
(1991) 06 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5504 of 1989

Jaipur Polyspin Ltd. and Others

APPELLANT

Vs

The Textile Commissioner and Others

RESPONDENT

Date of Decision : 25-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 482
Essential Commodities Act, 1955 — Section 10, 3, 7
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 468, 469
Trade and Merchandise Marks Act, 1958 — Section 3, 7, 95

Citation : (1992) 1 WLC 175 : (1991) WLN 486

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—In this writ petition duly filed by M/s. Jaipur Polyspin Limited, its Managing Director, General Manager and the Factory Manager, under Article 226 of the Constitution of India, prayer has been made to summon the record of the respondents and to restrain respondent No. 4 from conducting any investigation or taking any steps in the exercise of powers u/s 156 of the Code of Criminal Procedure, on the basis of the report lodged by respondent No. 1 and 2 or any of their subordinate officials. It has also been prayed that any action taken by respondent No. 4 pursuant to the said report may be declared illegal and unconstitutional and may be quashed.

2. Petitioner No. 1 is a Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing synthetic yarn. It has its factory at Reengus in district Sikar. The yarn manufactured by the petitioner is meant solely for industrial consumption and is used for the purpose of making fabric/cloth by industries. It has licence under the provisions of the Industries (Development & Regulation) Act, 1951. Petitioner No 2 is its Managing Director. Petitioner No 3 is the General Manager and petitioner No. 4 is the Factory

Manager of the Company.

3. The Petitioner has stated that on 13.6.89 certain persons claiming themselves to be the Inspecting Staff of the Regional Office of the Textile Commissioner visited the factory of the petitioner company for inspection. They drew sample of yarn from lot No 917. A show cause notice was issued on 14.8.89 by the Director of the Regional Office of the Textile Commissioner at Ahmedabad, calling upon the petitioner to let the said authority know the reason for incorrect declaration as well as the names of persons responsible for incorrect declaration in respect of the yarn manufactured by the petitioner Company. In the said notice it has been stated that samples drawn from the petitioner mill were sent for laboratory test for ascertaining the percentage in yarn. The test report of the Laboratory and the declaration/marketing made by the mill the yarn and as per record of the mill it was found that the percentage/composition are different. It has been stated in the notice that the declarations made by the petitioner company amount to violation of the provisions contained in Clause 10(C) of the Notification dated 7.3.88 and Clause (17) of the Textiles (Control) Order 1986 (hereinafter referred to as "the order"), issued under the Essential Commodities Act, 1955. It was, therefore, proposed to take action for prosecution u/s 10 and for penalty u/s 7 of the Essential Commodities Act 1955 (hereinafter referred to as "the Act"), The petitioner, have stated that after receipt of the communication dated 14.8.89, they got the sample of yarn from the sample tested at the Ahmedabad Textile Industries Research Association Laboratory (for short "ATIRA"), and its report dated 25.6.89. The polyester content of the yarn is 46.2% and the Viscose content thereof is 53.8% The petitioner has stated that according to this report there is no inconsistency between the percentage of composition of yarn found by ATIRA and the declaration to that effect given by the petitioner company. A detailed representation was submitted by the petitioner company to the Director, Regional Office of the Textile Commissioner, Ahmedabad on 26.8.89. Along with the representation a copy of its report sent by the ATIRA was also enclosed and it was stated that the declaration given by the petitioner and the test report given by ATIRA were well within the permissible limits of 5% as specified by notification No. 2937 dated September 20, 1962 issued by the Ministry of Commerce and Industry u/s 95 of the Trade and Merchandise Marks Act, 1958. On that premise it was claimed that there has been no violation of the provisions of the Act or the order or the Regulations issued by Notification dated 7.3.88. The further submission of the petitioners is that without objectively considering the facts and circumstances, the respondent No. 1 and 2 have lodged a complaint/report to respondent No. 4 (Station House Officer, Police Station, Reengus, District Sikar, Rajasthan), seeking prosecution of the petitioners for the alleged offence u/s 3/7 of the Act and the respondent No. 4 on his part has decided to register a report and commence investigation. According to the petitioners, since the report in question has been lodged by respondent No. 1 and 2 under the colour of public offence, therefore, consequential investigation and prosecution in pursuance of such report is a foregone conclusion.

