

(2004) 04 AP CK 0059

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No's. 8 and 1062 of 2002

P. Venkateswara Rao and Another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Essential Commodities Act, 1955 — Section 10A, 10AA, 11, 3, 6A

Citation : (2004) 2 ALD(Cri) 108 : (2004) 2 ALT(Cri) 496 : (2004) 2 APLJ 365 : (2004) CriLJ 3384

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : V.V.N. Narayana Rao and V. Srinivas, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Bilal Nazki, J.—These revisions have been referred to us by a learned single Judge of this Court by his order dt. 23.4.2003 as he was not able to agree with the law laid down earlier by a learned single Judge of this Court in an unreported judgment in W.P. No. 11259 of 2000, dt. 2.8.2001.

2. The short question involved is whether a police officer can approach the Collector u/s 6A of the Essential Commodities Act (for short "the E.C. Act"). One of the present cases pertains to the Fertilizer (Control) Order, 1985 promulgated in terms of Section 3 of the E.C. Act and another relates to Insecticides (Price, Stock, Display and Submission of Reports) Order, 1986. The case which was considered by the learned single Judge in W.P. No. 11259 of 2000 fell under Fertilizer (Control) Order and he felt that in terms of Clause 27 of the Fertilizer (Control) Order there had been no notification conferring any powers to the police officers belonging to the vigilance cell, therefore the whole exercise was without jurisdiction. In the order of reference, however, the learned single Judge had felt that u/s 10A of the E.C. Act the offences are cognizable and non-bailable and u/s 10AA of the E.C. Act an officer not below the rank of an officer who is in charge of police station has been authorized to arrest a person accused of

committing offences under the E.C. Act. Therefore an officer, during inspection, if finds goods which are subject to seizure in terms of the E.C. Act, can always approach the Collector in terms of Section 6A of the E.C. Act.

3. Before coming to the question, briefly the facts are stated. In one of the cases before us the learned Sessions Judge ordered confiscation of 30% of the seized stock in favour of the Government u/s 6A of the E.C. Act. In the second case he ordered confiscation of 25% of the seized stock in favour of the Government u/s 6A of the E.C. Act. In the first case proceedings u/s 6A of the E.C. Act have been initiated before the Joint Collector, East Godavari District, Kakinada alleging violation of Clauses 3, 4 and 6 of the Insecticides (Price, Stock, Display and Submission of Reports) Order, 1986. The Inspector of Police, Vigilance Cell, Civil Supplies Department, Kakinada inspected the premises of the revision petitioners who were the fertilizers/insecticides dealers and in the course of the inspection he noticed variations in the stock and therefore initiated proceedings u/s 6A of the E.C. Act. The Joint Collector issued a show cause notice. The revision petitioners submitted an explanation. The Joint Collector, not being satisfied with the explanation, ordered confiscation of 30% of the seized stock or its equivalent value in favour of the Government. In the second case the Inspector of Police, Vigilance Cell, Civil Supplies, Kakinada inspected the premises of the revision petitioner who was a dealer in fertilizer/cement and on physical verification he found variations in the stocks and irregularities in the maintenance of the records. The Joint Collector issued a show cause. The revision petitioner-dealer responded to the show cause notice and the Joint Collector passed an order confiscating 25% of the seized stocks. Appeals were taken before the learned Sessions Judge who dismissed the appeals, however, he reduced the quantities that were to be confiscated. The revisions have been filed against those orders of the learned Sessions Judge.

4. Learned counsel for the revision petitioners submits that there are two altogether different approaches laid down by the E.C. Act in regulating and controlling the business in essential commodities. He submits that u/s 3 of the E.C. Act Control Orders could be passed, u/s 6A confiscation of the essential commodities could be ordered and u/s 7 there could be prosecution. According to the learned counsel, as far as the prosecution is concerned, it could be initiated by a police officer because in terms of Section 10-A of the E.C. Act every offence under the E.C. Act is cognizable and non-bailable, notwithstanding anything contained in the Code of Criminal Procedure and u/s 10-AA of the E.C. Act a police officer not below the rank of an officer in charge of police station has power to arrest any person accused of committing an offence under the E.C. Act. Therefore if the prosecution was launched in terms of Section 11 of the E.C. Act, then a police officer was authorized to do so. But if the agencies who are supposed to regulate the flow of essential commodities wanted to take recourse to Section 6A of the E.C. Act, then it should not be done by a police officer. In the first case he places reliance on the Fertiliser (Control) Order, 1985. The learned counsel has drawn our attention to Clause 26 which gives power to State

Government to appoint a registering authority. He has also drawn our attention to Clause 27 which gives power to State Government to appoint Inspectors by notification in the official gazette. He has drawn our attention also to Clauses 27-A and 28. Clause 27-A lays down the qualifications for appointment of fertilizer inspectors. They should be graduates in Agriculture or Science with Chemistry as one of the subjects and they should have training or experience in the quality control of fertilizers. Under Clause 28 powers are given to Inspectors with a view to secure compliance of the Fertilizer (Control) Order, 1985. These powers include the power to enter upon and search any premises where any fertilizer is manufactured or stored or exhibited for sale. They also include the power to seize or detain any fertilizer in respect of which he has reason to believe that a contravention of the Order has been or is being or is about to be committed. The learned counsel submits that specifically a power of seizure of the fertilizer, for which there exists a reason to believe contravention of the Order, has been given to Inspector and the Inspector is required to have particular qualifications and the Police Officer cannot make any seizure. He further contends that under Clause 28 (3) a duty has been cast upon the Inspector that where he seizes any fertilizer, he has to forthwith report the fact of such seizure to the Collector whereupon the provisions of Sections 6A, 6B, 6C, 6D and 6E of the E.C. Act shall apply to the custody, disposal and confiscation of such fertilizers.

