

(1977) 10 GUJ CK 0001
In the Gujarat High Court

Ishwarbhai Rambhai Patel

APPELLANT

Vs

Shyamal Ghosh and Others

RESPONDENT

Date of Decision : 17-10-1977

Acts Referred:

Essential Commodities Act, 1955 — Section 6, 6A, 6C(2), 7, 7

Citation : (1978) 19 GLR 228

Hon'ble Judges : D.P. Desai, J

Bench : Single Bench

Judgement

D.P. Desai, J.—What is the effect of an order of acquittal in a prosecution u/s 7 of the Essential Commodities Act, 1955 (the Act) on the order of confiscation passed u/s 6A of the Act by the Collector in respect of a vehicle, is the question which arises in this proceeding. A few facts for this purpose may be stated. A truck bearing No. GTD 4207 (hereafter referred to as the truck in question) was loaded with 90 bags of rice in Ahmedabad and was found proceeding towards Broach and beyond Broach, it had crossed Narmada bridge. Before that, an information about it as well as some other trucks in which rice was to be exported to Maharashtra had reached the Deputy Director, Civil Supplies, Gandhinagar. He therefore, in the company of one Mr. Bachani, left Ahmedabad in a car; and at Narmada bridge near Broach they could find entry of this truck loaded with food grains in the relevant records. Having found that the truck had crossed Narmada bridge, they followed; and found it near Ankleshwar going ahead. They closely followed the truck which ultimately was found going from Bardoli towards Ukai. On the way near Bajipura, it stopped. There, the driver was questioned about its destination. It appears that thereafter the truck started its reverse journey from Bajipura and came to Bardoli. The car in which the Deputy Director was travelling, had proceeded ahead in search of other trucks; and on its return they found that the truck was not there near Bajipura. Therefore, they went to Bardoli and found the truck near a garage. There the search of the truck took place and 90 bags of rice were found loaded in it. Thus, the truck in question did not go beyond the limits of Gujarat. It is alleged that by this act, an

attempt was made to contravene Clauses 3 and 4 of the Gujarat and Dadra Nagar Haveli Rice Export and Movement Control Order which was issued u/s 3 of the Act. The said contravention was also, in law, made punishable u/s 7 of the Act; and for that contravention the petitioner was one of the six persons prosecuted. He was the owner of the truck in question. The collector of Surat in exercise of his powers u/s 6A of the Act, gave notice to the petitioner to show cause why the truck in question should not be confiscated as the same was found in a surreptitious taking rice out of the limits of Gujarat State, and thereby, contravention of the aforesaid order was made. The petitioner showed cause in reply and the Collector by his order dated September 10, 1976 ordered confiscation of the truck in question. Being aggrieved by this order, the petitioner preferred an appeal to the Sessions Judge at Surat as provided by Section 66 of the Act. It may be mentioned that prior to the decision of the appeal by the learned Sessions Judge, the petitioner came to be acquitted by the learned Magistrate in respect of the contravention of the aforesaid order which would be punishable u/s 7 of the Act. One of the contentions, therefore, raised before the learned Sessions judge on behalf of the petitioner was that in view of the order of acquittal the confiscation order made by the Collector must be set aside under Sub-section (2) of Section 6C of the Act, and the price for the truck should be paid to the petitioner. Two other contentions including a contention pertaining to the merits of the case were also raised. The learned Judge in appeal did not accept any of these three contentions, with the result that he dismissed the appeal confirming the order of confiscation passed by the Collector. Against the said order, present Special Criminal Application has been preferred by the petitioner.

2. The first contention advanced on behalf of the petitioners that the petitioner having been acquitted of the same contravention of the Movement Control Order on the basis of which the order of confiscation was passed, the confiscation ordered by the Collector of the vehicle must give way to the acquittal order which would entitle the petitioner to have his truck back. It is urged that the order of confiscation is based on the alleged contravention of the Movement Control Order made u/s 3 of the Act; and the petitioner (owner of the truck) is acquitted of the offence arising from the same contravention by the Court after a full-fledged trial. Therefore, runs the argument, the order of confiscation passed by the Collector does not survive and the petitioner is entitled to get back the truck. Having heard the learned advocates of both the sides on this Point. I found that there is a good deal of substance in this contention; and therefore, it is not necessary to examine the validity or otherwise of the order passed by the Collector and confirmed in appeal by the learned Sessions Judge on the basis of the other two contentions.

