
(1982) 07 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Smt. Savitri Kapur and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 482
Essential Commodities Act, 1955 — Section 3, 6A, 7

Citation : (1983) CriLJ 1135 : (1983) 2 RCR(Criminal) 178

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

M.M. Punchhi, J.—What is the mutual regard between Sections 6A and 7(1)(b) of the Essential Commodities Act, 1955 (hereinafter referred to as the Act), is the legal question which requires to be answered in this petition u/s 482 of the Criminal P.C. The jurisdiction of this Court has been invoked not only to prevent the abuse of the process of the Court but otherwise to secure the ends of justice. The facts on the basis of which lament has been made by the petitioners may now be noted:

2. S. N. Kapur predecessor-in-interest of the petitioners, was running an agricultural farm known as Kapur Farm situated in village Maharana, District Karnal, He had in the godown of the said farm stored 307 bags of wheat weighing 289.24 quintals. The State of Haryana had in the meanwhile promulgated Haryana Wheat (Restriction on Stock by Producers) Order, 1973 in exercise of powers u/s 3 of the Essential Commodities Act. Since the said Kapur was suspected to have violated the provisions of the aforesaid order a raid was conducted by the officials of the Food and Supply Department, as also the police on 22nd Aug. 1978. Since the wheat bags were found stored there, the said Kapur was arraigned as an accused in a criminal prosecution launched against him u/s 7 of the Act. Shri N.K. Jain. Chief Judicial Magistrate, vide his order dated 13th Dec. 1974. found the aforesaid Kapur guilty of the offence u/s 7 of the Act. He only imposed a sentence of fine on the accused to the tune of Rs. 1,500/-. As per his reasoning excess quantity of wheat with Kapur was 121.24

Qtls. The same he ordered to be confiscated to the State and the remaining Wheat i. e, 168 Qtls. he ordered to be returned to the accused.

3. Kapur filed an appeal against his conviction and sentence as also the confiscation order in the Court of Session. It seems that the trial Magistrate had used the word "confiscation" in his order loosely for what he seemingly meant was forfeiture as envisaged u/s 7(1) (by of the Act. Shri V.K. Jain, Additional Sessions Judge, Karnal, who disposed of the appeal of Kapur, vide order dated 12-11-1976 set aside the conviction and sentence giving Kapur the benefit of doubt on the ground that it was not affirmatively proved that the entire stock was in his possession, or even deeming to be in his possession.

4. The matter did not rest by the acquittal of the accused. The learned Additional Sessions Judge, set aside the order of the trial Magistrate with regard to the forfeiture of 121.24 Qtls., of wheat in explicit words. However, a new direction was given in the judgment". The same may be noticed:-

On the basis of the record it is not possible for me to give a finding whether or not an offence has been committed. Therefore, I am passing no order for the restoration of the property. Instead I direct that the police would take action u/s 6A of the Essential Commodities Act and would obtain orders from the Collector of the District in accordance with the provision of that Act. The order of the learned trial Magistrate by which the excessive stock, namely wheat weighing 121.24 Qtls. was confiscated, is set aside.

(Emphasis supplied)

5. At this juncture the relevant extract of Section 6A of the Act may be noticed:

(1) Where an essential commodity is seized in pursuance of an order made u/s 3 in relation thereto a report of such seizure shall, without unreasonable delay, be made to the Collector of the District Or the Presidency-town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, may if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection: before him and if he is satisfied that there has been a contravention of the order, may order confiscation of....Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

(2) Where the Collector...is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest to do. he may order the same to be sold....

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall

- (a) where no order of confiscation is ultimately passed by the Collector.
- (b) where an order passed on appeal under Sub-section (1) of Section 6A so requires, or
- (c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted.

be paid to the owner thereof or to the person from whom it is seized.