3. The petitioners have challenged the lodging of report/complaint by respondent No 1 and 2 on the ground that the provisions contained in Textiles (Consumer protection) Regulation 1988, cannot be construed as part of the order & alleged violation of these regulations cannot construe foundation for initiating action for prosecution u/s 3/7 of the Act. The alleged contravention of Clause (10) of the Regulations of 1988 does not amount to an offence punishable u/s 7 of the Act and, therefore, the threatened prosecution of the petitioners is without jurisdiction. The notice dated 14.8.89 does not make out a fake or misleading declaration on the part of the petitioner company. The alleged variation in the actual content of polyester and viscose in the said yarn is wholly inconsequential. It neither affects the quality of the said yarn nor the value thereof. The trust report given by ATIRA shows that the declaration made by the petitioner company with respect to the yarn manufactured by it is correct. The so called variation pointed out in the communication dated 14.8.89 is perfectly within the permissible limits prescribed by Central Government under its Notification issued u/s 95 of the Trade and Merchandise Marks Act, 1958.

4. The respondents No. 1 and 2 have contested writ petition In para 2 of their reply respondents No. 1 and 2 have stated that according to the Industrial licence issued by the petitioner company on 23.9.85 (part 4) the industrial licence will be further subject to "production, specification and packing of yarn in accordance with the policy in force and the directions issued by the Textile Commissioner in this regard from time to time." The respondents have stated that every marking so specified of the yarn shall be subject to the relevant limits of variation contained in the instructions issued by the Central Government u/s 95 of the Trade and Merchandise Marks Act, 1958 and also directions specified under Clause 3 of Textile (Consumer Protection) Regulation, 1988. The test referred to in Clause 3(F) of the Regulations is having reference to the standards prescribed by the Bureau of Indian Standards. According to the respondents one Technical Investigator duly appointed by the Government of India, holding identity to that effect visited the Mills as part of his assignment. The sample was drawn by the Technical Investigator during the course of his regular inspection of the Unit. The sample was sent for the Laboratory test and on the receipt of the report communication dated 14.8.89 was sent to the petitioner company. With reference to the test of the sample by ATIRA it has been stated according to Clause 6 Sub-section (5) of Regulations of 1988, a list of laboratories of Textile Committee and also several Research Associations have been notified wherein persons/organisations can get samples of tops/yarn/cloth tested on payment of Rs. 100/- per sample. In such cases samples will have to be in its original condition and packing to the extent it is possible. This facility has been provided for the consumer or any registered voluntary consumer association who have any bonafide complaints and who are aggrieved person. This facility is not available to the manufactures. According to the respondents the Bureau of Indian Standard vide ISI No. 11195-1985 has prescribed a tolerance limit of 3% on blend composition at para 22. For the purpose of samples the I.S.I, standard

prescribed by Bureau of Indian standard has to be applied, which clearly specifies a tolerance of 3%. The tolerance limit prescribed u/s 95 of Trade and Merchandise Marks Act 1958 have no bearing on the I.S.I, standards under which the samples are being tested by the laboratories. The respondents have also stated that it is not known as to from which lot the sample was drawn by the petitioner company for testing at ATIRA. The respondents have claimed that the writ petition filed by the petitioners is not maintainable. The petitioners have prima facie committed serious offence and are liable to be tried by a competent court & the respondent No. 4 has full jurisdiction to conduct investigation u/s 156 of the Code of Criminal Procedure. Regulations of 1988 are within the frame work of the provisions of the Act and the order. The petitioner company has given incorrect declaration and the laboratory report shows that the declaration is fake and misleading. This action of the petitioner company amounts to violation of the provisions of the Textile Control Order 1986 and for that the petitioner is liable to be prosecuted. The respondents have asserted that the petitioners, if they have any objection to the maintainability of prosecution against them, they are free to raise all objections before the Court which may ultimately try them for the alleged offence. This Court will not interfere in such proceedings at this stage.

