

(1983) 06 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 5 of 1982 and Criminal Revision Petition No. 5 of 1982

Krishna Oil and General Merchants and Commissions Agents,
Ravulapalem

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-06-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 45, 517

Citation : (1983) 06 AP CK 0009

Hon'ble Judges : Ramaswamy, J;Chennakesav Reddy, J

Bench : Division Bench

Advocate : M. Lakshmana Sarma, for the Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

Chennakesav Reddy, J.—The question that prominently presents itself for decision in these Criminal Revision Cases is : "Whether the owner of an essential commodity which has been ordered to be confiscated by the Collector u/s 6-A of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") is entitled to the return of the essential commodity in case the prosecution instituted against him u/s 7 of the Act ends in acquittal.

2. The case first came up for hearing before Jayachandra Reddy, J. The learned Judge doubted the correctness of the decision in Somiseti Ramanaiah Vs. The District Supply Officer, Chittoor, , and felt that the course of judicial authority on the question was unsteady. Having regard to the importance of the issue involved, and the consequent necessity for an authoritative pronouncement of the question, he referred the case for a Division Bench. So, the revision cases have now come up before us.

3. The facts giving rise to the question are neither disputed nor complicated : The petitioners are dealers in essential commodities. Proceedings u/s 6-A of the Act were initiated against the petitioners for contravention of an order made

under S. 3 of the Act. The Collector, after proper enquiry u/s 6-B of the Act ordered confiscation of the seized stocks. On appeal the judicial authority upheld the order of confiscation passed by the Collector. Aggrieved against the said orders the petitioners are now seeking to revise the order passed by the judicial authority. The petitioners were also prosecuted before the Criminal Court u/s 7(1)(a)(ii) of the Act for contravention of an order made u/s 3 of the Act. The Criminal Court acquitted the accused. When the criminal revision case came up for hearing it was contended before the learned Judge basing reliance on Section 6-C(2) of the Act, that the petitioners were entitled to return of the seized stocks or the value thereof in view of the acquittal of the petitioners.

4. The core of the question is, whether an order of acquittal in the criminal prosecution u/s 7 of Act will entitle the owner of the essential commodity for the return of the seized stocks u/s 6-C(2) of the Act notwithstanding the finality of the order of confiscation passed by the Collector u/s 6-A of the Act. It is, therefore, necessary to read Section 6-C of the Act.

"6-C. Appeal. - (1) Any person aggrieved by an order of confiscation under S. 6-A 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 made under S. 6-A 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 6-A, 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, except as provided by sub-section (3) of Section 6-A, 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 oil-seeds or edible oils, in accordance with the provisions of sub-section (3-B) of Section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) 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."

5. Sub-section (2) of Section 6-C is clear and unambiguous. It lays down two conditions under which the essential commodities seized shall be returned or the price therefore shall be paid to the owner (1) When an order of confiscation passed under S. 6-A is modified or annulled in the appeal by the judicial authority u/s 6-C of the Act or (2) When a prosecution instituted against the

owner for the contravention of the order in respect of which the order of confiscation had been made under S. 6-A, has ended in acquittal. In case any one of the aforesaid two conditions is satisfied, the owner is entitled to the return of the seized commodity or the value therefore with reasonable interest if the essential commodity has been sold. Clauses (b) and (c) of S. 6-A(3) are also to the same effect.

6. It is a well settled rule of construction that we must first look into the specific language of the law and if this language is plain and unambiguous on its face, susceptible of but one construction we may not go beyond it. It has been wisely stated that construction of statutes is "eminently a practical science". It is only by an intimate acquaintance with the application to the affairs of life, as they actually occur, that we can acquire that sagacity requisite to decide new and doubtful cases. The statute is one providing for deprivation of both liberty and property. Section 7 of the Act provides for forfeiture of the seized commodity as well as for sentence of imprisonment for the contravention of the order. Therefore a statute of this sort which is highly penal in, nature, strict construction of the provisions is demanded. No doubt, interpretation should be fair and the import of the interpretation should be to promote justice and effectuate the object of the law. Even u/s 45, Cr.P.C. the normal rule is that if the accused is acquitted of an offence relating to property, the Court must restore property to him if it is recovered from his possession. In case where ownership and possession are not in dispute, it would be fair and equitable to return the seized commodity to the owner, in the event of an acquittal. Justice and reason constitute general legislative intent in every piece of legislation. The intention of legislature could only be to promote the standard of justice and propriety. It is plain by the language of the section itself that the obvious intention of the legislature was to return the seized commodity in the event of an acquittal of the offender by the Criminal Court to the owner.

7. In our opinion, it could never be the intent of the legislature to read the conjunction "or" in Section 6-C(2) as "and" and that when only both the conditions laid down in Section 6-C(2) are fulfilled, the owner is entitled for the return of the seized commodity or the value therefor. The word "or" in ordinary use is disjunctive. It means, alternative. It generally corresponds to the word "either". No doubt, the word "or" if carelessly used, the Court by way of construction may read it as "and". But this cannot be done if the meaning and intention of the statute is clear. The statute itself must furnish the cogent meaning of the Legislature. Indeed the words used in the section "in either case it is not possible for any reason to return the property seized such person be paid the price therefore further the clear intention of the legislature. The Courts are extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words and vice versa. Alladi Kuppuswami, J., (as he then was) construing Section 6-C(1) of the Act in Somiseti Ramanaiah Vs. The District Supply Officer, Chittoor, rejected the submission that the conjunction "or" should be read as "and". He observed :

"If it was intended that both the conditions must be satisfied there was no difficulty for the legislature to use the expression "and" instead of "or". On the other hand I am of the view that there was a definite purpose in using the expression "or". The Legislature obviously felt that even if the order of confiscation was affirmed in appeal, if still the prosecution for contravention ended in an acquittal, the person concerned should be given the benefit of such acquittal and be paid the price of the goods."