6. It needs reiteration on the basis of the emphasised words appearing in the order of the learned Additional Sessions Judge that he had passed no order regarding the restoration of the property but otherwise had set aside the order of confiscation (forfeiture) of the foodgrains. He had directed the police to take action u/s 6A of the Essential Commodities Act and to obtain the orders from the Collector of the District in accordance with the provisions of that Act. Seemingly it was to achieve the object that if the Collector had disposed of the confiscated foodgrains made available to him with or without the orders of the trial Court, he should in exercise of powers u/s 6(3)(c) of, the Act remit the sale proceeds thereof to the concerned person who was acquitted. It cannot also before gotten that the proviso to Sub-section (1) of Section 6A prohibited the Collector from passing any seizure order with regard to foodgrains or edible oilseeds produced by the producer. A glance through the order of the learned Additional Sessions Judge makes it plain that the plea of Kapur that he was a producer of the (sic) mere fact that the collector had refused to exercise the power would not confer jurisdiction on it. The Court also took the view that the petitioner should approach the trial Court regarding the disposal of the case property, and in case he did not get any relief from there he could come in appeal or revision, as the case may be. It also expressed the view that the Court could not entertain at that time any fresh application for an amended direction. Having gone from pillar to post, Kapur made an application, as advised before the Chief Judicial Magistrate. During the while Kapur died and was succeeded by his natural heirs, the present petitioners, without any opposition from any quarters, and rightly so. The Chief Judicial Magistrate vide his order dated 4-4-1980 rejected the prayer of the petitioners on the ground that the learned Additional Sessions Judge had passed no direction as envisaged u/s 452(3) of the Criminal P.C. He thus felt that he had no powers to entertain the request as also there was nothing to prove on the file that the petitioners were legal representatives of Mr. Kapur. As observed earlier, the latter part of the order of the Chief Judicial Magistrate was wholly uncalled for, as there was no objection of any kind from any quarter to the petitioners being legal representatives of Mr. Kapur.

8. The petitioners then filed an appeal in the Court of Session. It was dismissed on 2-2-1981 by Shri Gorakh Nath, Additional Sessions Judge. Karnal He took the view that since the Chief Judicial Magistrate. Karnal. had in the first instance ordered confiscation of the property and that order had been set aside by the

Additional Sessions Judge, the said Magistrate could not review his own order unless there was a specific direction from a higher Court. He was of the view that it was the Additional Sessions Judge (Mr. V. K. Jain) who could have passed appropriate orders for disposing of the confiscated property when he had finally disposed of the appeal. He thus held that no fresh application u/s 452 of the Criminal P.C. lay before the Chief Judicial Magistrate, Karnal.

9. The set of facts as depicted reveals the harshness of the Court procedure and its tangles, more so when literality has been indulged in. The purposive approach, if employed in the spirit of justice could cut across these tangles, so as to reach the goal for which the Courts of justice have been set up. Time and again Courts have observed that the rules of procedures are hand, maids of justice; they promote rather than prevent its course. Regarding the emphasised words of the learned Additional Sessions Judge, noticeably, he had not passed any order with regard to the restoration of the property, though in the same breath he had set aside the order of confiscation passed by the Chief Judicial Magistrate. The order of confiscation having been wiped out it must come to the benefit of Kapur and it was well within the jurisdiction of the Chief Judicial Magistrate to have passed the order of the restoration of the property as equal to the appellate Court order. And if he had not done so the Court of the Additional Sessions Judge should have passed the said order pursuant to its earlier order of appeal. On their failure to do so, stems of litigation were allowed to sprout and spring up unnecessarily, one after the other, the floor of justice was neatly swept to put the sweepings under the carpet. And in such a situation if this Court will not come to the rescue of the petitioners lamenting, who else will. It is for this reason that the Legislature in its wisdom specifically conferred on the High Courts inherent powers u/s 482. Cr. P.C. though without such specific conferment, these were already there institutionally. Thus a case for interference has been made out.

10. Now the bare reading of Sections 6A and 7(1)(b) shows that these are complementary than contradictory as was sought to be spelled out by the Deputy Commissioner, Karnal in his executive order. These two provisions had to be employed in harmony by the Collector. The order of the Additional Sessions Judge Karnal, was totally misunderstood by him resulting in his refusal to exercise jurisdiction.

11. Without making any further effort to deduce procedural faults in the proceedings of the Courts below. I would like to give the whole proceedings a death-knell by ordering that the confiscated goods be delivered forthwith to the petitioners, and in case it is not possible to do so, the price at which they were sold at that time together with bank interest at the rate of 9 per cent per annum, till the date the payment is made over to the petitioners. This petition is accordingly allowed in the aforesaid terms.