5. The first contention urged by Mr. Paras Kuhad, learned Counsel for the petitioner is that the proceedings initiated against the petitioner on the basis of the complaint made by respondent Nos. 1 and 2, or their subordinates, are wholly without jurisdiction and are liable to be quashed. No such prosecution can be launched on the basis of alleged contravention of the Regulations made by the Textile Commissioner by Notification dated 7.3.88. Under the Textile Control Order of 1986 an obligation of marking is necessary in case the production is sold to consumers. Mere possess on of unmarked or not properly marked yarn is not an offence. According to him the provisions of the Act and the Order have to be construed too strictly. Moreover the manufacturer of yarn cannot be held responsible because the quality of cloth can be enforced by the manufacturer of the cloth. The second submission of Mr. Kuhad is that the ATIRA's report which has been given on the basis of the sample sent by the petitioner company clearly show that declaration made by the petitioner-company is not erroneous or misleading and the variation is within the permissible limit of 5% as indicated in the Notification dated September 20, 1962, issued by the Central Government u/s 95 of the Trade and Merchandise Marks Act, 1958. Learned Counsel has placed reliance on the decision of Supreme Court in *State of West Bengal Vs. S.N. Basak*, *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, *Niraj Garg v. State of Rajasthan and Ors.* R.L.R. 1988 1 860 . He also referred to the decision of Calcutta High Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Prohlad Agarwalla*, .

6. Mr. R.M. Iodha, learned Counsel for the respondents on the other hand argued that permissible tolerance limit is 3% on the basis of the standard prescribed by the Indian Standard Bureau. He referred to Clause (3)(f) of Regulations of 1988

in support of his submission that all tests are required to be carried out with reference to the standard prescribed by the Bureau of Indian Standards. According to Mr. Lodha, the test report of ATIRA is of no avail to the petitioner. In that report itself it has been written that the report is meant for chemical information of client only. It is not meant for advertisement, promotion, publicity or litigation. The test report shows that the variation is more than 3% and, therefore the petitioner company has prima facie violated the provisions of the Textile Control Order, 1986. Under Clause 6(5) of the Regulations of 1988 the test is not meant for the manufacturer. It is intended to protect the consumer. According to Mr. Lodha, the notice Anx. 1 dated 11.8.89 clearly discloses that the allegations against the petitioner is about contravention of the provisions of Essential Commodities Act. 1955 and Clause 17 of the Textile (Control) Order 1986. Violation of the conditions contained in the Regulations would also amount to contravention of the Order, according to Mr. Lodha. Mr. Lodha then submitted that the petitioner has not even placed on record of the court that the report which is sought to be quashed or proceedings in pursuance of which are being held and which are being sought to be quashed by this writ petition and he has made reference to the decision of the Supreme Court in *State of Bihar v. J.A.C. Saldanna* AIR 1980 S.C. 326. Another submission made by Mr. Lodha is that the petitioner has alternative remedy by filing a petition u/s 482 of the Code of Criminal Procedure and the writ petition filed under Article 226 must be held to be misconceived. The nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India for quashing the Criminal Proceedings initiated by means of AIR or complaint or for quashing of the investigation proceedings has been a subject matter of civil cases. The question as to whether and in what circumstances, the Court may interfere with the investigation was considered by a Judicial Committee of the Privy Council in AIR 1945 18 (Privy Council) While setting aside the order of the High Court by which the F.I.R. was quashed, in exercise of the powers conferred u/s 561-A of the Code of Criminal Procedure, 1898, the Privy Council proceeded to make the following observations.

In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in the matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime with out requiring any authority from the judicial authorities, and it would as their Lordships think be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complimentary, not overlapping and

the combination of individual liberty with a few observance of law and order is only to be obtained by leaving each to exercise its own function always, of course, subject to the right of the Court to interfere in an appropriate case when moved u/s 491, Cr.P.C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Courts functions begin when a charge is preferred before it and not until then.

7. In *State of West Bengal Vs. S.N. Basak*, the Supreme Court endorsed the said view expressed by the Privy Council and set aside the order of the High Court quashing the police investigation and held that there was no jurisdiction for the High Court to interfere at that stage of the proceedings. In *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, , their Lordships of the Supreme Court held that in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution in respect of criminal proceedings & if the high Court is convinced that the powers of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers, in *State of Bihar and Anr. v. J.A.C. Saldanha and Ors.* (supra) the Supreme Court held that the High Court was not justified in quashing the order of the Additional Chief Judicial Magistrate, whereby he did not accept the final report submitted by the police and adjourned the matter to await the report of further investigation. The Supreme Court observed that the High Court should not interfere at a stage where further investigation into the offence was sought to be thwarted by interference in exercise of the extraordinary jurisdiction. The Supreme Court observed that only an extraordinary case of gross abuse of power made out by those in charge of investigation the Court should be quite loath to interfere at the stage of investigation a field of activity reserved for police and the executive. In *State of West Bengal and Ors. v. Swapan Kumar Guha and Ors.* (supra) the Supreme Court upheld the quashing of the First Information Report. In *R.P. Kapur Vs. The State of Punjab*, , *Jehan Singh Vs. Delhi Administration*, *Pratibha Rani Vs. Suraj Kumar and Another*, , *State of Haryana and others Vs. Ch. Bhajan Lal and others*, as also in *Niraj Garg v. State of Rajasthan and Ors.* . 1988 1 R.L.R 860, the Courts have time and again reiterated the principle that for the purpose of deciding as to whether a case is made out for quashing of F.I.R. the Court has to take into consideration the contents in the F.I.R. and to examine as to whether said averments if taken at their face value and accepted in their entirety disclose the offence alleged.

