

(1969) 07 AP CK 0008

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 370 of 1969

Malepati Narayana and Another

APPELLANT

Vs

Station House Officer, Badvel

RESPONDENT

Date of Decision : 15-07-1969

Acts Referred:

Andhra Pradesh Kerosene (Fixation of Ceiling Price) Order, 1966 — Section 3(a)
Criminal Procedure Code, 1898 (CrPC) — Section 156, 156(1), 173, 4(1), 5(2)
Essential Commodities (Amendment) Act, 1967 — Section 10A, 7(1)
Essential Commodities Act, 1955 — Section 7(1)

Citation : AIR 1971 AP 29 : (1971) CriLJ 32

Hon'ble Judges : Narasimham, J; Madhava Reddy, J

Bench : Division Bench

Advocate : V. Venkataramana Reddy, for the Appellant; The Public Prosecutor, for the Respondent

Judgement

Narasimham, J.—The Station House Officer, Badwel has laid a charge sheet before the Judicial First Class Magistrate, Nandalur alleging offences punishable u/s 7(1) (a)(ii) of the Essential Commodities Act against the petitioners. The particulars of the charge sheet were, that the first petitioner as the agent of the second petitioner, who is a retail dealer in Kerosene, is carrying on business in Kerosene under a licence at Badwel and that on 13-5-1968 the first petitioner sold seven tins of Kerosene at Rs. 11.50 per tin of 16.5 litres i.e., Re. 0.16 paise in cess per litre than the declared price for that area and thereby contravened Section 3(a) of the Kerosene (Fixation of Ceiling Price) Order 1966 and Clause (9) of the Andhra Pradesh Kerosene (Licensing and Distribution) Order, 1965.

2. In the petition filed before us, the petitioners contended that the Station House Officer, Badwel is not competent to investigate and file a charge sheet, and so the proceedings started before the Magistrate should be quashed.

3. The short point for consideration is whether this contention can be upheld? At the outset we have to notice that offences punishable under the Essential

Commodities Act 1955 are made cognizable by section 10A of the Act, which was introduced by the amending Act 36 of 1967 on 30th December, 1967. By reason of this, prima facie Sec. 156 of Criminal Procedure Code would apply and an officer in charge of a police Station having jurisdiction would have the power to investigate into such an offence and file a charge sheet.

4. We have also to notice that u/s 5(2) of the Code of Criminal Procedure "All offences under any other Law" (the reference is to offences other than those punishable under the Indian Penal Code) shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with the offences.

5. We may now indicate that the main contention before us is that the orders contravened referred to supra, contained therein provisions for dealing with contravention's of the said orders, which are offences and as such the powers of investigation into cognizable offences by the police officer concerned are excluded.

6. Before we address ourselves to this contention we would refer to the definition of investigation in the Criminal Procedure Code and the interpretation the courts have put on the term. . Investigation under the Criminal Procedure Code, Section 4 (1) (1) "Includes all the proceedings under this Code for the collection of evidence conducted by the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

7. What constitutes investigation has been stated by Supreme Court lucidly in H.N. Rishbud and Inder Singh Vs. The State of Delhi, :-

"Thus, under the Code, investigation consists generally of the following steps (1) proceeding to the spot (2) ascertainment of the facts and circumstances of the case (3) discovery and arrest of the suspected offender (4) collection of evidence relating to the commission of the Offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statement into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet u/s 173".

This view has been reiterated in the later decision of the Supreme Court in The State of Madhya Pradesh Vs. Mubarak Ali, .

8. We would now refer to the provisions relied on by the learned counsel in the orders which the allegedly contravened. Clause 11 of the Andhra Pradesh Kerosene (Licensing and Distribution) Order 1965 confers on officers other than police officers, powers to enter search seize and such officers can require the

owner or any other person to produce any books, accounts or other documents showing any transactions relating to the contravention; enter, insect or break open and search any place or premises etc. If he has reason to believe that any contravention of the provisions of this order or of the conditions of any licence issued thereunder, is being or is about to be committed; take or cause to be taken, extracts from or copies of any documents showing transactions relating to such contravention, which are produced before him; and also search, seize and remove stocks of kerosene and the animals, vehicles, vessels, or other conveyance used in carrying the said kerosene in contravention of the provisions of the order, or of the conditions of the licenser issued thereunder; and take all measures necessary for securing the reduction of stocks of kerosene and the animals, vehicles vessels or other conveyance so seized in a court and for their safe custody pending such production. It is also provided that tea provisions of Sections 102 and 103 of the Code of Criminal Procedure 1989 relating to search and seizure shall so far as may apply to searches and seizures under the clause.

9. Similar provisions occur in Clauses 7 and 8 of the Andhra Pradesh Kerosene, (Fixation of Ceiling Price) Order, 1966. It is alleged before us that these provisions embody a complete code of investigation by officers specified therein other than police officers and so the police officers are excluded. It is also contended that they are the only persons, who can deal with the offences and not the police officers, although the offences are made cognizable and the provisions of Section 156(1), Cr. P. C. are primarily attracted.

10. We may clarify in this context that the Supreme Court has held in *Delhi Administration Vs. Ram Singh*, , with reference to Section 5 of the Criminal Procedure Code, that the word "otherwise" occurring u/s 5 of the Code points to the fact that they expression is all comprehensive, and that investigation, inquiry and trial were some aspects of "dealing with" the offences. That would mean that the investigation is by dealing with the offences. That would mean that the investigation is by dealing with the offences. It is significant from the lucid statement of what investigation constitutes, that the apprehension of the offender, and the collection of evidence by examination of witnesses etc. are vital steps in the scheme of investigation which do not occur in the provisions relied on by the learned counsel. We cannot say that investigation consists of only entry, search and seizure by officers other than police officers, nor are we persuaded that the orders contravened embody a complete code for investigation excluding investigation by a police officer under S. 156(1), Cr. P. C. A. scrutiny of the provisions leaves no room for doubt that there is no such exclusion of investigation by the police officer concerned.

11. We would now refer to the cases relied by the learned counsel for the petitioners in *In Re: Kuppammal*, dealing with investigation into offences under *Suppression of Immoral Traffic in Women and Girls Act, 1956*.

12. In the first of these cases it was held that investigation could be conducted only by the Special Police Officer mentioned in Section 13 of the Act.

13. In the second of the cases, the same view was pronounced thus:-

"We are therefore of opinion that the Special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offenses under the Act and that police officers not specially appointed as Special police offices cannot investigate the offences under the Act even though they are cognizable offences".

14. These cases are clearly distinguishable and cannot and will not apply.

15. the public prosecutor next invited our attention to the decision in Pravin Chandra Mody Vs. State of Andhra Pradesh, . In the said decision it was held that the police officer would be competent to include the offence u/s 7 of Essential Commodities Act, though non-cognizable, in the charge-sheet u/s 173, Cr. P. C. with respect to a cognizable offence i.e. u/s 420, I. P. C. The said decision would apply with greater force when the offences punishable u/s 7 of the Essential Commodities Act are made cognizable. The view we have taken on a scrutiny of the provisions derives support from the observations of the Supreme Court in the decision cited by the learned public prosecutor.

16. We, therefore, find no substance in the contention of the petitioners. The petition fails and is dismissed.

17. Petition dismissed.