3. A look at the relevant provisions of the Act will show how well founded this contention is. Section 3 of the Act empowers the Central Government to make an order for regulating or prohibiting, inter alia distribution, trade and commerce of an essential commodity. The Movement Control referred to earlier came to be

made under this provision; and about that there so dispute. The contravention of that order would be punishable u/s 7 of the Act. Now, Section 7(1)(b) of the Act, provides inter alia that any vehicle used in carrying property in respect of which contravention of the order u/s 3 has been made shall be forfeited to Government. However, the Court trying an offender for such contravention may refrain from forfeiting the property to the Government as provided by the proviso to Section 7(1)(b) of the Act. Thus, the law contemplates two consequences following a single contravention viz. confiscation by the Collector u/s 6A or forfeiture to Government u/s 7(1)(b) as a result of the order of the Court. The question is, can the Collector confiscate property on the basis of a contravention of order u/s 3 for which the person to whom the property belongs has been tried by a Court of law and acquitted? Now, when the Legislature has conferred power on the Court to refrain from forfeiting property to Government even in a case where contravention of an order u/s 3 has taken place, it would indeed be strange if in case of an acquittal on merits the power of confiscation vested in the Collector is not affected by the acquittal. On the contrary, there is sufficient indication given in the Act itself of the Legislative intent to see that the order of confiscation passed by the Collector is made subject to an order of acquittal passed by the Court. This has been expressly provided in respect of an essential commodity in Section 6C(2) of the Act. The entire section may be reproduced:

6C. (1) Any person aggrieved by an order of confiscation u/s 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order u/s 6A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made u/s 6A the person concerned is acquitted and in either case it is not possible for any reason to return the essential commodity seized, such person shall be paid the price therefore as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity: and such price shall be determined-

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of Sub-section (B) of Section 3.

(ii) in the case of sugar, in accordance with the provisions of Sub-section (3C) of Section 3, and

(iii) in the case of any other essential commodity, in accordance with the provisions of Sub-section (3) of Section 3.

(Emphasis supplied).

The emphasised portion, of course, speaks of an essential commodity. And the vehicle used to carry essential commodity is not an essential commodity. But if the essential commodity or its price becomes returnable on an acquittal, there is no reason why the vehicle cannot be returned if the acquittal is on merits. In such a case, the acquittal on merits means that in fact in law no contravention of an order u/s 3 has taken place in respect of the goods carried. In such a case, the vehicle must be returned to its rightful owner; and the law will readily imply this obligation of the Government, arising out of an acquittal on merits.

3.1 We have already seen earlier that the basis for confiscation u/s 6A in one case and forfeiture u/s 7 in the other is the contravention of an order made u/s 3 of the Act. If in a given case, therefore, the Collector exercising power u/s 6A of the Act confiscates a vehicle belonging to a particular person on the basis that the said person was intentionally or knowingly concerned in the contravention of the provision of an order issued u/s 3 of the Act, and the same person is acquitted on a trial held for the same contravention, it is obvious that the order of acquittal passed by the Court after full fledged trial should hold sway over the order of confiscation passed by a quasi Judicial authority like the Collector. In such a case, it can well be said that the decision of the Court as to contravention of an order u/s 3 holding that no contravention had taken place by a particular person would obliterate the satisfaction reached by the Collector that the same person had contravened the provisions of the order u/s 3 of the Act. To this extent, the order of confiscation of a vehicle passed by the Collector u/s 6A must be made subject to the decision of the Court as to the contravention of the provisions of an Order u/s 3 by a particular person against whom the collector passes the order of confiscation. If we apply the provisions of Section 6C(2) to the present case it is clear that so far as 90 bags of rice are concerned, the acquitted accused who may be the owner of the food grains in question and who was acquitted, was entitled to the return of the said essential commodity or its price in view of the acquittal. This is because the petitioner as well as other persons prosecuted with him came to be acquitted for the same contravention of the order u/s 3 of the Act on the basis of which the order of confiscation was passed by the Collector. If in this case, therefore, either the petitioner or the owner of the rice who may be his co-accused was entitled/to the return of 90 bags of rice or its price, it is not understood how the State can justifiably maintain that the owner of the vehicle in which the essential commodity was carried is not entitled to the return of the vehicle. If the carrying of the bags of rice itself was not an offence as found by the learned Magistrate at the trial, the vehicle in which it was carried could, by no stretch of imagination, be said to have been used in contravention of the provisions of the order u/s 3 of the Act. We find, therefore, sufficient indication in Section 6C(2) of the Act for the view that the order of confiscation passed by the Collector would be subject to the acquittal on merits by the Court in respect of the same contravention which is the basis of the order of confiscation.