8. The question relating to exercise of powers by the High Court under Article 226 of the Constitution has again come up for consideration in two recent judgments of the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . Their lordships of the Supreme Court referred to almost all the cases on the subject decided earlier either by the Privy Council or by the Supreme Court and in para 107 and 108 of the judgment observed:

107. In the backdrop of the interpretation of the various relevant provisions of

the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of my raid kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, Justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence or investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution & continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rerest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

9. In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, a Bench consisting of Kuldip Singh, J. and K. Ramaswamy, J. rule for quashing of proceedings by the High Court emanating from FIR and charge sheet u/s 409,420,468,469,471 and 120B IPC read with Section 7 of the Essential Commodities Act was unwarranted. In its cocurrent judgment Justice Ramaswamy, J. has made certain observations which are quite instructive and are, therefore, quoted below;

The...crucial question is whether the High Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution, would interfere and quash the charge-sheet. Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to killing still born child." Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial under Articles 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks.... The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grossesst error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Article 226. After the charge-sheet was filed, the FIR no longer remains sheet anchor. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the charge-sheets and the First Information Report. It is, therefore, not necessary to consider all the decisions dealing with the scope of the power of the High Court either u/s 482 Cr.P.C. or Article 226 of the Constitution to quash the First Information Report.

10. In the light of the principles which have been laid down, if the facts of this case are looked into I am constrained to observe that the petitioners have not even placed on the record of the Court the reports said to have been lodged by respondents No. 1 and 2 or their subordinate officials. It is not possible for the Court to find out as to what are the reports lodged against the petitioners and as to whether on the basis of the said report any case is made out for taking action against the petitioners. It is not the case of the petitioners that they had applied for copy of the report and the same had not been made available to them. The notice was given to the petitioner in the first instance on 14.8.89 and reply had been submitted on 26.8.89. The report must have been submitted sometimes

thereafter. In para II of the writ petition the petitioners have asserted that the respondents No. 1 and 2 have lodged a complaint/report that the respondent No. 4 is seeking prosecution of the petitions and the respondent No. 4 on its part has decided to proceed with the report only after commencement of Winter vacations so as to leave the petitioners with no redress. Even if the report may not have been available to the petitioner at the time of filing of the petition, they ought to have placed the same on record during the pendency of the petition. In the absence of report. It is not possible to issue any writ for quashing of the proceedings which are being taken on the basis of that report. In fact the petitioners have not furnished the basic documents on the basis of which their claim regarding the fact that no case is made out is founded.

11. So far as the report Anx. 2 which has been sent by ATIRA to the petitioners in respect of the yarn is concerned the language of Anx. 2 is very important. It shows that the report is meant for chemical information of client only and it is not for advertisement, promotion publicity or litigation. Moreover Clause 6(5) with reference to which the petitioners have claimed to have got this report, clearly shows that this provision is intended to be used by any aggrieved person or any Voluntary consumer Association who alleges of violation of any of the provisions of the Regulations by any Manufacturer, including processor or dealer or any person who is suspected to have committed such violation. Such aggrieved person or any registered voluntary Consumer Association can have tops, yarn and clothes tested in the Laboratory notified by the Textile Commissioner from time to time. The Laboratory is required to issue a test certificate to such aggrieved person or such registered voluntary Consumer Association, to enable them to initiate legal proceedings. The staff of such laboratory can be directed to appear before the Court to testify the results set out in the said Certificate. A plain reading of the provisions contained in Clause 6(5) of the Regulations show that it cannot be resorted to by the manufacture for the purpose of securing a certificate which could be used by him to show that he has not contravened the provisions of the Regulations.

