

(1982) 12 CAL CK 0026
In the Calcutta High Court
In Re: Ebadat Ali

Date of Decision : 23-12-1982

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6C, 6E, 7

Citation : (1982) 12 CAL CK 0026

Hon'ble Judges : Jyotirmayee Nag, J

Bench : Single Bench

Advocate : Sekhar Kr. Basu, for the Appellant; A. Pal and Krishna Ghosh for State, for the Respondent

Judgement

Jyotirmayee Nag, J.—In this application the order passed by the learned Judge, Special Court under Essential Commodities Act in Special Case No. 3(12) of 1982 arising out of Maheshtala Police Station Case No. 3 dated 4.12.82 is challenged by the petitioner. An application was filed by the petitioner before the learned Special Judge for return of Petrol tanker being No. WBK-1757. That application was opposed by the P.P. in charge. It was submitted before the learned Special Judge that the I. O. in the case had made a prayer to the Collector for return of the petrol tanker alleged to be involved as a Vehicle in an offence u/s 7 of the Essential Commodities Act. The learned Judge held that u/s 6A of the said Act, the Collector has power to confiscate the tanker and in view of the provisions of section 6E of the Essential Commodities Act the learned Special Judge had no power or jurisdiction to make any order regarding possession, delivery or disposal of the oil tanker. It was mainly on this ground that the learned Special Judge refused to pass any order for disposal of the oil tanker in question. After hearing the learned advocates for the petitioner as well as for the State, I am of the view that the learned Special Judge has power to pass an order for disposal of any vehicle involved in an offence u/s 7 of the Essential Commodities Act. The learned Special Judge misconstrued the provision of section 6E of the said Act which reads as follows :

Whenever any essential commodity is seized in pursuance of an order made u/s 3 in relation thereto the Collector or, as the case may be, the judicial authority

appointed u/s 6-C shall have and notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, tribunal or authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of such property.

2. In this connection a Division Bench decision of this Court reported in 1979(2) CLJ 254 is referred to. Some excerpt from the said decision may be quoted as follows:

Section 6A of the Act empowers the Collector to order confiscation of essential commodity including a vehicle, but section 6A does not take away the jurisdiction of an ordinary criminal court to pass an order regarding disposal of any article including any vehicle apart from the essential commodity seized under Act.

It is clear from section 6E that only essential commodity is mentioned and not any container or vehicle used for carrying the commodity. Therefore, jurisdiction of a criminal court has not been ousted in respect of any vehicle which is used for carrying any essential commodity."

3. This decision however has reference to the Act, before the amendment but even under the amendment the powers of the Special Judge are not limited as understood by the learned Special Judge. Section 12AC makes the position clear now. At present as the Magistrate is directed with the jurisdiction in these matters, the Special Judge does have jurisdiction to pass any order regarding disposal of a vehicle but not the essential commodities by virtue of section 12-AC which reads as follows:

Save as otherwise provided in the Act the provision of the Code (including the provision as to appeal) shall apply to a proceeding before a Special Court and for the purpose of the said provision the special court shall be deemed to be a court of sessions and the person conducting.

In view of what is stated above, I hold that the Special Court Judge has power to dispose of a vehicle which may be involved in an offence u/s 3 of the Essential Commodities Act. Hence the order passed by the learned Special Judge dated 9.12.82 is set aside and the learned Special Judge is directed to give the custody of the vehicle to the petitioner on his executing a bond to the tune of Rs. 10,000/- before the Special Judge concerned. The application is disposed of.

The vehicle should be produced by the petitioner whenever called upon by the I.O. if the same is needed in connection with the present case or in other case. It is submitted on behalf of the State that it would be an interest of all concerned if the matter is left entirely to the learned Special Judge to re-consider his decision regarding the disposal of the vehicle. I do not think that is necessary.

Let the order be communicated by a special messenger at the cost of the petitioner, as prayed for.