

(2007) 03 UK CK 0036

In the Uttarakhand High Court

Case No : Criminal Revision No. 39 of 2000

Naresh Kumar

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(5), 259, 468
Essential Commodities Act, 1955 — Section 7(1)(a)(ii)

Citation : (2007) NCC 625

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : L.K. Tiwari with Mr. G.S. Negi, for the Appellant; Nandan Arya, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Hon. Dharam Veer, J.—This Criminal Revision has been filed against the order dated 01.12.2000 passed by Special Judge/Sessions Judge, Pauri Garhwal in Special Trial No. 8 of 1983 whereby the learned Judge has rejected the application of the revisionist for quashing the proceedings initiated against him before the trial Court and discharging him of the charge punishable U/s 7(1)(a) (ii) of the Essential Commodities Act, 1955. Brief facts giving rise to the present revision are that on 13.01.1983, an F.I.R. was registered by the then Sub-divisional Magistrate, Kotdwar in Police Station Kotdwar against Dalveer Singh and others and Truck No. UTS 870 containing jaggery, oil, Vanaspati, sugar Ferax (milk-powder) etc. was seized. Besides the above-mentioned seizure, driver of the vehicle Dalveer Singh was detained in the Police Station, Kotdwar. After registration of the case, accused Naresh Kumar surrendered before the Court concerned and got him and his driver Dalveer Singh released on bail. After completion of the investigation, a charge-sheet was submitted against the accused persons in the Court of Special Judge/Sessions Judge, Pauri Garhwal and a case bearing Special Criminal Case No. 8 of 1983 is pending in the concerned Court. After the death of accused Dalveer Singh, the case against him stood

abated. The accused Naresh Kumar made a prayer before the learned trial Court that since charge-sheet was submitted on 09.12.1983 against him i.e. after six months of the lodging of the first Information report, therefore, the court of the special judge/sessions judge, Pauri Garhwal, was not competent to take cognizance of the case. He also pleaded that as per the provisions of the Essential Commodities Act, 1955, his trial ought to have been conducted summarily and as per the provisions of the Code of Criminal Procedure, the trial against him ought to have been conducted as "summons case" and not as "warrant case".

2. The learned trial Court held that since the accused was not in police custody, therefore, provisions of Section 167 (5) of the Cr. P.C. do not apply with regard to the investigation against him. With regard to his trial to be conducted summarily, the learned trial Court held that though the trial ought to have been conducted summarily, charge against him had already been framed by his predecessor vide order dated 06.08.1984 and since that order was not challenged by the accused, now, that cannot be challenged. He also held that since as per the provisions of Section 259 Cr. P.C., "summons case" can be converted into "warrant case". Thus, the learned trial Court held that there was no illegality in trying the present case as a "warrant case".

3. After hearing learned counsel for the parties; perusing the materials available on the record and going through the relevant provisions of law, the learned Special Judge/Sessions Judge, Pauri Garhwal, rejected the application of accused Naresh Kumar (revisionist herein). He also ordered that since this case was old being of the year 1983, the same has to be disposed of expeditiously and, therefore, he listed the case on 15.12.2000 and ordered that on the appearance of the prosecution witnesses, the case will be heard on day-to-day basis till the evidence of the prosecution witnesses is recorded.

4. Feeling aggrieved, the revisionist has filed the present revision against the order of the Court below.

5. Sri L.K. Tiwari, the learned counsel for the revisionist, has submitted that the F.I.R. was lodged on 13.01.1983 and the charge-sheet was submitted on 9.12.1983 i.e. after the period of six months, therefore, the order under revision is in violation of the mandatory provisions of law; the Special Court has framed the charge on 06.08.1984 as "warrant case" which is contrary to the mandatory provisions of the Essential Commodities Act, 1955; since for all the offences under the Essential Commodities Act, the summary way is prescribed, the special Judge has no power to convert the "summary case" into the "warrant case"; the order dated 1.12.2000 of the Special Judge/Sessions, Pauri Garhwal is against the provisions of law and it vitiates the whole trial; and the cognizance taken by the learned Special Judge, Pauri garhwal is not proper and the trial Court has committed grave illegality in passing the impugned order.