12. I do not find any merit in the submission of the learned Counsel for the petitioner that proceedings cannot be taken against the petitioner on the basis of allegations contained in Anx. 1 because the contravention of the Regulations cannot be treated as contravention of the provisions of the Order issued under the Essential Commodities Act, 1955. A perusal of the notice dated 15.8.89 shows that the allegations against the petitioners is of violation of Clause 10(c) of the Regulations and Clause 17 of the Textile Control Order. Section 3(1) of the Act empowers the Central Government to issue order for regulating and prescribing the production supply and any essential commodity for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations. u/s 3(2) it has been provided that the order issued u/s 3(1) may provide for various things specified in that sub-section and this is without prejudice to the general

provisions contained in Section 3(I). Textile Control Order 1986 has been made by the Central Government in exercise of powers conferred by Section 3 of the Essential Commodities Act 1955. Clause 16 empowers the Textile Commissioner to issue directions in writing to any manufacturer or class of manufacturers or manufacturers generally regarding class or specification of cloth or yarn, the maximum or minimum quantities of cloth or yarn which are required to be manufactured during a particular period, the maximum price wholesale, retail at which any class of specific cloth or yarn may be sold or the price of which and the manner in which such maximum prices may be determined by a manufacturer and the manner of packing or yarn in Banks, or any other form and in such provision as he may consider necessary and expedient. Clause 7(1) of the Order provides that the Textile Commissioner may specify the markings to be made by the manufacturer or dealer of any class or specification of cloth or yarn manufactured or sold by him and the time and manner of making such markings. The Regulations issued by Notification dated 17th March 1988 have been framed in exercise of the powers conferred by Clause 17 of the Textile Control Order 1986. Section 7 of the Essential Commodities Act provides for penalties for contravention of any order made u/s 3. As already mentioned herein above, the allegation about the petitioners is about violation of the provisions contained in Clause 17 of the Textile Control Order 1986. It has been alleged that the markings made by the petitioners and the yarn manufactured by the Company do not tally with the markings required to be made by the manufacturer as per the directions of the Textile Commissioner. It is not the argument of the learned Counsel for the petitioners that Regulations of 1988 are contrary to the provisions of Clause 17 of the Textile Control Order 1986. In my opinion prima facie it cannot be said that the petitioner has been charged with the violation of the provisions of Regulations of 1988 alone. In fact the petitioners have been charged with the violation of the provisions contained in Clause 17 of the Textile Control Order 1986. The judgment in Superintendent & Legal Remembrancer West Bengal v. Prahlad (supra) has no relevance with reference to the facts of the present case. In that case the allegation levelled against the respondent was regarding contravention of para 15 and 27(4) of the Iron and Steel (Control) Order, 1956. The learned Magistrate who had tried the respondent found that the respondent did not charge a rate in excess of the control rate but he held that the respondent did not mention the rate of the G.C. sheets in the cash memo which he was required to do under Notification No. S.R. 10 II/Es: Commissioner Iron and Steel. He therefore, convicted the respondent u/s 7 of the Essential Commodities Act. The learned Sessions Judge set aside the conviction primarily on the ground that there was want of mens rea in what the respondent did, namely in not mentioning the rate of G.C. sheets in the cash memo. The High Court found that there has been no contravention of any of the provisions of Iron and Steel (Control) Order, 1956 and mere contravention of the directions issued by the Controller, cannot be treated as contravention of the order itself. A perusal of the judgment shows that the finding had been recorded by the learned trial court in favour of the petitioner, on the question of

contravention of the provisions of order issued u/s 3 of the Essential Commodities Act. In that situation the Court had held that a mere breach of the direction cannot be made a ground for conviction u/s 7 of the Essential Commodities Act. Here the allegation against the petitioners is not of contravention of the provisions of Regulations of 1989 simplicitor but in fact the allegation leveled against them is about the violation of Clause 17 of the Textile Control Order 1986.

13. Thus, I find no merit in the writ petition, the writ petition is, therefore, dismissed. The petitioners will, however be free to raise all objections before a competent Court which may try them in respect of the case registered against the petitioners on the basis of report/complaints submitted by respondent No. 1 and 2 and/or their subordinate officers.

Parties are left to bear their own costs.