4. Any other interpretation would bring about two contradictory results in actual

practice. A person who has been acquitted of contravention of an order u/s 3 of the Act would still lose his vehicle which would stand confiscated to the State by virtue of an order passed by the Collector. Such a result could never have been contemplated by the Legislature. In fact the result contemplated by the Legislature as Sub-section (2) of Section 6-C indicates, was the return of the essential commodity or its price in case of an acquittal of the person concerned, In this view of the matter it is clear that confiscation order passed by the Collector in the present case and confirmed in appeal by the learned Sessions Judge cannot survive in view of the acquittal of the petitioner by the Court. The learned advocate for the petitioner has produced a certified copy of the judgment in Summary Case No. 93 of 1976; and going through the same, it is fairly clear that the petitioner and his co-accused were found not guilty of the breach of Clauses 3 and 5 of the Movement Control Order read with Section 7 of the Act; and each of them was, therefore, acquitted of the said offence. There is no dispute about the fact that the petitioner is the owner of the truck in question. On his acquittal, therefore, he was entitled to the return of the truck and if it was sold in the meanwhile, to the amount of sale price realised by its sale.

5. Before parting, it will be necessary to reproduce certain observations of the Allahabad High Court in *Kishori Lal Bihani Vs. The Addl. Collector and District Magistrate, Kanpur and Others*, . There the question was with regard to the confiscation of paddy u/s 6-A of the Act and also the prosecution for contravention of the relevant order u/s 3 of the Act made punishable by Section 7 of the Act. The learned Judge in paragraph 3 of his judgment pointed out that the contravention contemplated by both the provisions was of the same character. He also found that Sections 6A and 7 were in *pari materia*, and they have the same legal incidence and consequence. Therefore, it was held that the Collector was entitled to take into consideration whether there was an intentional contravention of the order, or whether the conduct of the dealer was *bona fide*, under the belief that he was acting legally. The learned Judge then referred to the provisions of Section 7(1)(b) of the Act where in case of a contravention, the Court can forfeit to Government, *inter alia*, any vehicle, vessel or other conveyance. The proviso to Section 7 giving a discretion to the Court to refrain from doing so was also referred to. The learned Judge then proceeded to state in paragraph 4 as under:

So, in case where initially an order of confiscation has been passed under 6A, and the dealer is subsequently prosecuted the Court is entitled to look into the whole matter and to see whether there were reasons for not directing so. If it finds that it is not necessary to order forfeiture of the goods, it can direct that the good need not be forfeited. In that case the initial order of the Collector would stand modified or abrogated.

Thus, the orders u/s 6A are provisional, that is they are subject to the orders passed by the Court. Section 7 does not require that the contravention for which the dealer was liable to be punished under it, was something different in a nature

and character than the contravention for which an order of forfeiture is to be passed by the Collector in the first instance u/s 6A....

These observations also in a way support the view that the order of confiscation passed by the Collector becomes subject to the order of acquittal where the same person who is alleged to have contravened the order u/s 3 of the Act is prosecuted for the same contravention and is ultimately acquitted. In this view of the matter, this Special Criminal Application must succeed.

6. In the result, the application is allowed. The orders of confiscation passed by the Collector on September 10, 1976 in respect of truck No. GTD 4207 and confirmed in appeal by the Sessions Judge, Surat are both hushed. As a necessary result of this, a direction will issue that the truck in question, if not disposed of so far, shall be returned to the petitioner within a period of two months from the date of receipt of the writ of this Court by the Collector. If, however, it is already disposed of, its sale price realised shall be made over or paid to the petitioner. Rule made absolute in these terms. A copy of this writ also will be sent to the Collector.