8. The learned Judge held that if any one of the conditions of Section 6-C(2) was fulfilled the owner was entitled to the return of the seized stocks. To the same effect is the decision of this Court in Arvapalli Kotiratnam Vs. State, .

9. The Kerala High Court in C. Unni Vs. State of Kerala, dealing with the scope of Section 6-C(2) of the Act observed at p. 585) :

"The Scheme of the Act appears to be that though proceedings for confiscation by the Collector and Criminal Prosecution for contravention of the order in respect of which an order of confiscation has been made u/s 6-A are independent and parallel proceedings, acquittal in the prosecution will amount to annulling the confiscation order."

9-A. In State of Maharashtra v. Morarji Hirji Maru 1978 Mah LJ 260, the Bombay High Court observed :

"Where the prosecution ends in acquittal, then also the order of the Collector stands superseded and the property has to be returned to the accused in specie or as converted."

9-B. The learned Judges went a step further and observed :

"Even where Magistrate convicts the accused, but does not forfeit the property u/s 7(1)(b), he can order return of the property in specie or if converted into money, the return of the money by resorting to Section 517, Cr.P.C. It cannot be contended that the Collector's order has to yield only in case of an acquittal by the Magistrate or the appellate order u/s 6-C."

10. The Gujarat High Court in Kasamkhan Basulkhan Pathan v. State of Gujarat (1979) 20 Guj LR 542, held that u/s 6-C(2) of the Act it was only the essential commodity or its monetary equivalent was to be returned to the person concerned if he was acquitted in a regular judicial trial.

11. This Court in Dharni Trading Co. v. State of Andh. Pra. (1974) 2 Andh WR 319, held :

"The procedure prescribed under S. 6-B of the Act is based upon expediency and policy necessitating speedy and prompt action. If the authorities under the Act were to go in for the traditional, elaborate and time consuming process of trial in a law court, the very purpose of the object to take ready and immediate action either to quash some prejudicial activity or to palliate some measure economic or otherwise would be frustrated".

It was held that the object would be defeated if the authority under the Act were to go into the traditional, process of trial, and the observance of the principles of natural justice and impartiality was strengthened by the provisions of Sections 6-B and 6-C of the Act. But when once a criminal prosecution is launched u/s 7 of the Act for the contravention of the Order and the Criminal Court finds the person not guilty of any contravention and acquits him it would be against justice and equity to allow the order of confiscation of the seized stock to stand. Section 7 is comprehensive and penalises the contravention of any order u/s 3 of the Act. The orders u/s 6-A of the Act are only quasi-judicial in nature. It is well settled that the orders passed by a quasi-judicial authority should be subject to the order of the judicial authority. Therefore, when once Criminal Court finds a person not guilty of contravention of an order made under S. 3 of the Act, that find (sic) a judicial authority supersedes or annuls the satisfactory (sic) a quasi-judicial authority that the person was guilty of contravention of an order and ordering confiscation of the seized stocks.

12. The Court in *M. Gaffar Saheb v. Government of Andhra Pradesh* ILR (1975) A P 277, relying on the decision of the Madras High Court in *Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another*, held : that the finding and orders of the Criminal Court should be treated as conclusive in a proceeding before a quasi-judicial tribunal. The order of confiscation passed by the Collector is quasi-judicial in nature and the finding of contravention of the order is not conclusively based as it is an expediency policy necessitating speedy and prompt action.

13. No doubt this Court in *Venka Anantha Rao Vs. The State of Andhra Pradesh and Others*, observed that the proceedings u/s 6-A and the criminal prosecution u/s 7 for contravention of an order made u/s 3 of the Act are parallel proceedings and the jurisdiction exercised is a concurrent jurisdiction or simultaneous jurisdiction. Placing reliance on this decision, it is contended, that the order of acquittal by a Criminal Court cannot annul the order of confiscation passed by the Collector u/s 6-A and upheld in appeal under S. 6-C of the Act. The argument is no doubt attractive but it does not diminish the express effect of the statute which undoubtedly constitutes a defence-in-depth and in favour of the primacy of the finding of a Criminal Court over the finding of a quasi-judicial tribunal. In view of the express provision enacted in Section 6-C(2) of the Act an order of confiscation passed under S. 6-A of the Act could not have any legal effect when the person concerned has been acquitted by the Criminal Court in a prosecution u/s 7 of the Act.

14. From the aforesaid discussion devoted to the statutory provisions and judicial precedents it follows that where a prosecution u/s 7 of the Act for contravention of an order u/s 3, ends in acquittal, the satisfaction recorded by the Collector u/s 6-A in respect of the alleged contravention stands annulled or obliterated by the finding of the Criminal Court that there was no contravention committed. We accordingly hold that the owner of the essential commodity is entitled to the

return of the essential commodity in specie or if converted into money, the return of the money with reasonable interest u/s 6-C(2) of the Act, in case the criminal prosecution against him u/s 7 of the Act ends in acquittal.

15. The reference is accordingly answered and the criminal revision cases will now be posted before the learned single Judge for disposal on merits.

16. Reference answered accordingly.