5. On the other hand, learned Public Prosecutor submits that giving power under Clause 28 to the Inspector to seize the goods and report the matter to the Collector under Sections 6-A to 6-E of the E.C. Act does not take away the power of the police officer, if, during the process of investigation for which he was authorized, he finds that the goods have been stored in contravention of the Order.

6. Reliance has been placed by the learned counsel for the revision petitioners on various judgments. In a judgment of the Supreme Court reported in Delhi Administration Vs. Ram Singh, the controversy was that a person was charged with an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956. The accused was allegedly a pimp and had committed an offence u/s 8 of the Act. Investigation into the offence was made by the officer in charge of Kamla Market Police Station and a charge sheet was filed before the Magistrate. An objection was taken before the Magistrate that the charge sheet was bad because investigation into the offence was not made by the Special Police Officer who was authorized to investigate in terms of the Act. The objection was upheld by the Magistrate and the charge sheet was rejected. A revision was preferred before the High Court of Punjab. That revision was also rejected. Thereafter an appeal was preferred before the Supreme Court. The matter was decided by the Supreme Court on the opinion of the majority Judges. The majority judgment was delivered by Raghubar Dayal J. on behalf of himself and on behalf of K. Subba Rao, J. The dissented judgment was delivered by Madholkar J. Section 16(1) of the Act lays down that where a Magistrate has reason to believe from information received from the police or otherwise that a girl apparently under the

age of twenty-one years, is living or is carrying on, or is being made to carry on prostitution, in a brothel, he may direct the special police officer to enter such brothel, and to remove therefrom such girl and produce her before him. Section 16(2) of the Act also envisages that the special police officer after removing the girl shall forthwith produce her before the Magistrate. The Supreme Court, while considering the various provisions of the Act and the Code of Criminal Procedure, came to the conclusion that the special police officer is competent to investigate and he and his assistant police officers are the only persons who are competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences.

7. The learned counsel for the revision petitioners submits that there is a similarity in between the case before the Supreme Court and the case on hand and the Inspector has not specially been authorized to seize, therefore the seizure by a police officer was illegal. We are unable to agree with this submission in view of the fact that both the police officer as well as the Inspector appointed under the Fertiliser (Control) Order, 1985 have the power of seizure. The Inspector appointed under the Fertiliser (Control) Order, 1985 has special powers of investigation, inspection and seizure, whereas the police officer has all those powers which he has in terms of the Code of Criminal Procedure while dealing with investigation of a case.

8. The learned counsel for the revision petitioners also relies on a judgment of the Supreme Court reported in *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, . This was a case which concerned the Special Court and Special Judge and we do not think that this judgment would help us in arriving at a conclusion.

9. In *Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others*, the Supreme Court laid down a method for taking cognizance of an offence in terms of Section 190 of the Code of Criminal Procedure by the Magistrate irrespective of the qualifications of eligibility of the complainant to file the complaint. We are not concerned presently with such controversy.

10. Reliance has also been placed on a judgment of the Supreme Court reported in *Gangula Ashok and Another Vs. State of A.P.*, . This judgment also dealt with the controversy as to whether a Special Court created under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would take cognizance of the offences directly as a Court of original jurisdiction without the case being committed to it by the Magistrate u/s 193 of the Code of Criminal Procedure. We have not been able to find anything in this judgment which would help us in resolving the present controversy because admittedly for investigation and trial of offences under the E.C. Act the operation of the Code of Criminal Procedure has not been excluded.

11. On the other hand, the learned Public Prosecutor relies on a judgment of the

Supreme Court reported in State of Punjab Vs. Balbir Singh, It pertains to a case under the Narcotic Drugs and Psychotropic Substances Act. It lays down a specific mode for search and seizure and excludes to that extent the operation of the Code of Criminal Procedure. But the Supreme Court held that if a police officer in normal course of investigation finds an offence having been committed and if there was a chance of recovery of Narcotic Drugs and Psychotropic Substances, he could seize it. Para-26 (1) of the judgment would be profitable to be reproduced,

"If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act."

12. Therefore, for the reasons given hereinabove, we feel that the Police Officer is not debarred from seizing and reporting the seizure to the Collector u/s 6A of the E.C. Act and he can also prosecute in terms of Section 7 of the E.C. Act. The seizure as such is not bad or without power. Once a police officer investigates and seizes the commodity which he is empowered to do because the case is cognizable, whether he prosecutes in terms of Section 7 of the E.C. Act or not, but he is bound to make a report to the Collector which is independent of prosecution. Therefore, we do not agree with the law laid down by the learned single Judge in W.P. 11259 of 2000.

13. Coming to the case relating to the Insecticides (Price, Stock, Display and Submission of Reports) Order, 1986, in terms of Section 2(e), Insecticide Inspector means, the Insecticide Inspector appointed by the Central or State Government u/s 20 of the Insecticides Act, 1968 and Sections 20 and 21 of the Insecticides Act are para material with Clauses 27-A and 28 of the Fertilizer (Control) Order, 1985.

14. The reference is answered accordingly.