

(1967) 02 GUJ CK 0002
In the Gujarat High Court

Patel Hargovan Nathubhai and Another	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 02-02-1967

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : AIR 1968 Guj 250 : (1968) CriLJ 1275 : (1968) GLR 314

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Judgement

N.G. Shelat, J.

* * * * * 6. That takes me to the other Revision Application No. 299 of 1966 before this Court. Mr. Patel's contention is that while the police held the power to seize such utensils in which the prohibited food-stuffs etc., were found at the time when the raid was carried out u/s 6 of the Gujarat Guests Control Order, while passing an order of confiscation of the property u/s 7 of the Act, it has necessarily to confine itself to that provision, and as provided in Section 7(1)(b) of the Act all that could be forfeited to Government would be the "property in respect of which the Order has been contravened or such part thereof to the Court may deem fit". According, to him, the contravention is in respect of having prepared and distributed food to more than 25 persons at a time as contemplated under the provisions of this Order, and, therefore, only that property viz., the prohibited food-stuffs can be confiscated. Rest of the property such as the utensils containing the same or other materials not prohibited by any law attached from that place as also from the house cannot be confiscated as done in this case.

7. It would, therefore, be necessary to refer to the relevant part of Section 7(1) of the Act. It runs thus:

7. (1) If any person contravenes any order made u/s 3-

(a) xx xx xx xx (i) xx xx xx xx (ii)xx xx xx xx

(b) any property in respect of which the order has been contravened or such part thereof as to the Court may seem fit shall be forfeited to the Government:

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property it may, for reasons to be recorded, refrain from doing so.

Turning, therefore, to Section 3 of the Order, it provides for the restriction on preparation, consumption and distribution of prohibited foodstuffs. Since the original accused No. 1 had distributed or served the prohibited foodstuffs to more than 25 persons at the ordinary social function such as the one that he held on that day, he committed breach of the said Order. If that Order is read with Section 7 of the Essential Commodities Act, 1955 which provides for the punishment for contravening any such Order referred to above, all that the Court can pass is an order for forfeiture of only that property or such part thereof in respect of which the Order has been contravened. The term "property" has not been defined either in the Act or in the Order. It has, therefore, to be given a natural meaning having regard to the subject-matter dealt with under the Order read with Section 7. As I said above, the Order relates to contravention in respect of prohibited food-stuffs and for which the original accused No. 1 came to be held liable. That property, therefore, would be nothing more than the prohibited food-stuffs found or seized at the time of the raid carried by the police on the date of the offence. Therefore, the prohibited food-stuffs which were found were liable to be forfeited to the Government.

8. An attempt was, however, made by Mr. Nanavaty to invite a reference to Section 6 of the Order which provides for the powers of entry, search, seizure, etc., and urge that if the coverings or containers of those prohibited food-stuff could be seized and attached, they can as well be forfeited - they being used in committing the said offence, Section 6 runs thus:

6. (1) For the effective enforcement of the provisions of this Order, any Revenue or Supply Officer not below the rank of AvalKarkun or any Police Officer not below the rank of a Head Constable and any other person specially authorized by the State Government in this behalf may, when he has reason to believe that a contravention of this Order has been, is being or is about to be committed, enter and search any premises, interrogate any person and seize any articles including their coverings or containers in respect of which he has reason to believe that the contravention has been, is being or is about to be committed.

(2) xx xx xx x x

This Section 6 only relates to the powers of a police officer or any other officer contemplated therein for the purpose of making a search of the premises and seizing any articles including their coverings or containers etc. That has been for the effective enforcement of the Order, and at the same time, prohibited articles of food would have to be seized or attached along with their containers or coverings as they cannot have kept with them for taking away those prohibited

food-stuffs. But that cannot necessarily mean that the containers were also liable to be confiscated to Government u/s 7(1)(b) of the Essential Commodities Act. If that were intended to be so, it would have specifically referred to any such articles including the coverings or containers as we find in Section 6 of the Order. All that Clause (b) of Section 7(1) of the Act refers to is to the "property" in respect of which the Order has been contravened. The property in respect of which the Order has been contravened would be the prohibited food stuffs in the present case and much though such food-stuffs are bound to be in containers or some utensils, the containers or utensils cannot be treated as property in respect of which the Order has been contravened. Thus while the seizure may be valid, the confiscation cannot be, as it was not "property" in respect of which the Order was contravened.

9. It was then pointed out by Mr. Nanavaty that the learned Magistrate has exercised his powers as required u/s 517(1) of the Criminal Procedure Code and, therefore, the order passed by him cannot be called illegal. That Section 517(1) runs thus:

517. (1) When an inquiry or a trial in any Criminal Court is concluded the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery, to any person claiming to be entitled to possession thereof or other of any property...regarding which any offence appears to have committed, or which has been used for the commission of any offence.

It is no doubt true that the Court would be, justified u/s 517(1) of the Code to pass any such order of confiscation as the property such as the containers or coverings etc., can be covered in the second part "or which has been used for the commission of an offence". But it is well settled rule of law that when a specific provision is made under the special Act as we have Section 7(1)(b) in the Essential Commodities Act, 1955, that would prevail over the general provisions contained in the Criminal Procedure Code. They cannot be used to supplement or add something to the provision in the special Act. In the special Act, the second part as we find in Section 517(1) of the Code viz., "or which has been used for the commission of any offence" is not there. Only the first part viz., the property in respect of which the offence appears to have been committed is there, The Legislature can therefore be said to have given powers to confiscate only such property in respect of which offence appeared to have been committed, and not any, other properties which have been used for commission of such an offence. The provisions of the Act head with those of the Order provide for a complete machinery and therefore the order has to be passed with regard to the medial property thereunder, and not u/s 517 of the Criminal Procedure Code. In my opinion, therefore, the only property that could be forfeited to the Government would be the property in respect of which the Order has been contravened, and that was no other property than the prohibited food-stuffs the breach in relation whereof is made punishable u/s 7(1) of the Act. The Courts below, therefore, were wrong in law in directing all the articles seized from that place to be

confiscated to the Government.

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