s 7 and an application was moved u/s 6-A to seize the property and to confiscate the same. The Collector issued a notice to show cause u/s 6-B and after hearing the petitioner seized the property and also ordered for its confiscation. It necessarily follows, that the property confiscated was to be dealt with by the Collector in the best manner considered by him. Accordingly he directed for the sale of the foodgrains. No exception could be taken to that order. In fact the order of disposal of the confiscated property is very much inherent in the order of confiscation itself passed u/s 6-A.

6. The learned, counsel essentially argued that the provisions contained in Section 516-A of the Code of Criminal Procedure applied, and unless an enquiry or trial was pending before a Magistrate and the property was subject to speedy or natural decay, or it was otherwise expedient so to do, the Court could not order for its sale. It is manifest the general provision contained in the Code of Criminal Procedure must be displaced by the special provision provided by Section 6-A of the Essential Commodities Act, 1955. In my opinion, the amended provisions of Section 6-A of the Act impliedly limit the powers of the criminal Court in the matter of disposal of foodgrains etc. which are seized in contravention of the Act and Orders, whether or not prosecution is instituted against the accused. There is no condition precedent for making the order of confiscation that a prosecution case should be pending. This is so clear from Section 6-A itself. Therefore, the provisions of the Code of Criminal Procedure will not come into play and even without prosecution case being launched, the Collector will have the power to confiscate and also to deal with the property, may be by selling the same in public interest. Where a statute specifies a particular mode of enforcing a new obligation created by it, such obligation can, as a general rule, be enforced in no other manner than that provided by the statute. Therefore, in my opinion, there can be no relevancy of Section 516-A of the Code of Criminal Procedure.

7. There was already a presumption that the foodgrains were meant for sale and the purpose of the petitioner is to get corrected the order passed by the Collector which according to him was incorrectly passed on the facts of the case. As I have remarked above, this is not the purpose of a petition under Article 227. Even if the order of the Collector was wrong on facts, it cannot be corrected by this Court. I am not sitting in appeal against that order. It is abundantly clear that the said order was well within the jurisdiction of the Collector and he passed it after going through the entire evidence.

8. It was not pointed out in what manner the Collector could not assume jurisdiction u/s 6-A or 7 of the Act. The Collector has given valid reasons in his order, and I have stated above, the order of sale was a natural consequence of the order of seizure and confiscation. It would be futile to say that Articles 19, 31 and 31-A were impinged in any manner.

9. It may further be stated that a remedy by way of appeal u/s 6-C was very

much there. The petitioner has not availed of that remedy which was more than efficacious for him. That would I be an additional ground why the petition should be dismissed.

10. In view of what I have stated above, there is absolutely no merit in the petition. The petition is dismissed with costs. Counsel fee to be assessed at Rs. 100.