6. Sri Nandan Arya, the learned A.G.A. has supported the order passed by the

trial Court and submitted that the order under revisions is perfectly justified and is based on the materials on record and the learned trial Court has passed the order after going through the relevant provisions of law and as such, the same is liable to be sustained.

7. After hearing learned counsel for the parties, I am of the view that the order under revision is liable to be affirmed as the learned Trial Court has passed the order after thorough scrutiny of the provisions of law.

8. So far as the first submission of the learned counsel for the revisionist that the F.I.R. was lodged on 13.01.1983 and the charge-sheet was submitted on 9.12.1983 i.e. after the period of six months and, therefore, the trial of the revisionist is in violation of the mandatory provision of the Code of Criminal Procedure is concerned, the same is liable to be rejected because the accused was not in detention as he surrendered in the Court on 21.01.1983 and got bail from the Court on the next date i.e. on 22.01.1983.

9. In support of the above submission, the learned counsel has placed reliance in Section 167(5) Cr.P.C., which reads as under:

If in any case triable by a Magistrate as summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice, the continuation of the investigation beyond the period of six months is necessary.

10. A bare reading of the above quoted section makes it clear that there was no irregularity in filing the charge-sheet after the expiry of period of six months as the above quoted section applies strictly to those persons who are in detention. Since the accused was not in detention, I do not find any illegality or infirmity in submitting the charge-sheet after expiry of six months.

11. Otherwise also, the bar to take cognizance after lapse of the period of limitation is provided U/s 468 Cr.P.C. which is reproduced as under : "468. Bar to taking cognizance after lapse of the period of limitation-(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

12. The above quoted section also does not apply in the present case as the period of limitation is to be determined with reference to the severity of the offence. As in the present case, the imprisonment may extend to seven years, therefore, the cognizance in the present case has been rightly taken by the Special Judge.

13. So far as the next submission of the learned counsel for the revisionist that this case ought to have been tried as "summons case" and not as "warrant case" is concerned, I do not find any illegality in the order under revision as a "summons case" may be converted into a "warrant case" if a summons case relates to an offence punishable with imprisonment for a term exceeding six months. As per the provisions of Section 259, Cr.P.C., a summons case may be converted into a warrant case when trial of the summons case relates to an offence punishable with imprisonment which may exceed six months. Section 259 of the Code of the Criminal Procedure may be reproduced as under:

259. Power of Court to convert summons-cases into warrant-cases : When in the course of the trial of a summons case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interest of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

14. From the above quoted section, it is quite clear that the trial of the revisionist is not in violation of the provisions of the Code of Criminal Procedure. Since the present case relates to the offence punishable U/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 where imprisonment may be imposed for a term which shall not be less than three months but which may extend to seven years with fine, therefore, in my opinion there is no illegality if the trial of the revisionist is conducted as "warrant case".

15. Considering the facts and circumstances of the case, I am of the view that the Special Judge/Sessions Judge, Pauri Garhwal has rightly taken cognizance of the case and has rightly held that the accused was not entitled to get benefit of Section 167(5) Cr.P.C. as the accused was not in custody during the period when the F.I.R. was lodged and the charge-sheet was filed except for a day when he surrendered before the trial Court on 21.01.1983 and was granted bail on 22.01.1983. There appears no illegality in trying the case of the revisionist as "warrant case" because the punishment for the offence punishable U/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 may extend to seven years with fine. The Special Judge/Sessions Judge, Pauri Garhwal vide his order dated 1.12.2000

has rightly rejected the application of the revisionist for quashing the proceedings in the trial Court and for discharging him for alleged commission of the offence punishable U/s 7(1)(a)(ii) of the Essential Commodities Act, 1955. Thus, I do not find any irregularity, illegality and impropriety in the order of the Court below. Therefore, no interference is called for at this stage and the revision is liable to be dismissed.

16. For the foregoing reasons, the revision is hereby dismissed. With the above order, interim order dated 13.12.2000 stands vacated.