

(2006) 06 KL CK 0016
In the High Court Of Kerala
Case No : Criminal A. No. 416 of 2001

Savarikutty @ Chacko Xavier

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 465
Essential Commodities Act, 1955 — Section 12A, 12B, 12C, 7(1)

Citation : (2006) 06 KL CK 0016

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, for the Appellant; K.J. George, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The Appellant stands convicted of the offence punishable u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955 (for short "the Act") for violating the provisions of Clause 5(a) of the Kerala Rationing Order and Clause 3 of the Kerala Food grains Dealers' (Licensing) Order insofar as he had, without due licence, stored in his godown 10262 kg. ration rice contained in 142 bags, 884 kgs. of ration boiled rice contained in 12 bags and 14,318 kgs. of ration wheat contained in 159 bags. It was detected by about 6.30 p.m. on 13-2-1998 by the police party. A complaint was taken cognizance of by a Special Court constituted in terms of Section 12A of the Act. Appreciating the evidence on record, the Appellant was, convicted of the said offence and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3,000 with a default sentence.

2. It is contended by the counsel for the Appellant, assailing the conviction, that the court below did not have any jurisdiction to try the offence, which was taken cognizance of on 18-2-1999, the trial of which commenced on 20-1-2000 before the Special Court. It is also submitted that the Special Court was constituted in terms of the Essential Commodities Act (Special Provisions) Act, 1981, which came into force on 1-9-1982 for a period of 15 years. There was further

extension by way of two ordinances one after Anr. . The last one was not replaced by a competent enactment. That ordinance lapsed. Therefore, the Special Court constituted u/s 12A of the Act did not exist to try the offence. So the case ought to have been tried by a competent Magistrate. In this regard, the decision reported in State of Tamil Nadu Vs. Paramasiva Pandian, , has been heavily relied on. The decision in Karim Vs. State of Kerala, , is also relied on to contend that the trial as well as the conviction was thus vitiated.

3. It is further contended by the counsel that, even going by the evidence on record, there arises no reason for conviction. Therefore, even on merit the conviction is bad.

4. It is contended by the Public Prosecutor that this is a fit case where the provisions of Section 465 of the Code of Criminal Procedure, 1973 could be applied, because by reason of the trial and conviction, no prejudice is caused to the Appellant. It is further contended that the contention regarding the vitiation of the trial and conviction had not been taken in the memorandum of appeal. It is a new ground urged at the time of hearing.

5. The competence of the court which tried the offence and convicted the Appellant is a very material contention going to the root of the jurisdiction of the court which tried him. That contention can be taken note of, even without it ground urged, being a question of law.

6. As held by the Supreme Court in the decision cited (supra), the Essential Commodities (Special Provisions) Act, 1981 which provides for constituting a Special Court in terms of Section 12A introduced by the said Act had life only until 31-8-1997. The subsequent two ordinances promulgated to save the provision were not replaced by an appropriate enactment. The resultant position is that there was no provision on the statute book enabling the establishment of a Special Court to try the offences under the Act. Thus the Special Court established for trial of offences under the Essential Commodities Act had ceased to exist. In 1999, when this case was taken cognizance of and in January, 2000 when this trial commenced, there was no Special Court in terms of the Act. When there was no Special Court constituted under the Act, the offence had to be tried by a competent magistrates within whose jurisdiction the offence had been committed. The Supreme Court in the aforesaid decision has made it clear that:

The consequential position that followed, was that the cases registered under the EC Act were to be tried before the Magistrate having jurisdiction as it was being done prior to enactment of the EC (Special Provisions) Act, 1981.

7. The judge appointed as a Special Judge was not a Magistrate, but a Sessions Judge. For a Sessions Judge to try an offence, there should have been a committal proceedings. The Sessions Judge could not have directly tried an offence exercising the original jurisdiction without a committal order. On that count also, the trial cannot be saved.

8. In such circumstances, there arises no question of consideration of the contention of the learned Public Prosecutor placing reliance on Section 465 of the Code of Criminal Procedure, 1973. Even otherwise, there may arise a prejudice, as the accused would lose a chance of revision, in case an opportunity of trial by a Magistrate is not afforded to him.

9. The contention raised by the counsel for the Appellant in this appeal for consideration of the merit of the appeal also does not arise because, this Court gets an appellate jurisdiction only in terms of Section 12AB whereby the decisions of the Special Court were treated as decisions by the Sessions Court. Then alone an appeal will lie to this Court. When the provisions introduced by the Essential Commodities (Special Provisions) Act, 1981, including Section 12A to 12C have ceased to operate, necessarily, the appellate power conferred on this Court u/s 12AB also does not have efficacy.

10. Even otherwise, I cannot consider the merit of the case of the Appellant for an acquittal based on the alleged evidence on record, as there was no trial, going by the first limb of the argument addressed, because of the incompetence of the court. I can either confirm the conviction or acquit him, only after appreciating the evidence on record. Here, there is no evidence on record, which has been taken by a court of competent jurisdiction. Therefore, on that ground also, I cannot now consider the merit of the allegations based on evidence.

11. Necessarily, the order of conviction shall have to be set aside, because of the incompetence of the court, exercising the power of supervision vested in this Court, and not by reason of the appellate remedy. The order passed by the Special Judge is set aside with a direction that the Registry shall send back the records to the Chief Judicial Magistrate, Thrissur, who shall, in turn, transmit them to the Magistrate concerned, having jurisdiction for taking cognizance of the offence.