

(1968) 05 KL CK 0014

In the High Court Of Kerala

Case No : Criminal R. P. No. 123 of 1968

Ramaswamy Gouttder and others

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 27-05-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Essential Commodities Act, 1955 — Section 2, 3, 7, 7(I)(b)

Citation : (1968) KLJ 734

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : N. K. Sreedharan, M. A. Thrivikrama Pai and M. Ramakrishnani, for the Appellant;

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The first contention of the counsel of the petitioners is that the Sessions Judge has erred in treating the proceeding as one u/s 517 of the Code of Criminal Procedure. The District Magistrate acquitted the petitioners of offences under clauses 3 and 3A of the Southern States (Regulation of Export of Rice) Order, 1954 read with sections 2, 3 and 7 of the Essential Commodities Act, 1955 and Rule 125 (9) of the Defense of India Rules, 1962; but, he directed that the sale proceeds of the paddy seized be credited to the Government. The petitioners filed a memorandum before the Sessions Judge, which was drafted as a criminal revision petition. However, it appears that the same was later on converted into a criminal miscellaneous petition and the Sessions Judge passed orders only on that petition. Therefore, the Sessions Judge cannot be said to be in error when he treated the petition as one u/s 517 of the Code of Criminal Procedure for return of the articles involved in the crime. Then, it may possibly be argued that in that event the petition should have been to the District Magistrate who passed the order. Looking at the matter a little more closely, what appears is that since the District Magistrate himself passed an order of confiscation, the petition before the Sessions Judge should have been treated as

one in revision; and the order passed by the Sessions Judge would then fall u/s 520 of the Code. At any rate, I need not decide that question, because, in my opinion, the petitioners cannot succeed even if the petition before the Sessions Judge was one in revision against the order of the District Magistrate directing the forfeiture of the paddy.

2. The next contention then arises. The counsel of the petitioners argues that forfeiture u/s 7 (l)(b) of the Essential Commodities Act is a punishment in addition to the fine and imprisonment contemplated by the previous clause (a) of the sub-section. The counsel proceeds that if forfeiture is an additional punishment, it can arise only on conviction and the order of forfeiture passed by the District Magistrate after acquittal is then illegal. The main basis for this argument is the use of the conjunctive word "and" at the end of the proviso to clause (a) of sub-section 1 of section 7. I may straightaway observe that the conjunction "and" does not necessarily mean that what follows is an additional punishment on conviction.

3. The counsel has drawn my attention to a few decisions. They are *Paliah v Govt. of Mysore* (A.I.R. 1962 Mys.55), *Pratap Singh and Others Vs. The State*, and *In re Hussain Bee* (1955 (2) M.L.J. 285). The first case was under the (Mysore) Food Acquisition (Harvest) Order; the second was under the West Bengal Black Marketing Act; and the third was under the Madras Prohibition Act. I do not propose to discuss these decisions, because I have not been told in detail as to what was the nature of the provisions which the three High Courts construed in these cases and how a similar construction should necessarily be placed on section 7 of the Essential Commodities Act. Moreover, the point considered in these cases was that where a special statute made provision for the disposal of the articles involved in crimes under that statute, section 517 of the Criminal Procedure Code, the general provision intended to meet such situations, had no application. That is a simple proposition; and there cannot be any dispute regarding that.

4. But, the question in this case is whether section 7 of the Essential Commodities Act clearly excludes section 517 of the Criminal Procedure Code. On this question my opinion is that the section itself indicates the clear intention of the legislature that the articles, in respect of which any order made u/s 3 of the Act relating to foodstuffs has been contravened, should be disposed of as laid down by the section. In support of this, the Public Prosecutor has drawn my attention to the Division Bench ruling of the Assam High Court in *State v Mohanlal Sutadiya* (A.I.R. 1955 Ass 30), which arose under the Essential Supplies Act itself. The Division Bench has said that clause (b) of sub-section 1 prescribes only the mode of disposal of the property involved in the crime and it does not lay down a punishment. I may add this. Both clauses (a) and (b) appear in sub-section 1 of section 7; and the heading of the section is "Penalties". Therefore, it may be argued that forfeiture is also a penalty. But, it does not necessarily mean that it is a "punishment" as contemplated by clause

(a). I shall make my meaning clear. Clause (a) prescribes the punishment to be imposed on the offender who contravenes any order u/s 3, whereas clause (b) provides for a penalty relating to the article in respect of which the order has been contravened, whoever the offender be, known or unknown. In that sense the provision in clause (b) may be a penalty; and in another sense it may be a provision For the disposal of the property. In any view of the matter, it is not an additional punishment to be imposed on a person on conviction as the imprisonment and fine mentioned in clause (a). I may also, in conclusion, add that if the proceeding is to be treated as one u/s 517, Criminal Procedure Code, then the case is covered by the decision of this Court in Paul Vs. State of Kerala, . The petitioners having obtained the benefit of an acquittal on the ground that there was no evidence to show that they contravened an order u/s 3 nor the paddy belonged to them, they cannot now claim the paddy as theirs. I have perused their statement u/s 342 of the Code of Criminal Procedure; and therein they have made no claim to the paddy. The order of the lower courts is confirmed and the revision petition is dismissed.